

**MEMORANDUM OF UNDERSTANDING**

**Between**

**OFFICE OF INDUSTRIAL RELATIONS  
Department of Education  
Queensland**

**AND**

**AUSTRALIAN MARITIME SAFETY AUTHORITY**

**AUGUST 2018**

## Part A - Introduction

### 1. Purpose

- 1.1 This Memorandum of Understanding (MOU) between the Office of Industrial Relations (OIR) in the Department of Education (OIR), and the Australian Maritime Safety Authority ("AMSA") (the parties) concerns safety in and around maritime workplaces in Queensland.
- 1.2 It provides examples of regulator responsibilities where jurisdiction is clear and supports cooperation and consultation where jurisdiction overlaps or may be unclear.
- 1.3 This MOU sets out the guidelines under which OIR and AMSA will respond to maritime workplace incidents on ships, Domestic Commercial Vessels and wharves in Queensland. The MOU also provides guidance on:
  - (a) separation of responsibilities between the two jurisdictions where this is possible
  - (b) mechanisms for determining responsibility where responsibility may be unclear
  - (c) providing assistance and advice to each other when legislatively required to do so, and
  - (d) working together to maximise educational and compliance activities, where practical and appropriate, directed towards enhancing maritime safety.
- 1.4 OIR and AMSA acknowledge that nothing in this MOU restricts respective statutory duties, discretions and powers of the parties under relevant legislation.
- 1.5 Whilst the parties shall as far as possible:
  - (a) abide by the procedures set out in this MOU, and
  - (b) take whatever measures are necessary to ensure that the officers of the parties are aware of the terms of this MOU and abide by it,

It is not intended that this MOU shall have legally binding effect.

### 2. Parties

- 2.1 OIR is the Regulatory Authority in Queensland responsible for administering the *Work Health and Safety Act 2011*, the *Safety in Recreational Water Activities Act 2011* and the *Electrical Safety Act 2002*[
- 2.1 OIR seeks to improve work health and safety, electrical safety and workers' compensation performance through regulatory and policy frameworks and the provision of evidenced-based services and advice. The OIR includes the agencies of Workplace Health and Safety Queensland (WHSQ) and the Electrical Safety Office (ESO).
- 2.2 AMSA is created by the *Australian Maritime Safety Authority Act 1991* (Cth). It is the Commonwealth Regulatory Authority responsible for inspectorate functions under the *Occupational Health and Safety (Maritime Industry) Act 1993* (Cth) (OHS(MI) Act). It also administers the *Navigation Act 2012* (Cth) (Navigation Act), protection of the sea legislation, including the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth) and subordinate legislation made under those Acts. AMSA also administers the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth) (National Law).

- 2.3 AMSA's mission is ensuring safe vessel operations, combatting marine pollution, and rescuing people in distress.

### 3. Definitions for the purpose of this MOU

**"Domestic Commercial Vessel (DCV)"** means a vessel that is for use in connection with a commercial, governmental or research activity and is not a RAV.

**"maritime incident"** means an incident that involves a ship, a DCV or land based workplace

**"notify"** means notification in accordance with agreed procedure

**"plant"** means any machinery, equipment, appliance, implement or tool; and includes any component, fitting, connection, mounting or accessory used in or in conjunction with any of the above

**"powered mobile plant"** means: plant which is provided with some form of self-propulsion which is ordinarily under the direct control of an operator

**"regulated Australian vessel (RAV)"** means an Australian vessel that is subject to the Navigation Act and is not a DCV.

**"Regulatory Authority"** means the Australian Maritime Safety Authority and/or OIR Queensland.

**"respond"** means a response by the relevant party/parties in accordance with documented organisational response procedures.

**"ship"** (which may be a regulated Australian vessel or a foreign flagged ship) for the *Navigation Act 2012* means any kind of vessel used in navigation by water, however propelled or moved, and includes:

- (a) a barge, lighter or other floating vessel
- (b) an air cushion vehicle or other similar craft used wholly or primarily in navigation by water, and
- (c) an offshore industry mobile unit.

**"workplace"** means: place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. For this definition, **place** includes—

- (a) a vehicle, vessel, aircraft or other mobile structure, and
- (b) any waters and any installation on land, on the bed of any waters or floating on any waters.

**"workplace incident"** means a maritime incident that is:

- (a) an incident resulting in a person suffering serious bodily injury that must be notified to the Regulatory Authority under a regulation; or
- (b) a work caused injury that must be notified to the Regulatory Authority under a regulation, or
- (c) a dangerous event that must be notified to the Regulatory Authority under a regulation, or

(d) a fatality.

## Part B – Scope of Respective Legislation

### 4. AMSA Jurisdiction - General

- 4.1 **Regulated Australian Vessels (RAVs)** - The *Navigation Act 2012* (Cth) (Navigation Act) and its Marine Orders apply to these vessels. Of particular relevance to this MOU are Marine Order 32 (Cargo Handling Equipment) (MO32) and Marine Order 41 (Carriage of dangerous goods) (MO41).

In addition and with further relevance to this MOU, RAVs may at times come under the *Occupational Health and Safety (Maritime Industry) Act 1993* (Cth) (OHS(MI) Act).

*Note:* that the OHS (MI) Act does not generally apply to RAVs that are limited to intra state trade unless operators of those vessels choose to be covered.

- 4.2 **Foreign Vessels** - The Navigation Act and its Marine Orders apply to these vessels. Of particular relevance to this MOU are MO 32 and MO41. The OHSMI Act will generally not apply to foreign vessels.
- 4.3 **Domestic Commercial Vessels (DCVs)** - The *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth) (National Law) applies to these vessels. DCVs are generally permitted to operate only up to 200nm from the Australian coast. Some DCVs may also be covered by some aspects of the Navigation Act, and those involved in interstate trade may be covered by the OHS (MI) Act.

#### 4.4 Legislation

- (a) OHSMI Act – performance-based WHS legislation that, broadly speaking, only applies to the following vessels undertaking interstate or international voyages:
- all RAVs and DCVs, and
  - foreign vessels that are operated by an Australian-based company and which have a majority of Australian crew, or which are licensed for coastal trading.
- (b) Navigation Act –relevant to the purpose of this MOU in that, among other things, it provides for verification of:
- survey and certification of RAVs and foreign vessels (hardware)
  - safety management systems of companies and application of those systems on RAVs and foreign vessels
  - qualification and competence of seafarers on RAVs and foreign vessels
  - verification of compliance with international conventions, including international occupational safety, health and welfare standards for crews
- (c) MO32 – subordinate legislation of the Navigation Act. Legislates cargo handling matters in relation to RAVs and foreign vessels, and is a common point of interface with workers, particularly stevedores. Largely prescriptive in relation to vessel construction and equipment, and refers primarily to Safe Work Australia's Stevedoring Code of Practice for operational matters.
- (d) MO41 – subordinate legislation of the Navigation Act. Legislates the carriage and handling of dangerous goods on RAVs and foreign vessels. Does not apply to DCVs.

- (e) National Law –relevant to the purpose of this MOU in that, among other things, it provides for standards and verification of DCVs in relation to:
- survey and certification (construction and operation)
  - near coastal qualifications and navigational practices
  - safety management arrangements
  - general safety duties of crews and owners.

## 5. OIR Jurisdiction - General

5.1 OIR administers legislation that applies to workplace incidents including *Work Health and Safety Act 2011* (WHS Act), the *Safety in Recreational Water Activities Act 2011* (SRWA Act) and the *Electrical Safety Act 2002* (ES Act).

- (a) WHSQ's goal is to foster safe and healthy work environments for all workers in Queensland. The key outcome is a reduction in work-related fatalities, injuries and illnesses in Queensland. WHSQ collaborates with all stakeholders to improve work health and safety performance by:
- delivering education and awareness activities to improve the ability of workplace participants to identify and manage risks to work health and safety;
  - implementing targeted compliance programs at state and local levels and participating in national compliance activities;
  - undertaking enforcement activities;
  - managing the registration, licensing and approval regimes under the WHS Act; and
  - working cooperatively with other states, territories and the Commonwealth.
- (b) The ESO's goal is to make Queensland industry, homes and communities safe from the risk of electrical harm. The key outcome is a reduction in electricity-related fatalities, injuries, and property damage in Queensland. The ESO collaborates with all stakeholders to improve electrical safety by:
- promoting compliance with electrical safety laws and standards across industry and the community, and enforcing standards when non-compliance is evident;
  - influencing and developing legislation and standards for electrical safety;
  - managing registration, licensing, approval (electrical equipment) and accreditation regimes required under legislation;
  - providing information, education and training activities to help industry employees and the community manage electrical safety risks;
  - providing advice to the Minister and statutory bodies, including the Commissioner for Electrical Safety, the Electrical Safety Board and its three committees; and
  - working cooperatively with other states, territories and the Commonwealth Government to improve electrical safety outcomes.

## Part C – Cross Jurisdictional Operational Arrangements

### 6. Incident notification

- 6.1 When there is a workplace incident involving a DCV or ship, both parties agree:
- (b) that the first notified party will undertake reasonable endeavours to establish the relevance of the incident to the other party. For this purpose, the incidents listed by category in Schedule 2 and Schedule 3 will guide decision making;
  - (c) to notify the other party of the incident, and the likely Schedule 2 or Schedule 3 category, as soon as reasonably practicable;
  - (d) the receiving party will confirm that it has received the incident notification;
  - (e) to consult, as soon as reasonably practicable, about the intended actions, including agreeing which party will take the lead in responding to the incident. For this purpose, the following will act as a guide:
    - AMSA will lead **Category A** matters;
    - AMSA and OIR will confer/consult to determine the best approach for handling **Category B** matters, including who will lead;
    - OIR will lead **Category C** matters.
  - (f) Maintain appropriate lines and level of communication until the matter is finalised.
- 6.2 The nominated contact officers for incident notification are listed in Schedule 1.

### 7. Policy and legislative development

- 7.1 The parties acknowledge that issues concerning workplace safety in the maritime industry require specific policy development for effective management. Therefore the parties agree to:
- (a) consult with each other regarding policies about safety on DCVs;
  - (b) undertake, where appropriate, to ensure that the parties' standards, policies and working arrangements are made as harmonious and consistent as possible with respect to safety matters on DCVs;
  - (c) consult each other about proposed policy or legislative changes to determine whether the changes will affect the operation and/or implementation of other relevant laws; and
  - (d) explore the benefits to be realised by the development and implementation of an approved Code of Practice covering safe working practices on DCVs.
- 7.2 Where changes to policies or legislation have the potential to affect the operation and/or implementation of this MOU, both parties will endeavour to develop mechanisms to mitigate any undesirable effects.

## **8. Education and campaign activities**

- 8.1 The parties agree to identify and collaborate on educational opportunities and compliance campaigns aimed at improving safety in the maritime industry.
- 8.2 Where such activities are to be undertaken the parties agree to each appoint a contact officer to ensure that the activities have maximum mutual benefit.
- 8.3 AMSA agrees to circulate jointly developed educational materials through its industry engagement activities (including via Liaison Officers, Safety Campaigns, E News (Monthly) and Working Boats publication (Quarterly) and marine notices, and to provide feedback to OIR on the initiatives.
- 8.4 The parties agree to share findings/outcomes from research or studies involving, or relevant to, safety in the maritime industry.
- 8.5 Each party will make training opportunities available to the other party's staff so that a level of understanding of its approach, obligations and responsibilities can be developed and maintained over time.

## **9. Investigations and prosecutions**

- 9.1 Investigations are undertaken in order to determine:
  - causes;
  - compliance with the legislation;
  - whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the legislation;
  - lessons to be learnt and to influence the legislation and policy; and
  - what response is appropriate to an alleged breach of the legislation.
- 9.2 The agencies will generally carry out an investigation of a fatality unless there are specific reasons for not doing so (such as when the incident is outside the authority's jurisdiction). In such cases the reasons will be recorded and kept on file. In circumstances where jurisdictional responsibility relating to an incident rests with more than one agency, the agencies will establish a 'lead agency' for any investigations.
- 9.3 At the commencement of an investigation where there is more than one agency involved, the agencies will nominate an appropriate contact person through whom all communications will channel. The agencies will confirm in writing (e.g. by email) the scope of each investigation.
- 9.4 Where there is joint jurisdictional responsibility for investigating an incident the relevant agencies will ensure regular communication is maintained to ensure timely and effective enquiries are made. The decision as to who is the lead agency should be made as early as practicable. This will ensure resources are adequate to conduct the investigation, there is consistency as to how investigations are apportioned, and there is some accountability for the decision.
- 9.5 Alternatively, consideration may be given to the establishment of a joint team/task force where inspectors/investigators from each interested agency work side by side on an investigation. This will ensure that only one brief of evidence will result and that there is



accountability for the investigation. It will also ensure that expert assistance is on hand at all times.

- 9.6 In circumstances whereby more than one agency is seeking evidence from a common witness or potential defendant all endeavours should be made to undertake these activities jointly.
- 9.7 An agency undertaking an investigation may require specific technical expertise from another agency. In these circumstances the signatories to this Memorandum of Understanding agree to provide such assistance whenever it is practicable to do so.
- 9.8 To ensure accountability, at the conclusion of the investigation a decision as to what charges (if any) should be laid should be made by a lead agency in consultation with other interested parties as opposed to discussing the prosecution action that will or may be taken. This decision will be made with input from the Legal Services unit from each agency.

## **9.10 Confidentiality of Information**

9.10.1 Section 271 of the WHS Act, section 41 of the SRWA Act and s193 of the ES Act impose a duty of confidentiality regarding information and documents obtained in exercising any power or function under the respective Act. A person must not disclose the information to anyone else, unless an exception applies.

9.10.2 There are a range of exceptions, including s271(3)(c)(iii) of the WHS Act, s41(3)(c)(iii) of the SRWA Act and s193(3)(c)(iii) of the ES Act, which allow for disclosure of information if the regulator reasonably believes:

- (a) the disclosure is necessary for the administration or enforcement of another Act or law, and
- (b) if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety.
- (c) The regulator may also disclose information if they reasonably believe the disclosure is necessary for the administration or enforcement of another Act prescribed under a regulation<sup>1</sup>.

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<sup>1</sup>s271(3)(c)(ii) WHS Act, s41(3)(c)(ii) of the SWRA Act, s193(3)(c)(ii) ES Act

## **Part D – Interdepartmental Co-operation**

### **10. Administrative matters agreed by the parties**

- 10.1 All AMSA and OIR officers involved in the investigation of incidents covered under this MOU will have access to this MOU.
- 10.2 OIR and AMSA agree to adopt and implement the Operational Guidelines contained in Schedules 2 & 3. The Guidelines may be amended or expanded by mutual agreement, to give improved clarity to jurisdictional arrangements.
- 10.3 In the event of circumstances arising that are not covered by this MOU, both parties agree to consult each other to reach agreement on appropriate responsibilities and actions.
- 10.4 Subject to legislated restrictions on disclosure of information, reports resulting from investigations of incidents covered in this MOU will be made available to either party on request.
- 10.5 Nothing in this MOU:
- (a) entitles or requires a person to disclose information that is the subject of legal professional privilege; or
  - (b) affects the law or practice relating to legal professional privilege; or
  - (c) restricts the statutory duties, directions and powers available under legislation administered by either party.
- 10.6 The parties will provide technical advice and assistance (including site visits) to each other when requested to do so. All requests will be the subject to consultation.
- 10.7 The parties agree to share information resources and intervention details relating to maritime incidents, when requested and appropriate to do so.

## **Part E – General provisions**

### **11. Commencement, Variation, Termination and Review**

- 11.1 This MOU will commence:
- (a) on the date it is signed by both parties; or
  - (b) on the date the last party signs where the parties do not sign on the same day.
- 11.2 The MOU may be varied by written agreement between the parties.
- 11.3 The MOU will be reviewed twelve months after its commencement, and thereafter on an annual basis.
- 11.4 The MOU will remain in place unless otherwise terminated at the annual review or in accordance with clause 11.5.

11.5 The MOU may be terminated:

- (a) at any time by mutual agreement; or
- (b) by either party giving 90 business days' notice in writing to the other party.

## 12. Dispute Resolution

12.1 If there is a dispute between the parties arising out of or related to this MOU, the parties agree:

- (a) to use their best endeavours and act in good faith to resolve the dispute, and
- (b) if the parties cannot resolve the dispute within seven days of the commencement of negotiations, to refer the matter to the dispute resolution officers listed in Schedule 1 for resolution.

## 13. Costs

13.1 Each party will bear its own costs in giving effect to this MOU unless there is a written agreement changing this arrangement.

This MOU is signed this

17th day of August

2018

On behalf of OIR Department of Education



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Dr Simon Blackwood  
Deputy Director-General

On behalf of the Australian Maritime Safety Authority



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Mick Kinley  
Chief Executive Officer

## SCHEDULE 1

### OIR Contact details

OIR CONTACT DETAILS	
OIR	
	<p><b>Workplace Health and Safety Qld</b>  <a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a></p> <p><b>1300 362 128</b></p>
<b>Relevant Manager for Operational Contact</b>	<p>Director, Investigative Services                      Workplace Health and Safety Qld                      Office of Industrial Relations                      Phone 1300 362 128  <a href="mailto:david.mckenzie@justice.qld.gov.au">david.mckenzie@justice.qld.gov.au</a></p> <p>Director, Coronial and Enforceable Undertakings                      Office of Industrial Relations                      Phone (07) 30206399  <a href="mailto:ohs.coronialliaison@justice.qld.gov.au">ohs.coronialliaison@justice.qld.gov.au</a></p>
<b>Alternative Electrical Safety Office</b>	<p>Electrical Safety Office  <a href="http://www.electricalsafety.qld.gov.au">www.electricalsafety.qld.gov.au</a>                      For emergencies where death or serious injury occur as a result of electric shock ring                      (07) 3406 6884.</p>

### AMSA Contact Details in Queensland

	WORK PHONE NO	MOBILE	EMAIL
<b>Regional Manager</b>	<b>Greg Witherall</b>	<b>0418894306</b>	<b>Nthmanoperations@amsa.gov.au</b>
<b>Principal Regional Port Marine Surveyor Qld South</b>	Giuseppe Ferretti de Luca	0447369730	<b>Nthmanoperations@amsa.gov.au</b>
<b>Principal Regional Port Marine Surveyor Qld North</b>	Michael Hickman	0427636267	<b>Nthmanoperations@amsa.gov.au</b>
<b>AMSA Rescue Coordination Centre 24 hour contact</b>	1800 641 792	-	02 62306811 or 1800 641 792 reports@amsa.gov.au

### Dispute Resolution Officers:

	<b>WORK PHONE NO</b>	<b>EMAIL</b>	<b>MOBILE</b>	<b>FACSIMILE</b>
<b>General Manager Operations</b>	02 6279 5935	GMOperations@amsa.gov.au	0418 236 223	02 6279 5953
<b>OIR</b>				
<b>Director Work Health and Electrical Safety Policy OIR</b>	(07) 3406 9906	<u>Andrea.fox@oir.qld.gov.au</u>		

## **SCHEDULE 2**

### **Operational Category Guidelines – OSH (MI) Act and Navigation Act**

**Note:** Navigation Act and OHS(MI) Act definitions apply to this schedule.

#### **Category A - AMSA to lead**

- Incidents involving ship's crew using ship's equipment at sea or in port (Including use of ship's lifting equipment, load restraint systems, propulsion or ancillary machinery and operational spaces)
- Incidents involving ship's crew and equipment to tranship to another vessel
- Incidents involving ship's crew

#### **Category B - Areas of potential overlap**

- Incidents involving contractors working on ships
- Incidents involving stevedores or contractors using ship's equipment
- Incidents involving stevedores using shore based equipment on the vessel (ie RO/RO)
- Incidents on Australian ships which work only intrastate

#### **Category C - OIR to lead**

- Ship's or shore based personnel working ashore (using either ship or shore owned equipment ie Forklift)
- Incidents involving stevedores or contractors on shore using or working on shore based equipment.
- Incidents involving stevedores or contractors on a ship utilising shore stowage machinery (forklift etc)

## **SCHEDULE 3**

### **Operational Category Guidelines - Domestic Commercial Vessels**

**Note:** National Law definition of Domestic Commercial Vessel applies to this schedule

#### **Category A - AMSA to lead**

Incidents attributable to:

- crew specific maritime skills e.g. navigation/collision
- vessel safety equipment – e.g. absence/insufficient, incorrect lifesaving equipment
- vessel construction and or modification - capsizing, sinking
- vessel survey (including Non-survey) - various failures breaches of survey limitations (e.g. carrying passengers)
- area of operation – vessel operating out of the area for which it is approved

#### **Category B - Areas of potential overlap**

Incidents attributable to:

- breaches of Safety Management System as per the NSCV Part E
- breaches of National Law General Safety Duties where these are also attributable to specific State/Territory legislative obligations
- serious injury or fatality
- Incident involving fatigue issues

#### **Category C - OIR to lead**

Incidents related to a failure to provide a safe a workplace as defined by State/Territory legislation or regulations. For example - Injuries and fatalities occurring as a consequence of:

- Diving and snorkelling
  - Incidents related to a failure to provide a safe workplace as defined by Work Health and Safety laws which are outside the scope of the Navigation Act.
-