



Australian Government
**Seafarers Safety, Rehabilitation
and Compensation Authority**

**NOTICE TO MARITIME INDUSTRY ORGANISATIONS
AND OTHER INTERESTED PARTIES**

NOTICE NO 06/2009

**Amendments to *Seafarers Rehabilitation and Compensation Act 1992* as a
consequence of the *Same-Sex Relationships (Equal Treatment in Commonwealth
Laws—General Law Reform) Act 2008***

1. The *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* (Same-Sex Act) was passed on 27 November 2008 and received Royal Assent on 9 December 2008; consequently its provisions in relation to the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) commenced on and from Wednesday 10 December 2008.
2. Schedule 5 of the Same-Sex Act amends Sections 3, 15, 16, and 43 of the Seafarers Act by the addition of new definitions of relationships and the amendment of existing definitions (see **Attachment A**). The *Family Law Act 1975* definition of ‘child’ is now included in the Seafarers Act.
3. The Same-Sex Act removes discrimination against same-sex couples and their dependent children from a wide range of Commonwealth laws and programs including the Seafarers Act. The Same-Sex Act extends recognition to de facto and registered relationships of de facto couples of the same sex. This is to ensure that same-sex couples, their dependent children and other dependants receive the same entitlements as married or de facto opposite-sex couples and their dependents.
4. The amendments do not change the definition of ‘prescribed child’. They do, however, expand the circumstances in which a person can be considered to be a child of an employee for the purposes of the Seafarers Act.
5. The amendments to section 3 definitions for ‘dependant’ and ‘spouse’ will alter the eligibility provisions for the lump sum death benefit under section 29 **Compensation for injuries resulting in death** for any claims where the date of death is on or after 10 December 2008.

6. The amendments to the definitions for 'dependant' and 'spouse' also changes eligibility for weekly benefits payable on or after 10 December 2008 for a prescribed child, irrespective of the date of death, as the Seafarers Act now includes a definition for child aligned to the definition of child in the *Family Law Act 1975*.
7. The repeal and substitution of section 16, now headed **Certain family relationships**, and the amendments to section 43 **Compensation for household services and attendant care services** are also in compliance with the Same-Sex Act. These changes apply on and from 10 December 2008 to any person now included in these definitions by virtue of the amendment to section 3.
8. For enquiries concerning this policy advice, please contact the Secretariat and Seacare Management Section of Comcare by telephone on (02) 6275 0070 or by email at seacare@comcare.gov.au.

Secretariat & Seacare Management Section
9 June 2009

Amendments to the Seafarers Rehabilitation and Compensation Act 1992
as a consequence of the
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008 (No 144, 2008) – Schedule 5

Section	Action	Amendment	Explanation of the amendment
3	New definition inserted	<p><i>child</i> : without limiting who is a child of a person for the purposes of this Act, someone is the <i>child</i> of a person if he or she is a child of the person within the meaning of the Family Law Act 1975.</p>	<p>Extends the classes of children who can be considered as the child of a person for the purposes of the Seafarers Act. A child is now considered to be a person’s child where that child was the ‘product of the relationship’ the person has or had as a couple with another person. The intention is to ensure that children of same-sex couples are recognised by the Seafarers Act.</p>
		<p><i>de facto partner</i> of a person has the meaning given by the Acts Interpretation Act 1901.</p>	<p>Extends the range of persons who can be considered to be the spouse of a person for the purpose of the Seafarers Act. As ‘partner’ is gender neutral it encompasses members of both same-sex and opposite-sex relationships. Section 22A of the <i>Acts Interpretation Act 1901</i> prescribes two different circumstances in which a person is considered to be the de facto partner of another person: if they are in a “registered relationship” (paragraph 22A(a)) or if they are in a “de facto relationship” (paragraph 22A(b)).</p>
		<p><i>parent</i> : without limiting who is a parent of a person for the purposes of this Act, someone is the <i>parent</i> of a person if the person is his or her child because of the definition of <i>child</i> in this section.</p>	<p>Extends the range of persons who can be considered to be the parent of a child for the purposes of the Seafarers Act. The intention is to ensure that in certain circumstances the same-sex partner of a parent could also be recognised as a ‘parent’ for the purposes of the Seafarers Act.</p>
		<p><i>stepchild</i> : without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a de facto partner of the person is the <i>stepchild</i> of the person if he or she would be the person’s stepchild except that the person is not legally married to the partner.</p>	<p>Extends the range of persons who can be considered to be a ‘stepchild’ to ensure that stepchildren of both same-sex and opposite-sex de facto relationships are recognised in the same way as stepchildren of married couples are currently recognised for the purposes of the Seafarers Act.</p>

		<i>step-parent</i> : without limiting who is a step-parent of a person for the purposes of this Act, someone who is a de facto partner of a parent of the person is the <i>step-parent</i> of the person if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.	Ensures that step-parents of children of both same-sex and opposite-sex de facto relationships are recognised in the same way as the stepchildren of married couples are currently recognised for the purposed of the Seafarers Act.
	Amended	Paragraph (b) of the definition of <i>dependant</i>: Omit “father, mother, step-father, father-in-law, grandfather, grandmother, son, daughter, step-son, step-daughter, grandson, grand-daughter, brother, sister, half-brother or half sister. Substitute “parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling”.	Gender specific language has been replaced with gender neutral language (except for ‘father-in-law’ and ‘mother-in-law’).
		Paragraph (b)(i) of the definition of <i>prescribed person</i>: father, mother, step-father, father-in-law, grandfather, grandmother, son, daughter, step-son, step-daughter, grandson, grand-daughter, brother, sister, half-brother or half sister. Substitute “parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling”.	Gender specific language has been replaced with gender neutral language (except for ‘father-in-law’ and ‘mother-in-law’).
	Repealed and Substituted	Paragraph (a) of the definition of <i>spouse</i>: in relation to an employee or a deceased employee – a person who is, or immediately before the employee’s death was, a de facto partner of the employee; and	Includes (in relation to an employee or deceased employee) a de facto partner of the employee whether of the same or opposite sex to the employee. Where the relationship is not registered, the previous requirement that a spouse be living with the employee is now contained in the definition of ‘de facto partner’.
15(3)	Amended	Omit “son or daughter” Substitute “child”	Gender specific language has been replaced with gender neutral language (‘son or daughter’ has been replaced with ‘child’).

16	Repealed and Substituted	<p>Certain family relationships</p> <p>For the purposes of this Act, relationships (including the relationship of being family or being relatives) are taken to include (without limitation):</p> <p>(a) relationships between de facto partners; and</p> <p>(b) relationships of child and parent that arise:</p> <p style="padding-left: 20px;">(i) if someone is an exnuptial or adoptive child of a person; or</p> <p style="padding-left: 20px;">(ii) because of the definitions of child and parent in this section; and</p> <p>(c) relationships traced through relationships referred to in paragraphs (a) and (b)</p>	<p>Changes the heading.</p> <p>Allows relationships referred to in the Seafarers Act to include those between de facto partners or relationships of parent and child that arise because of adoption, the definitions of ‘parent’ and ‘child’ and exnuptial relationships.</p> <p>Includes a <u>tracing rule</u> that allows relationships traced through adoption, the definitions of ‘parent’ and ‘child’ and exnuptial relationships to be recognised for the purpose of the Seafarers Act.</p>
43(3)	Added at the end of subsection	Note: In relation to paragraph (3)(d), see also section 16.	Cross-references the household services provisions to the newly amended section 16. It directs the reader to the tracing rule (see above) contained in subsection 16, which is relevant to paragraph 43(3)(d).
43(5)		Note: In relation to paragraph (5)(f), see also section 16.	Cross-references the attendant care services provisions to the newly amended section 16. It directs the reader to the tracing rule (see above) contained in subsection 16, which is relevant to paragraph 43(5)(f).

<p>Application of amendments</p>		<p>(1) The amendments of the <i>Seafarers Rehabilitation and Compensation Act 1992</i> made by this Schedule apply in relation to a payment made under that Act on or after the commencement of the amendments, other than a payment of a lump sum to which subitem (2) applies.</p> <p>(2) The amendments of the <i>Seafarers Rehabilitation and Compensation Act 1992</i> made by this Schedule apply in relation to a lump sum benefit payable in respect of the death of a person if the death occurs on or after the commencement of the amendments.</p>	
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