

25 June 2013

Ms Kylie Emery
Group Manager
Workplace Relations Implementation and Safety Group
Department of Education, Employment and Workplace Relations
GPO Box 9880
CANBERRA ACT 2601
Email: WorkersCompensationPolicy@deewr.gov.au

Dear Ms Emery

Seafarers, Rehabilitation and Compensation Act Review

Thank you for the opportunity to provide feedback on the report of the Review of the Seacare Scheme (the Seacare Report).

Further to the participation of AMMA and AMMA members in consultations held earlier this month, brief written comments on behalf of the Australian Mines and Metals Association (AMMA) are set out below.

The Seacare scheme should be collapsed

In its submission to the Seacare Scheme Review (the 2012 AMMA submission), AMMA noted that one option may be to collapse the scheme, allowing for the election to adopt the Comcare scheme or a State scheme. Qualified support was given to such a reform in the AMMA submission, which stated that AMMA members would like more detailed information to enable due consideration of the merits of this option.

AMMA notes that the Seacare Report did not address this matter. However, the significant practical and legislative difficulties identified in the Seacare Report associated with providing greater certainty regarding both the coverage of the Seacare scheme and its legislative consistency with related legislative schemes constitute, in AMMA's view, strong reasons for the Federal Government to consider the collapse of the Seacare scheme into another workers' compensation scheme. Again, were that option to be considered, AMMA and its members would ask for the opportunity to review properly the options under consideration and be heard on how Government should proceed.

If continued, the Seacare scheme is in need of urgent reform

The 2012 AMMA submission incorporated recommendations made a decade earlier to a prior review of the Seacare scheme. The prior review did not lead to the implementation of any reforms requested by industry. Accordingly, by the time of the 2012 AMMA submission, the sustainability of the Seacare scheme was at risk.

As the Seacare Report finds, the comparatively high real costs of the Seacare scheme are not matched by better outcomes, including in relation to rehabilitation and return to work. AMMA's concerns about the poor outcomes for employees and the high costs and undue regulatory burdens for employers continue and, indeed, have increased with the further effluxion of time.

Were the Seacare scheme to continue and not be collapsed into alternate schemes, timely legislative amendments are required.

Some SRC Act Review Report recommendations should not be adopted

The Seacare Report adopts many of the recommendations made in the Safety, Rehabilitation and Compensation Act Review Report (the Hanks report). Further recommendations made in the Hanks Report are adopted with some amendment.

In a letter to the Secretary of the Department of Education, Employment and Workplace Relations dated 6 May 2013, AMMA stated concerns regarding a number of recommendations in the Hanks report.

A copy of that letter is **attached** as the AMMA concerns about the Hanks report apply equally in respect of the Seacare scheme.

Conclusion

In summary, we say you should:

- a) Collapse the Seacare scheme, allowing for compulsory election to participate in an alternate scheme.
- b) If the Seacare scheme is to be continued, seek amendment of the Seacare legislation as a matter of Government priority.
- c) Not adopt identified recommendations made in the Hanks Report.

We would be pleased to discuss this response further. Please contact Julie Copley, Policy Manager on (07) 3210 0313 or via email: julie.copley@amma.org.au.

Yours sincerely



SCOTT BARKLAMB
Executive Director, Industry

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6 May 2013

Ms Lisa Paul AO PSM
Secretary
Department of Education, Employment and Workplace Relations
GPO Box 9880
CANBERRA ACT 2601
Email: WorkersCompensationPolicy@deewr.gov.au

Dear Ms Paul

Safety, Rehabilitation and Compensation Act 1988 Review 2013

Thank you for the opportunity to provide feedback on the Safety, Rehabilitation and Compensation Act Review Report (February 2013) (the Report). Brief comments provided on behalf of the Australian Mines and Metals Association (AMMA) are set out below.

About AMMA

AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for 95 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to these industries.

AMMA works with its strong network of likeminded companies and resource industry experts to achieve significant workforce outcomes for the entire resource industry.

General comment regarding the Report recommendations

AMMA has discussed its response with the Australian Chamber of Commerce and Industry (ACCI) and has the benefit of reading the ACCI submission, which AMMA supports.

This AMMA submission addresses three aspects of the Report recommendations:

- a) Specific concerns about recommendations to confer added jurisdiction upon the Fair Work Commission.
- b) Recommendations regarding rehabilitation – it provides some resource industry-related comment.

- c) Concerns about any wider application of recommendations made by Hanks QC in relation to the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act), without opportunity for due consideration by industry.

Specific comment regarding Report recommendations

Recommendations 9.14, 9.15 and 9.16

AMMA strongly opposes recommendations 9.15 and 9.16. With respect, the Report does not provide detailed examination of the benefits of conferring the proposed additional jurisdiction upon the Fair Work Commission. Changes of this nature should not proceed without an opportunity for far greater consideration of the issues. Importantly, change should not occur without discussion by the National Workplace Relations Consultative Committee.

The Fair Work Commission does not need more jobs. The workers' compensation jurisdiction would require Fair Work Commissioners to develop additional expertise which is not of direct compatibility with the jurisdiction it currently holds. The additional jurisdiction would divert the Commission from the many vital functions it performs currently, as set out in section 576 of the *Fair Work Act 2009*. Further, no evidence has been provided to suggest that the Commission would resolve workers' compensation matters with greater efficiency than the Administrative Appeals Tribunal (AAT) brings to such matters at present.

Within our Federal system, resource industry employers currently navigate multiple regulatory schemes across the range of jurisdictions. Implementation of these recommendations, particularly if they were to have a wider application as examined below, would create a further layer of regulatory complication, would be likely to increase costs to employers and may add to delays. The better approach, it is suggested, would be to address the capacity of the AAT to provide speedy, effective and low-cost administrative justice in these matters.

In relation to recommendation 9.14, AMMA cautions against the use of a Fair Work Commission determination, made on one issue, being determinative of another issue. With respect, this recommendation appears to be inconsistent with principles of procedural fairness.

Recommendations about rehabilitation

A fundamental concern of employers is continuous improvement in workplace health and safety performance. Effective injury management, rehabilitation and return to work are key elements and early engagement is supported by resource industry employers. However, AMMA agrees with the ACCI submission that a better balance of obligations and responsibilities should be struck by the SRC Act than the balance recommended in the Report. In particular, optimal employer and employee compliance should be supported by way of a culture of continuous improvement; it should not be enforced by way of penalties.

Wider application of Report recommendations

AMMA made a detailed submission to the Seacare Review Taskforce. That submission responded to the matters raised in that Taskforce's issues paper. If the SRC Act Report recommendations are to have a wider application, including to the Seacare scheme, AMMA would like an opportunity to make further submissions in that regard. As stated in its Seacare submission, the unique nature of the maritime industry, including in its operations regarding offshore oil and gas, raises quite specific workers' compensation issues.

We would be pleased to discuss this response further. Please contact Julie Copley, Policy Manager on (07) 3210 0313 or via email: julie.copley@amma.org.au.

Yours sincerely



SCOTT BARKLAMB
Executive Director, Industry