



Australian Government

Australian Maritime Safety Authority

# Regulatory Update



# Topics Covered:

- Seacare legislation
- Limits of Liability amendment
- Maritime Legislation Amendment Bill 2015
- Shipping Legislation Amendment Bill 2015
- Interaction of s 114 of Navigation Act with State OH&S/WHS laws
- Ratification of IMO conventions

- *Samson Maritime Pty Ltd v Aucote*
  - Seacare scheme applies to all employees of a trading, financial or foreign corporation
  - Not limited by the voyage pattern of the vessel on which they were employed
  - Substantially shifted compensation and WHS arrangements between States and Commonwealth

- *Seafarers Rehabilitation and Compensation and Other Legislation (Amendment Act) 2015*
  - Retrospectively amended coverage under Seacare and OHS(MI) Acts for the period from commencement in 1993 until 26 May 2015
  - No coverage for employees on vessels engaged in intrastate trade or commerce

- Exemptions and Ministerial Declarations
  - 24 March, 26 March and 21 April
  - Exempts employees on intrastate trading vessels, listed by name
  - Exempts domestic commercial vessels
  - Declares that vessels on intrastate trade are not prescribed ships

# Seacare

- Effect:
  - Status quo with position thought to be in effect before *Aucote*
- Seacare Authority now within the Department of Employment
- Review of Seacare scheme coverage continuing

# Limits of Liability

- Following Pacific Adventurer incident Australia led move at IMO to increase limits of liability
- IMO Legal Committee agreed to amend the 1996 Protocol of LLMC 76 in 2012
- Increase of 51% to existing limits

# Limits of Liability

- *Limitation of Liability for Maritime Claims Amendment Act 2015*
  - Amends the *Limitation of Liability for Maritime Claims Act 1989* by changing the definition of ‘Convention’ and adding a definition of ‘1996 Protocol’ - includes IMO Resolution LEG.5(99)
  - Resolution increases the number of units of account for claims for loss of life, personal injury and other claims



# Limits of Liability

- Increase in limits of liability entered into force internationally, and for Australia, on 8 June 2015
- Pacific Adventurer:
  - 2009 limit: M\$17.5
  - 2015 limit: M\$26
  - 2009 cost: M\$32

# Maritime Legislation Amendment Bill 2015

- To be introduced in current sittings
  - Amendments to:
    - Navigation Act – all minor updates
    - Protection of the Sea (Prevention of Pollution from Ships) – corrects error which removed Cth coverage from ‘internal waters’ of States and Territories
    - Includes amendment to ban carriage of heavy grade oil as ballast in the Antarctic area

# Maritime Legislation Amendment Bill 2015

- *Protection of the Sea (Civil Liability) Act and Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act*
  - Correct errors that deleted definitions required to ensure carriage of relevant certificates

# Shipping Legislation Amendment Bill 2015

- Amends the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and the *Shipping Registration Act 1981*.
  - The existing three tiered licensing system replaced with a single permit system.
  - A Coastal Shipping Permit (CSP) granted to the owner of a vessel, or a person who has day to day responsibility for a vessel, provides the vessel with access to coastal shipping for 12 months.

# Shipping Legislation Amendment Bill 2015

- Establish a framework of entitlements for seafarers on foreign vessels engaging or intending to engage in coastal shipping for more than 183 days.
- Apply Part B of the Seagoing Industry Award 2010 (Award) to seafarers on vessels that engage predominantly in coastal shipping when the *Fair Work Act 2009* applies to them.

# Shipping Legislation Amendment Bill 2015

- Enforcement mechanism for seafarers to recover payments if a vessel trades for more than 183 days contrary to what was indicated in a permit.
- A new coastal shipping permit must not be issued to a foreign vessel if the Minister is satisfied that the applicant has not correctly paid required amounts to seafarers under a previous permit.

# Shipping Legislation Amendment Bill 2015

- Foreign vessels engaging in coastal shipping for more than 183 days will have to have two senior skilled crew members who are eligible to work in Australia because they are citizens, residents, or hold a relevant visa.
- Senior skill crew members = master, chief mate, chief engineer or first engineer.

# Shipping Legislation Amendment Bill 2015

- SRA amendments: to be registered on the AISR, requirement is to undertake 90 days of international trading per year. Replaces requirement to be “predominantly engaged”.
- Entry into a collective agreement with the seafarers’ bargaining unit not a pre-requisite to becoming registered, but seafarers may still make collective agreements.



# Shipping Legislation Amendment Bill 2015

- Amendments will also apply Part B of the Award to seafarers on vessels registered under the AISR and not engaged in international trading.
- These vessels will also need to have two senior skilled crew members who are eligible to work in Australia because they are citizens, residents, or hold a relevant visa.

# Interaction of Navigation Act with State WHS

## 114 Proper precautions in loading a vessel

*A person who is involved in an activity of packing, sending, stowing, loading, unloading, securing or carrying cargo, livestock or ship's stores on a vessel contravenes this subsection if the person does not:*

- ensure, so far as is reasonably practicable, that the activity is carried out in such a way that it does not damage the vessel, risk the safety of a person or damage the environment; and*
- carry out, or arrange the carrying out of, such procedures as may be necessary for compliance with the above.*

# Interaction of Navigation Act with State WHS

- One jurisdiction has construed s 114 as ‘covering the field’
  - safety of loading and unloading of all ships
  - therefore ousting the operation of State WHS laws
- Consideration is being given to amending s114 to make clear that there is no intention to cover field.
  - (Of course a matter may arise in which the Court determines the question.)

# Ratification of Conventions

- Legislation enacting Ballast Water Convention has been passed and will enter into force for Australia when the Convention enters into force – currently meets number of signatories but not percentage of world fleet tonnage
- Wreck removal convention entered into force internationally in April 2015 –under consideration for Australia

# Ratification of Conventions

- HNS Protocol
  - Under consideration
- Athens convention (Passengers and luggage)
  - Under consideration
- Ship breaking convention
  - Not under active consideration