



## Guidance on coverage

The *Seafarers Rehabilitation and Compensation Act 1992* (Cth) (Seafarers Act) establishes a rehabilitation and workers compensation scheme for seafarers. This guidance note provides stakeholders with general guidance about when the Seafarers Act applies.

**This guidance note is not legal advice and should not be relied upon as a complete statement of the law. Persons who may be affected by the Seafarers Act should seek their own legal advice.**

## Application of the Seafarers Act

The Seafarers Act generally applies<sup>1</sup> to ‘employees’<sup>2</sup> who are on:

1. a prescribed ship that is engaged in trade or commerce either interstate, outside of Australia or within a Territory;<sup>3</sup>
2. a vessel used to engage in ‘coastal trading’:<sup>4</sup>
  - a. under a ‘general licence’<sup>5</sup> or;
  - b. if the vessel is registered in the ‘Australian General Shipping Register’<sup>6</sup>, under an ‘emergency licence’;<sup>7</sup>

and

3. any ‘prescribed ship’<sup>8</sup> that:
  - a. would be an off-shore industry vessel or a trading ship within the meaning of the *Navigation Act 1912* (Cth) (Navigation Act) if that Act had not been repealed; and
  - b. is covered by a declaration that it either is, or would be, an off-shore industry vessel or trading ship:
    - i. to which the Navigation Act applied<sup>9</sup>, immediately before that Act was repealed; or
    - ii. within the meaning of the Navigation Act if that Act had not been repealed, made by the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority);<sup>10</sup> and
  - c. is not covered by a declaration made by the Seacare Authority under the Seafarers Act<sup>11</sup> that the Seafarers Act does not apply.

A list of vessels declared off-shore industry vessels and trading vessels under the Navigation Act is on the [Australian Maritime Safety Authority website](#). At the date of this publication the Seacare Authority has not made any declarations under sections 19(1C) or 19(1D) of the Seafarers Act.

## Assessing coverage

Most Seafarers Act coverage falls within category (1) above. The following questions assist in assessing whether there is coverage under that category. If the answer to each of these questions is 'yes', the Seafarers Act is likely to apply.

### Is the person an employee?

'Employee' is defined in section 4 of the Seafarers Act to include a 'seafarer' and a 'trainee'.

#### Seafarer

Under section 3 of the Seafarers Act, a 'seafarer' means a **seafarer**, as defined in the *Navigation Act 2012* (Cth), who is **employed** in any capacity on a prescribed ship, on the business of the ship.

Section 14 of the *Navigation Act 2012* (Cth) defines 'seafarer' as any person who is employed or engaged or works in any capacity (including that of master) on board a vessel on the business of the vessel, other than the following:

- a. a licensed pilot of the vessel (acting as such a pilot)
- b. an owner of the vessel or a person (except the master) representing the owner
- c. law enforcement personnel (in their capacity as law enforcement personnel)
- d. if the vessel is a special purpose vessel—special personnel in relation to the vessel
- e. a person temporarily employed on the vessel in port
- f. a person prescribed by the regulations.

Whether or not a seafarer is 'employed' (i.e. an employee, rather than a contractor) will depend on the nature of the relationship between the parties. The following factors generally indicate an employee/employer relationship:

- a. the worker performs work under the direction and control of the employer on an ongoing basis.
- b. the worker works standard or set hours, has an ongoing expectation of work, and is paid regularly.
- c. tools and equipment are provided by the employer, or a tool allowance is paid.<sup>12</sup>

#### Trainee

Under section 3 of the Seafarers Act, a 'trainee' means either:

- a. a 'company trainee': a person (other than an industry trainee); or
- b. an 'industry trainee': a person (other than a company trainee)

who either:

- a. before becoming a seafarer; or
- b. although ordinarily employed or engaged as a seafarer, is not so employed or engaged but

is undergoing respectively:

- a. a training course as required by their employer; or
- b. an industry training course approved by the Seacare Authority.<sup>13</sup>

## Is the employee on a prescribed ship?

Section 3 of the Seafarers Act defines 'prescribed ship' to mean a ship that:

- a. is either:
  - i. a ship to which Part II of the **Navigation Act** would apply if that Act had not been repealed; or
  - ii. a ship that is **declared by the Minister** under section 3A(1) of the Seafarers Act to be a prescribed ship; and
- b. is not a '**Government ship**'<sup>14</sup> or a ship **declared by the Minister** under section 3A(2) of the Seafarers Act not to be a prescribed ship.

### Navigation Act

Section 10 of the Navigation Act states that Part II of that Act applies to:

- a. a ship registered in Australia;
- b. a ship that is used to engage in 'coastal trading'<sup>15</sup> under a 'general licence'<sup>16</sup>; or
- c. a ship of which the majority of the crew are Australian residents and which is operated by an Australian company or person.

### Ministerial declarations

At the date of this publication there are:

- a. no declarations under section 3A(1) declaring a ship to be a prescribed ship; and
- b. two declarations under section 3A(2) declaring a ship not to be a prescribed ship:
  - i. [\*Seafarers Rehabilitation and Compensation \(Prescribed Ship – Intra-State Trade\) Declaration 2017 \(Intra-State Trade Declaration\)\*](#). The purpose of this declaration is discussed below.
  - ii. [\*Seafarers Rehabilitation and Compensation \(Prescribed Ship – Norfolk Island\) Declaration 2016\*](#). This declares certain ships of which the majority of the crew are Norfolk Island residents, or which are operated by a Norfolk Island resident, firm or company not to be a prescribed ship.

## Is the employment not exempt from the Seafarers Act?

Under section 20A of the Seafarers Act, the Seacare Authority can exempt the employment on a particular ship of all or some employees from the application of the Seafarers Act. At the date of this publication the Seacare Authority has granted two exemptions:

- a. [Exemption – Multiple vessels](#) and
- b. [Exemption – Multiple vessels, Domestic Commercial Vessels](#).

These exemptions, along with the Intra-State Trade Declaration, are designed to ensure that ships only engaged in intrastate trade or commerce (not in interstate or international trade or commerce) are not covered by the Seafarers Act.

Further information about this issue is on the [Seacare Authority's website](#).

## Is the prescribed ship engaged in trade or commerce?

The expression 'trade or commerce' has a wide meaning. For example, it can include the transportation of goods or persons for profit or reward (such as would be involved in tourism operations). Whether a ship is engaged in trade or commerce will depend on the facts of each case and must therefore be considered on a case by case basis.

## Is the prescribed ship engaged in international, inter-state or Territory trade or commerce?

The prescribed ship must be engaged in trade and commerce:

- a. between Australia and places outside Australia; or
- b. between two places outside Australia; or
- c. among the states; or
- d. within a Territory, between a State and a Territory, or between two Territories.

Information about Australia's maritime boundaries is available on the [Geoscience Australia website](#).

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1 Section 19(1), 19(1AA) and 19(1A) of the Seafarers Act.

2 The meaning of the term 'employee' is discussed below.

3 There is detailed guidance below about how these criteria and relevant exemptions apply.

4 The term 'coastal trading' is defined in section 7 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).

5 The term 'general licence' is defined in section 6 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).

6 The term 'Australian General Shipping Register' is defined in section 3 of the *Shipping Registration Act 1981* (Cth).

7 The term 'emergency licence' is defined in section 6 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).

8 The meaning of the term 'prescribed ship' is discussed below.

9 Under section 8A(2) or 8AA(2) of the Navigation Act.

10 Under section 19(1C) of the Seafarers Act.

11 Under section 19(1D) of the Seafarers Act.

12 More information about the difference between an employee and a contractor is available on the [Fair Work Ombudsman's website](#).

13 A list of industry training courses approved by the Seacare Authority is available on the [Seacare Authority's website](#).

14 The term 'Government ship' is defined in section 3 of the Seafarers Act.

15 The term 'coastal trading' is defined in section 7 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).

16 The term 'general licence' is defined in section 6 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).