**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Employment

*Occupational Health and Safety (Maritime Industry) Act 1993*

Subsections 4A(2) and 4B(2)

*Occupational Health and Safety (Maritime Industry) (Prescribed Ship or Unit — Intra-State Trade) Declaration 2017*

**Overview**

This instrument, the *Occupational Health and Safety (Maritime Industry) (Prescribed Ship or Unit — Intra-State Trade) Declaration 2017,* replaces the *Occupational Health and Safety (Maritime Industry) (Prescribed Ship or Unit — Intra-State Trade) Declaration 2015 (No. 2)* (the current instrument) which will cease to have effect on 23 June 2017. This instrument is being remade in its current form to maintain the status quo while legislative reform is pursued.

**Background**

The *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act) regulates work health and safety for a defined part of the Australian maritime industry. The OHS(MI) Act operates in conjunction with the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) to provide a combined work health and safety and workers’ compensation scheme known as the ‘Seacare scheme’. As of July 2016, the scheme was known to apply to 219 vessels and approximately 6000 employees (a small portion of approximately 80,000 domestic seafarers in Australia).

Prior to the decision in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC 182 (the *Aucote* decision), coverage of the Seacare scheme was historically understood by maritime industry regulators and participants to operate primarily by reference to the form of trade or commerce engaged in by a ship. Ships engaged in interstate or international trade or commerce were understood to be covered by the Seacare scheme, while ships engaged in intrastate trade or commerce were understood to be covered by the legislation of the state in which they operate.

The Federal Court held in *Aucote* that the scheme applied to seafarers employed by a trading, financial or foreign corporation on a prescribed ship engaged in intrastate trade, substantially broadening coverage of the Seacare scheme to potentially over 10, 000 Australian registered ships.

Several interim measures were taken in 2015 to address the uncertainty caused by the *Aucote* decision. The retrospective effect of the decision was addressed by the *Seafarers Rehabilitation and Compensation and Other Legislation Amendment Act 2015* (Amendment Act), while the prospective application of the OHS(MI) Act was clarified by the current declaration. The prospective application of the Seafarers Act is addressed by two exemptions issued by the Seacare Authority and the *Seafarers Rehabilitation and Compensation (Prescribed Ship — Intra-State Trade) Declaration 2015 (No. 2)*.

The combined effect of the current declaration and the Amendment Act is that ships understood to be outside the coverage of the OHS(MI) Act prior to the Federal Court’s *Aucote* decision are not covered by the OHS(MI) Act.

**Effect of Declaration**

Clause 1 repeals the current instrument.

Clause 2 declares that a ship or vessel which is only engaged in intrastate trade is not a prescribed ship or a prescribed unit for the purposes of the OHS(MI) Act. These ships and vessels will continue to be subject to relevant state work health and safety laws.

Clause 3 ensures this declaration will not affect ships that are subject to subsections 6(3) and (3A) of the OHS(MI) Act because they are covered by a declaration under sections 8A or 8AA of the now repealed *Navigation Act 1912* or because they are licenced under the *Coastal Shipping (Revitalising Australian Shipping) Act 2012*.

This instrument will come into effect the day after it is registered on the Federal Register of Legislation.

Consultation

Maritime industry stakeholders and the co-regulators of the Seacare scheme – the Seacare Authority and the Australian Maritime Safety Authority - support the remaking of the declaration pending legislative reform.

The Office of Best Practice Regulation was consulted regarding this declaration and indicated that a Regulation Impact Statement was not required for this declaration (OBPR 22374).

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Occupational Health and Safety (Maritime Industry) (Prescribed Ship or Unit — Intra‑State Trade) Declaration 2017**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

This instrument, the *Occupational Health and Safety (Maritime Industry) (Prescribed Ship or Unit — Intra-State Trade) Declaration 2017*, replaces the *Occupational Health and Safety (Maritime Industry) (Prescribed Ship or Unit — Intra-State Trade) Declaration 2015 (No. 2)* (the current instrument) which will cease to have effect on 23 June 2017. The instrument is being remade in its current form to maintain the status quo while legislative reform is pursued. The instrument remains an interim measure supported by industry and unions to address issues arising from the Federal Court decision in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC 182 (the *Aucote* decision).

The impacts of the current instrument were discussed in the Human Rights Compatibility Statement for the current instrument.[[1]](#footnote-1) The Committee did not identify any human rights issues at that time for comment.

As with the current declaration this instrument will maintain the coverage of the OHS(MI) Act as it was traditionally understood prior to the *Aucote* decision. All employees not covered by the OHS(MI) Act as a result of this declaration will continue to be protected by more modern work health and safety laws of the state in which the ship or vessel operates. The declaration does not create any change, but merely continues the interim measures taken in 2015, while legislative reform is being pursued. The Seafarers and Other Legislation Amendment Bill 2016 (Seafarers Bill) is currently before the Parliament and would remove the need for continued reliance on the instrument to clarify the coverage of the Seacare scheme following the Federal Court’s decision in *Aucote*.

**Conclusion**

The Legislative Instrument is compatible with human rights.

1. Statement of Compatibility with Human Rights, *Occupational Health and Safety (Maritime Industry) (Prescribed Ship or Unit — Intra-State Trade) Declaration 2015 (No. 2)* [F2015L00863] [↑](#footnote-ref-1)