30 March 2012

Mr Gerard Newman
Director
Seacare Management Team
Seacare Authority
GPO Box 9905
CANBERRA ACT 2601

By email  Seacare@comcare.gov.au

Dear Mr Newman

RE:  SEACARE JURISDICTIONAL COVERAGE – DISCUSSION PAPER

I refer to the Seacare Jurisdictional Coverage – Discussion Paper (the Discussion Paper) open for public consultation. Suncorp welcomes the opportunity to contribute to the discussion.

The Suncorp Group

Suncorp Group Limited and its related bodies corporate and subsidiaries (collectively ‘Suncorp’) offers a range of financial products and services in banking (Suncorp Bank), general insurance, life insurance and superannuation (Suncorp Life) across Australia and New Zealand. Suncorp has around 16,000 employees located across Australia and relationships with over nine million customers.

Suncorp offers statutory insurance products through our mass brands: AAMI, GIO, Suncorp and Vero. GIO is our predominant brand for statutory workers compensation insurance, with Vero underwriting the seafarers’ workers compensation insurance products. Vero also offers a range of commercial marine insurance products including conventional and specialised marine cargo, loss of income covers, road carriers’ liability, marine hull and liability.

This submission is made on behalf of the Suncorp Commercial Insurance division.

The Discussion Paper

The Discussion Paper forms part of the Federal Government’s broad initiative to revitalise the Australian shipping industry and Suncorp commends and supports this initiative.

Suncorp has lodged submissions in respect to the other reform activities namely:

- Shipping Reform (Tax Incentives) Bill 2012, which establishes eligibility criteria for the access to taxation concessions;
The intent of the submissions lodged in respect to the maritime sector reform is substantially repeated in response to the current Discussion Paper. Suncorp confines its comments to overarching principles in respect to the significant legislative reform of the Australian shipping industry, which involves interaction with numerous pieces of legislation.

Scope, Objectives and Key Definitions

Suncorp reiterates its views expressed in previous submissions that the scope, objectives and key definitions be clear and consistent to ensure seamless interaction of all pieces of relevant legislation, relating to the maritime industry and relevant insurance. The aim is to provide clarity and avoid the potential for disputes.

Section 3, General Definitions of the Seafarers Rehabilitation and Compensation Act 1992 (Cth) (Seafarers Act) needs to be reviewed to ensure terms are consistently defined and references to related legislation are updated. By way of example, the term, ‘Navigation Act’ will need to be amended to reflect the relevant legalisation once it becomes law.

The terms ‘domestic commercial vessel,’ ‘recreational vessels’ and ‘ships’ are examples of terms that require consistent definitions across all relevant legislation. For the sake of clarity and consistency, Suncorp submits the following be considered:

- terms should be standardised and defined consistently across all related legislation including the *Insurance Contracts Act 1984* (Cth), including (but not exclusively);
  - ‘recreational vessel’ and ‘pleasure craft’;
  - ‘ship’ and ‘vessel’; and
  - ‘seafarer.’

The Australian International Shipping Register

Implications may arise in applying the Fair Work and Seafarers Acts to vessels registered under the *Shipping Registration Act 1981*(Cth), which is of concern.

It is proposed that the Australian International Shipping Register (AISR) will be established alongside the already existing General Register, both to be administered by the Australian Maritime Safety Authority.

1 As used in *Marine Safety (Domestic Commercial Vessel) National Law Bill 2012*
(AMSA). The establishment of the AISR is intended to address the cost disadvantages currently experienced by Australian companies operating in the global shipping market, while maintaining high safety and environmental standards.

The key initiatives at reducing operating costs include:

- mix crew arrangements – only two (2) key senior crew positions must be occupied by Australian Nationals or residents;
- Fair Work Act 2009 (Fair Work Act) and Seafarers Act will not apply to AISR ships while undertaking international voyages;
- AISR ships will be eligible for taxation exemptions and incentives.

Notably the Fair Work and Seafarers Acts will apply to General Register vessels. Clause 17 of the Coastal Trading (Revitalising Australian Shipping) Bill 2012 (Coastal Trading Bill) automatically grants a general licence for five years, where the Minister fails to make a determination within 10 business days. However, a requirement for the granting of a general licence is that the vessel must be manned by an Australian crew. It is conceivable that a general licence could be granted where this requirement is not satisfied, despite general licence cancellation procedures. Such a scenario is likely to increase the pool of non Australian seafarers entitled to access benefits under the seafarers’ workers compensation scheme (Seafarers Scheme).

Further, AISR and foreign vessels may apply for and obtain a temporary or emergency licence under the General Register, provided all criteria are met. Clause 36 of the Coastal Trading Bill grants the issue of a temporary licence for 12 months in circumstances where the Minister fails to make a determination within 15 business days. This is so even if the licence application fails to meet the relevant criteria, despite temporary licence cancellation procedures. Clause 68 provides similar arrangements for an emergency licence although that licence is only valid for 30 days.

It is suggested that AISR and foreign vessels holding either a temporary or emergency licence would be subject to the Fair Work and Seafarers Acts whilst operating in Australian coastal trade but not international trade. This is notwithstanding the AISR and foreign vessels may be carrying a mix crew of Australian and non Australian seafarers or a full crew of non Australian seafarers.

Seafarers presently have access to benefits under the Seafarers Scheme when they are employed on a ‘Prescribed Ship’ as defined under section 19 of the Seafarers Act. By amending the licensing system, it is expected the definition for ‘Prescribed Ship’ will be expanded to include vessels manned by a mix and/or full non Australian crew.

Non Australian seafarers’ access to benefits under the Seafarer Scheme is problematic. Managing ongoing medical treatment, return to work initiatives and entitlement to compensation when a non Australian seafarer returns to the country of residence presents difficulties, as there is little or no oversight over the nature and scope of medical treatment, return to work initiatives or retraining when return to pre-accident employment is not possible. This argument applies equally to Australian seafarers suffering a permanent injury deciding to reside outside Australia.

Increasing the pool of non Australian seafarers is likely to lead to an overall increase in claims costs. This in turn will put upward pressure on premiums which will add to the overall cost of employment. Potentially this may adversely impact the intent of the Australian shipping industry revitalisation strategy.

Further, undue regulatory burden may be created for ship operators. The availability of suitable seafarers’ workers compensation insurance under Australian law for non Australian seafarers may become problematic.

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2 Clause 25: Coastal Trading (Revitalising Australian Shipping) Bill 2012  
3 Division 2: Coastal Trading (Revitalising Australian Shipping) Bill 2012  
4 Division 3 – Coastal Trading (Revitalising Australian Shipping) Bill 2012  
5 Subdivision E – Coastal Trading (Revitalising Australian Shipping) Bill 2012  
6 Division 3 – Coastal Trading (Revitalising Australian Shipping) Bill 2012
Alternatively, purchasing and managing separate policies of seafarers’ workers compensation insurance for Australian seafarers and non Australian seafarers would be unnecessarily onerous for ship operators.

In responding to this challenge, there are a number of options to consider:

- exclude non Australian seafarers from access to the Seafarers Scheme; and/or
- review the limits applied to benefits available to non Australian seafarers or Australian seafarers who reside overseas through the following methods:
  - applying a dollar cap to benefits; or
  - discontinue access to benefits where the medical certificate is not able to be signed by an approved medical practitioner, to be defined; or
  - discontinue access to benefits where the seafarer is unable or unwilling to participate in assessments of incapacity, approved rehabilitation, vocational re-education programs or actively seek alternative employment, to be defined.

Comcare and most other Australian jurisdictions have established procedures to determine ongoing entitlement of workers compensation benefits whilst workers are residing overseas. It is recommended that these procedures be reviewed and the best practice considered for adoption in the Seafarers Scheme. It would also a timely opportunity to consider clearly defining benefits in terms of limits, eligibility and obligations to facilitate consistency between the Seafarers Scheme and other Australian workers compensation schemes.

Suncorp recommends review of the application of maritime sector reforms, once implemented, to ensure no unintended consequences or adverse impacts upon the Seafarers Scheme.

**Conclusion**

The Discussion Paper is part of wider initiative to invigorate the Australian shipping industry. As the initiative involves the introduction of six (6) bills and review of the jurisdictional cover of the Seafarers Scheme, it represents significant reform in the area.

In this environment, it is essential that the scope, objectives and key definitions are consistent across all pieces of interrelated legislation including legislation covering occupational, health and safety; workers compensation, general and maritime insurance. This is essential to ensure clear, consistent cost–effective, targeted, outcomes-based risk mitigation strategies that protect the welfare of seafarers, safety of marine property whilst invigorating the Australian shipping industry.

Accordingly, Suncorp suggests there be a review of the maritime sector reform - once implemented - to ensure there are no unintended consequences or adverse impacts upon the Seafarers Scheme. Surveillance at the implementation stage may be required to ensure any emerging issues are resolved in a timely manner.

Suncorp is keen to work collaboratively with the Seacare Authority, the AMSA and the Department of Infrastructure and Transport to achieve the right policy settings for the Seafarers Scheme in the context of the overall maritime reform agenda. It is also timely to consider the regulatory burden on vessel operators subject to Australian law.
Suncorp is willing to discuss our submission and any other matters relating to the maritime sector reform with you. If you wish to do so, please contact me on 03 8681 9428 or 0425 294 903. Alternatively, please contact Mike Thomas – Manager, Government and Stakeholder Relations on 02 8121 3115 or 0419 772 069.

Yours faithfully

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