ATTACHMENT B

Summary of WHS changes in Seafarers and Other Legislation Amendment Bill 2016including MIAL Comments

Definitions	Effect of DoE change	MIAL Comments
'action for non-economic loss' – s 3	Clarifies an action for non-economic loss is not restricted to the formal institution of proceedings but can include processes like settlement negotiations and consultations.	The effect of this clarification is to prevent employees from receiving compensation for non-economic loss but then claiming that the compensation was not made through a *formal* action and so also claim worker's compensation under the Act. This was a problem under the Safety, Rehabilitation and Compensation Act (the national workers compensation scheme that the Seacare scheme is being compared to) but has not been an issue for Seacare. The clarification expands the current definition of an action for non-economic loss in section 55 to include less formal mechanisms where an employee can elect to institute an action against the employer for non-economic loss. The election still needs to meet the requirements in s55(2) of being given in writing to the employer before compensation is paid. Once an election is made then compensation is not payable.
'medical treatment' – s 3	Enables legislative rules to be made to include a wider range of compensable medical treatment.	It is unclear if this change will have any material impact. The current definition of medical treatment is focused on treatment delivered by legally registered practitioners and includes artificial limbs.

		The change to the definition allows the making of regulations that can broaden the definition. By way of example, most state based workers' compensation schemes also include crutches, artificial aids or spectacles, home and vehicle modifications and domestic assistance services. Medical practitioner delivery is still required.
'superannuation scheme' – s 3	Extends the definition of superannuation scheme to include retirement savings accounts, reflecting updated approaches to superannuation arrangements.	This changes a loophole that allowed for potential double-payment of superannuation and workers compensation if the employee was receiving superannuation from an overseas account. This hasn't been an issue in the Seacare jurisdiction but apparently was an issue for the federal scheme (the SRCC). The Act allows for employees who are incapacitated from an injury and who retire and receive superannuation as a result to continue to receive workers compensation top ups. A retirement savings account (RSA) is high-interest account that employees can transfer their superannuation fund into on retirement. This change has no effect since RSAs would have been approved deposit funds, and if they weren't (e.g. if they were overseas), the change is just closing a loophole that has not actually been never exploited.

Benefit changes	Effect of DoE change	MIAL Comments
Payment of medical related expenses – s 28	Enables reimbursement of medical related expenses (at the direction of the employee) to the medical treatment provider or the employee if they have paid for the treatment.	The impact of the change is unclear as the current legislative provisions appear to provide for employees to request payment to be made directly to providers.
Reduction in threshold for binaural hearing loss to improve access to compensation where permanent impairment - s 40	Reduces the qualifying threshold for a permanent impairment that is a binaural hearing loss from 10% to 5% to align with the SRC Act and other jurisdictions.	S40 sets the threshold for compensable permanent impairment at 10%. The change makes an exception for hearing loss, reducing the threshold to 5%.
Increase to funeral benefit **– s 30(2)**	Aligns the maximum amount of compensation payable in respect of funeral expenses with the SRC Act.	S30(2) currently caps funeral reimbursement at $3500. The SRC Act, at section 18, caps it at $9000 but increases this regularly through regulation – it is presently at $11,000. The proposed change ties s30(2) to s18(4)(b) and thus allows for periodic regulatory changes to the maximum.
Improvements to scheme integrity	**Effect of DoE change**	**MIAL Comments**
Clarification that dependents of deceased employees have access to common law remedies against the employer of the deceased **– s 54**	Clarifies that where an employee's injury results in death, the dependants of the deceased employee are not prevented from bringing an action against the employer, even where the employee may have made a previous election not to bring an action for damages against the employer.	Effectively no change as the Act never explicitly prevented common law claims by dependents in the case of death. Where an employee makes an election under section 55 not to being an action for damages and then their injury subsequently results in death, the dependents of the deceased employee can still bring an action for damages against the employer.

Clarification of employee's ability to bring action for non-economic loss **– s 55**	Clarifies that an election by an employee to institute an action or proceeding against their employer or another employee does not prevent the employee from doing any other thing that constitutes an action for non-economic loss.	Effectively no change as the Act never precluded employees from instituting multiple actions for economic loss.
Clarification of requirements in relation to proceedings and consequences of election and payment of damages **– ss 56-60**	Aligns provisions with the Safety and Rehabilitation Act (the SRC, the federal workers' compensation law) by substituting references to 'proceedings' with the broader term of 'claims'. 'Claims' encompasses settlements resulting from negotiation whether or not that claim or action progressed to the formal institution of proceedings or was made at common law.	This simply aligns the text of the Act with the new definition of 'action for non-economic loss' that has been added into section 3.

Changes to eligibility thresholds	Effect of DoE change	MIAL Comments
Injury which is a disease - contribution of employment to shift from the 'material degree' to a 'significant degree' – s 3 and new s 5B	Increases threshold to align with the SRC Act. Employment must contribute to disease suffered by employee to a 'significant degree' rather than 'material degree'.	Employment has to have significantly contributed to the disease caused, which is a higher threshold than merely a material degree. This modernises the Act to align with the wording the in the federal workers compensation Act (the SRC) and to an extent the state workers compensation schemes, which require a similar test, e.g. that the employment has been 'the main contributing factor' to the disease (NSW)

Other technical changes	Effect of DoE change	MIAL Comments
Psychological injuries-exclusions - shift from 'reasonable disciplinary action' to 'reasonable administrative action' **– new s 5A**	The Seafarers Act currently excludes compensation for injuries as a result of 'reasonable disciplinary action' or an employee's 'failure to obtain a promotion, transfer or benefit'. This definition will be replaced with the concept of 'reasonable administrative action taken in a reasonable manner'. A new section will also be added providing a non-exhaustive list of the actions which may constitute 'reasonable administrative action'. This will align with the SRC Act.	Although this is simply modernising the language to align with the federal workers compensation scheme (the SRC), the broader definition of the kind of action that is excluded is beneficial.
Updates to references to other Commonwealth legislation – s 135	Updates references to other Commonwealth legislation - the *Child Support (Registration and Collection) Act 1988*, the *Social Security Act 1991*, and the *Family Law Act 1975* – to reflect current practice regarding the treatment of compensation payments for the purposes of assignment and attachment.	Effectively no change.
Removal of redundant references	References to "industry panel", "Seafarers Engagement Centre" and "industry trainee" will be removed.	This has been done as per MIAL advice.
Administrative Appeals Tribunal – Costs – s 91	Clarifies that the AAT may order claimants costs where determination about eligibility for compensation is reconsidered by a determining authority on its own motion and proceedings are rendered abortive.	There is effectively no change as a result of this as section 91 already provides for this. The proposed change to the wording is as a result of a single decision in the Comcare (SRC) jurisdiction that had tax implications for a claimant. MIAL has made submissions requesting that the AAT also allow employers to recoup legal costs for AAT proceedings from claimants in some circumstances, but this recommendation has not been adopted.