

19 December 2022

The Hon Anthony Albanese MP
Prime Minister
Parliament House
Canberra ACT 2600
Via email: A.Albanese.MP@aph.gov.au

Dear Prime Minister,

We are writing on behalf of the ACTU's maritime affiliates to seek your support to expedite cross-government actions to address the crisis in the Seacare seafarers' workers' compensation scheme. We have been engaging with the Minister for Employment and Workplace Relations Tony Burke about this matter and have been collaborating with his Department and maritime employers to develop a solution. This engagement has been very positive and we thank the Minister, his office and his Department for their attention at this very busy time.

We greatly appreciate your long-running support for Australian shipping and recognise your efforts to revitalise our maritime industry, from the 2012 shipping reforms to the current government's work to establish a strategic fleet. We ask that you consider the need to support the continuity of the Seacare scheme as part of the ongoing revitalisation of this critically important sector of the economy.

The current problems in the Seacare workers' compensation scheme have arisen due its reliance on competing commercial insurers to write and underwrite policies for employers and to manage claims. Due to pressures across the insurance industry, most insurers have announced they will no longer provide these policies and are exiting the market.¹ The previous government was aware of this issue, but took no action to address it.

We have already had four maritime employers who have been unable to secure Seacare workers compensation insurance to cover their workforce.² These employers and workers are now juggling the cost and complexities of multiple state workers' compensation schemes that deliver inadequate coverage for injured seafarers. This goes against the intention of Parliament for there to be a single national scheme for seafarers delivered through the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers' Act).

If the national workers' compensation scheme for seafarers collapses, it will add considerable complexity to the delivery of the government's objective of revitalising Australia's maritime industry and delivering a strategic fleet by requiring vessel and crew operators to navigate multiple inconsistent state workers' compensation schemes, and risk lengthy jurisdictional disputes that will delay return to work and affect workforce availability. Current 'state of connection' tests for state workers' compensation are based on the work history of each individual worker, meaning that seafarers on the same vessel could be covered by

¹ The Seacare Authority reports that Vero will not offer renewals past July 2022 - they issued almost half of all Seacare policies. All other insurers have 'ceased offering new policies and would only offer renewals to existing clients in certain circumstances', for example if they have a large number of other insurance business with that employer (Annual Report 2021-22, Seacare, p.39).

² The employers who have been unable to renew their Seacare cover so far are: Solstad on 1 July 2022 with 222 crew, Pacific Tug on 1 August with 81 crew, Coral Expeditions on 28 September with 220 crew, and Inco Ships on 30 November with about 60 crew.

different state schemes and access different benefits depending on when and where they joined the vessel and their length of service on board.

From 31 March 2023, it will be extremely difficult, if not impossible, for most Seacare employers to buy a commercial policy. Six policies covering about 900 workers expire on that date, and most insurers have said they will stop issuing policies at that time. Another four companies with approximately 350 workers have Seacare policies expiring between December 2022 and February 2023.

We believe the best solution to the crisis in Seacare coverage is to set up an industry scheme under a sole provider model to deliver workers' compensation insurance. Establishing such an industry scheme will offer substantial benefits for workers and employers in the maritime industry, including:

- Ensuring that the industry scheme has the necessary scale to be commercially viable, and therefore effectively provide universal coverage to all employers within the industry
- Industry participation through an advisory committee of unions and employer representatives
- Continuity of current coverage for workers and employers, which is specified in Enterprise Agreements covering most seafarers
- Improved dispute resolution processes. At present dispute resolution mainly occurs through the Administrative Appeals Tribunal (AAT), with an average wait of 411 days from the lodgement of a dispute with the AAT until it is finalised
- Services for injured workers could be improved through a customised approach, managed by people with direct knowledge of the industry
- Consolidation of claims management from six commercial insurance companies to a single provider would provide a considerable advantage of scale, and allow for investment in better systems and services
- Dedicated and specialised claims management by a centralised claims management team
- Facilitation of industry focussed rehabilitation and industry-wide return to work procedures

Taken together, these measures can help retain the skills and experience of the current maritime workforce and ensure that current workforce shortages are not exacerbated by poor management of workers' injuries as crew are trained for the future strategic fleet and revitalised maritime sector.

We have secured the support of a reputable insurer, with deep experience in the management of industry schemes, to enter the Seacare Scheme as an authorised insurer under s93(1)(a) of the Seafarers Act. The insurer holds an APRA licence and has a proven track record managing claims for industry-based workers compensation schemes, including the hospitality and coal mining industries in NSW, and is also experienced in managing claims on behalf of licensees in the Comcare scheme, which has a number of similarities to the Seacare scheme.

We are seeking your support to expedite processes to establish such a scheme from various government Ministers, Departments and Committees. As part of the package of reforms we have been discussing with the Department for Employment and Workplace Relations, we are seeking your support in achieving the following:

- The Minister of Finance to issue a regulation under s.32B of the *Financial Framework (Supplementary Powers) Act 1997* to allow expenditure on a new, temporary, Exceptional Claims Scheme for Seafarers (ECSS – more details below). Depending on advice received by the relevant Ministers, an appropriation measure from the Finance Minister may also be required.
- Appropriate funding for the ECSS through the Expenditure Review Committee.
- A comprehensive package to alleviate the decline in Australia's maritime industry in order to build scale in the scheme and make it sustainable.

Once the ECSS is in place, the industry scheme will need to commission an actuarial assessment to enable the preparation of a business plan for submission to the Australian Prudential Regulation Authority (APRA).

These steps must be complete by 28 February 2023, so that the industry scheme can issue policies in March 2023.

The purpose of the new Exceptional Claims Scheme for Seafarers (ECSS) is to provide temporary risk management assistance while the industry scheme is being established and scheme performance is improved. The ECSS would involve the Commonwealth covering the cost of each claim event exceeding \$500,000, for the amount by which the claim event exceeds \$500,000. The ECSS would be strictly limited to a five-year period. The scheme is modelled on the High Cost Claims Scheme and the Exceptional Claims Scheme within the Commonwealth Medical Indemnity reinsurance scheme currently operated by the Department of Health.

The ECSS is needed because the new entrant has engaged with the private reinsurance market and determined that it would be unable to obtain reinsurance cover for exceptional claims (i.e. claims exceeding \$500K) from any private market reinsurers. This is a normal part of the risk management processes that APRA will look for in their evaluation of the business plan.

The long period of neglect from the previous government, combined with the small size and fragmented nature of the market, along with a lack of investment in claims handling and risk mitigation initiatives, makes private reinsurance unattractive for traditional providers. Furthermore, there is a lack of employer-level data collected by government agencies to allow a new insurer and potential reinsurers to fully understand the risk profile and economics of the scheme.³ In addition, the initial premium pool available to pay for claims will be quite small, and there will be a transition period during which employers' current policies expire, and they seek new policies as expiry dates roll throughout the year.

We would appreciate your urgent assistance with securing support for these measures. If we cannot complete these steps by 28 February 2023 to ensure that policies can begin at the end of March 2023, seafarers and their employers will find themselves in a real predicament and the future of workers' compensation coverage for the government's ambitious plans for the maritime industry will be in doubt.

We are happy to discuss any details with you further.

Yours sincerely,



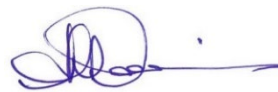
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Assistant Secretary ACTU



Martin Byrne
Federal Secretary
AIMPE



Paddy Crumlin,
National Secretary
MUA
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Executive Officer
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³ The lack of data is because most data of interest for insurance companies was kept by insurance companies and not shared by government. This included: Annual wage roll of covered employees, Number of covered FTE and location by state and territory, Maximum number of covered employees co-located at any given time, Nature of employer (primary activity of parent, typical size/type of vessels), Common law settlements (number and \$ value).

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