



# Seacare Authority exemption guidelines

July 2021

Without limiting in any way the power of the Seafarers Safety, Rehabilitation and Compensation Authority (the Seacare Authority) to exempt employment on a particular ship from the operation of the Seafarers, Rehabilitation and Compensation Act 1992 (the Seafarers Act) pursuant to section 20A, the Seafarers Rehabilitation and Compensation Levy Act 1992 and the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* the Authority has adopted the following guidelines to assist in determining exemption requests.

## 1. Application to the Authority for an exemption

All requests for exemptions from the application of the Seafarers Act by operators should be provided to the Authority in writing and be:

- a) in accordance with the Section 20A Request for Exemption from the Application of the *Seafarers Rehabilitation and Compensation Act 1992* form (Seacare form 10).
- b) accompanied by written evidence from an insurer that the employees will be completely covered by a valid, current and suitable workers' compensation policy (including under a state or territory workers' compensation scheme) for the duration of the proposed period of exemption from the Seafarers Act.
- c) provided by mail or email within a minimum of 7 days prior to the proposed date of commencement of the exemption (noting that more complex requests may take longer to determine and that applicants will be advised if a longer period is required).

**Note:** The Seacare Authority may exempt the employment on a particular prescribed ship from the operation of the Seafarers Act pursuant to section 20A of that Act by its own motion (i.e. without an application from the operator of the prescribed ship which would be subject to the exemption granted) if the Seacare Authority considers that in all the circumstances it is appropriate to grant the exemption. The Seacare Authority exemption guidelines do not apply to exemptions granted by the Seacare Authority by its own motion.

In granting exemptions of own motion, the Seacare Authority will follow administrative law principles.

## 2. Consideration by the Authority of an application for exemption

### 2.1 General

- (a) Consideration by the Seacare Authority of an application for exemption from the operation of the Seafarers Act will in every case involve an assessment pursuant to section 19 of the Seafarers Act as to whether the Seafarers Act has application to the employment of the employees on the particular ship or ships which would be subject to the proposed exemption.

**For example**, fishing vessels and fishing fleet support vessels proceeding on voyages other than overseas voyages would not be covered by the legislation; therefore, applications for exemption would be inappropriate.

- (b) All requests for exemptions will be considered on their merits.
- (c) In accordance with section 20A(4) of the Seafarers Act, the Seacare Authority will not grant an exemption from the operation of the Act if the proposed exemption would be inconsistent with an obligation of Australia under an international agreement.

### 2.2 Factors for consideration

Without limiting the circumstances in which the Seacare Authority may exempt employment on a particular prescribed ship from the operation of the Seafarers Act, the Seacare Authority will consider the following factors:

A	The availability of workers' compensation insurance under a state or territory scheme, at a cost lower than that available under the Seacare scheme <sup>1</sup> . <i>The Seacare Authority may exempt employment on a particular prescribed ship from the operation of the Seafarers Act where an employer is able to demonstrate to the Seacare Authority that workers' compensation cover is available to its employees under another Australian workers' compensation scheme, at a cost that is below that available under the Seacare scheme.</i>
B	The prescribed ships' proposed voyage does not constitute a regular trading or operating pattern and is incidental to the primary operations of the ship.
C	The prescribed ship/s are operating within a territory only.
D	The prescribed ship is expected to voyage between two places outside Australia over a period of 12 months or more, and the majority of the crew on the prescribed ship are not residents of Australia.

Guidance note:

A voyage does not constitute a regular trading/operating pattern where:

- (a) a voyage either among the States, between a state and territory, or between two territories is not normally undertaken as part of the primary operations of the prescribed ship.
- (b) a voyage between Australia and a place (or places) outside Australia is not normally undertaken as part of the primary operations of the prescribed ship.

**For example**, a non-regular trading pattern would be a delivery voyage among two states (or a single voyage between Australia and a place outside Australia) where the prescribed ship is normally engaged in intra-state voyages or voyages within a single territory only.

<sup>1</sup> This factor is included in these guidelines in accordance with the *Seafarers Safety Rehabilitation and Compensation Directions 2006* (1), issued by the Minister on 24 August 2006.

### 3. Granting an exemption

- (a) Any exemption granted by the Seacare Authority from the operation of the Seafarers Act under section 20A must be issued in writing by the Authority.
- (b) An exemption granted by the Seacare Authority to employment on a prescribed ship or ships from the operation of the Seafarers Act must specify:
  - (i) the particular prescribed ship or ships to which the exemption granted by the Seacare Authority applies;
  - (ii) the employees on the prescribed ship or ships to which the exemption relates.

The employees to which the exemption may relate may be specified to be all of a particular group or groups of employees, or a particular employee or employees.

- (c) In order to provide certainty in the operation of an exemption granted to employment on a particular prescribed ship or ships, exemptions granted by the Seacare Authority are limited in scope to a specified purpose for a specified period of time:
  - (i) a detailed description of the specified purpose must be set out in the exemption application form;
  - (ii) the Seacare Authority will specify the date the exemption is to commence to have effect and the date on which the exemption ceases to have effect;
  - (iii) the Seacare Authority will not grant an exemption which would have effect for a period longer than 12 months, unless the exemption is requested in relation to exemption factor D.
- (d) On or before the expiration of the exemption, if a future exemption is required, the operator of the prescribed ship to which the exemption relates must make a further application to the Seacare Authority for an exemption from the operation of the Act. The Seacare Authority will then assess such further application in accordance with these guidelines.
- (e) An exemption granted by the Seacare Authority must set out any conditions attached to the granting of the exemption.
- (f) An exemption will not be granted unless the Seacare Authority is satisfied that:
  - (i) each employee who would otherwise be covered by the Act will be likely to be covered by other workers' compensation arrangements (eg State or Territory scheme) the exemption removing the operation of the Act and permitting the other arrangements to apply; **and**
  - (ii) the potential liability of the employer will be the subject of insurance cover or satisfactory self-insurance arrangements.
- (g) The Seacare Authority is to be advised as soon as reasonably practicable of any significant changes to the circumstances relating to an exemption granted in accordance with

## 4. Operation of an exemption

An exemption granted by the Seacare Authority is subject to any conditions set out in the exemption.

- (a) While the terms and conditions of an exemption granted by the Seacare Authority are met, the Seafarers Act will not apply to the employment on the prescribed ship which is subject to the exemption granted.
- (b) If the terms and/or conditions to which an exemption is subject are breached, the exemption becomes null and void and the Seafarers Act will again apply to the prescribed ship.
- (c) The Seacare Authority has the power to amend the terms and conditions of the exemption granted to an operator of a prescribed ship. If the Seacare Authority amends the exemption granted it will:
  - (i) give notice, in writing, of the amendment to the operator of the prescribed ship to which the exemption relates; and
  - (ii) include in that notice details of the amendment to the exemption granted.
- d) The Seacare Authority has the power to revoke an exemption granted to the operator of a prescribed ship. If the Seacare Authority decides to revoke an exemption, the Seacare Authority will:
  - (i) give notice, in writing, of its decision to revoke the exemption to the operator of the prescribed ship which is the subject of the exemption granted
  - (ii) include in that notice the reasons for deciding to revoke the exemption granted.
- e) Exemptions granted by the Seacare Authority only apply to the application of the Seafarers Act, the *Seafarers Rehabilitation and Compensation Levy Act 1992* and the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* and regulations made under those Acts. The *Occupational Health and Safety (Maritime Industry) Act 1993* may still apply.

## 5. Review

The decision by the Seacare Authority to grant, revoke or amend an exemption from the operation of the Seafarers Act is a decision which may be subject to judicial review under the *Administrative Decision (Judicial Review) Act 1977* on the legal grounds set out in that Act (i.e. the review is not a merits review).