



Australian Government

Seafarers Safety, Rehabilitation
and Compensation Authority

Health and Safety Representatives Handbook

A guide for HSRs in the Australian maritime industry





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Contact details:

Seacare Authority

Post GPO Box 9905
Canberra ACT 2601

Phone (02) 6275 0070

Fax (02) 6275 0067

Email seacare@comcare.gov.au

Website www.seacare.gov.au

Disclaimer

This publication has been issued by the Seacare Authority as a practical guide for health and safety representatives (HSR)s in the Australian maritime industry. Operator's OHS/HR staff and onboard employees should also make use of this handbook.

However, the HSR Handbook is not intended to be comprehensive and is not a substitute for independent professional advice. Please contact an appropriate qualified professional before relying on the contents of this publication.

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The Seacare Authority wishes to acknowledge the use of Comcare's HSR Handbook as the basis for this document.

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Acronyms and definitions

The Act

Occupational Health and Safety (Maritime Industry) Act 1993
[also known as the OHS(MI) Act]

AIRC

Australian Industrial Relations Commission [the reviewing authority]

AMSA

Australian Maritime Safety Authority

ASCC

Australian Safety and Compensation Council

DWG

Designated Work Group

Employee

A person employed by an operator on a prescribed ship or prescribed unit; or a person engaged on a prescribed ship or unit under articles of agreement

HR

Human Resources

HSC

Health and Safety Committee

HSIS

Hazardous Substances Information System

HSR

Health and Safety Representative

Inspectorate

AMSA performs the OHS maritime inspectorate service for the Seacare Authority

MSDS

Material Safety Data Sheet

Navigation Act

Navigation Act 1912

[NOPSA](#)

National Offshore Petroleum Safety Authority

[OHS](#)

Occupational Health and Safety

[Operator](#)

In relation to a prescribed ship or a prescribed unit, means the person who has the management or control of the ship or unit. Where the employer is in control of the workplace they would be the operator.

[Person in command](#)

In relation to a prescribed ship or a prescribed unit, is the master, or in the absence of the master, the person on board responsible, as agent for the operator, for the operation of the ship or unit.

[PIN](#)

Provisional Improvement Notice

[PPE](#)

Personal Protective Equipment

[Regulations](#)

Occupational Health and Safety (Maritime Industry) Regulations 1995

[Reviewing authority](#)

Australian Industrial Relations Commission (AIRC)

[Seacare](#)

Seafarers Safety, Rehabilitation and Compensation Scheme

[Seacare Authority](#)

Seafarers Safety, Rehabilitation and Compensation Authority

[Seafarers Act](#)

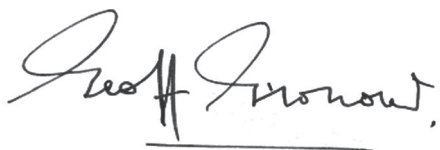
Seafarers Rehabilitation and Compensation Act 1992

Message from the Chairperson, Seacare Authority

A health and safety representative has a very important role in the partnership between an operator and its maritime employees on occupational health and safety issues in the workplace. A health and safety representative can help to ensure that the employees they represent are effectively represented in decisions that affect their health and safety at work.

Since the *Occupational Health and Safety (Maritime Industry) Act 1993* came into effect, health and safety representatives have demonstrated an active interest and commitment to the health and well-being of their fellow seafarers.

The Seafarers Safety, Rehabilitation and Compensation Authority has developed this handbook principally to provide guidance to health and safety representatives and to help them with their understanding of their role and responsibilities, and those of other parties, in preventing injuries and ill health in the workplace. Operator's OHS / HR staff, seafarers and union representatives will also find this handbook a useful reference.

A handwritten signature in black ink that reads "Geoff Gronow". The signature is written in a cursive style with a horizontal line underneath the name.

Geoff Gronow ESM ED
Chairperson
Seacare Authority

28 August 2008

1 Introduction

Ask employees in a workplace to describe the role of a health and safety representative (HSR) and you will get a variety of answers. A trained HSR will have a clearer idea. However, a recently selected / elected HSR may not, at least until they have attended a HSR training course accredited by the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority).

A HSR is not expected to be the person responsible for health and safety in a workplace. Nor is a HSR expected to be an expert on occupational health and safety (OHS) issues. The primary role of a HSR is to represent the employees of a designated work group (DWG) with regard to their health and safety.

A HSR should seek to maintain communication with other HSRs in their organisation to share experiences. This will greatly assist with developing a better understanding of their role and assist them to more effectively carry out their responsibilities as a HSR. A HSR may find that there are a number of common OHS issues within their organisation. A group approach to achieving solutions may be more effective. The aim should be to develop negotiation and communication skills, and so enhance their communication with employees in their DWG, supervisors and persons in command.

As a first step, an operator's OHS staff should be able to assist a HSR, both in understanding OHS issues and also making contact with other HSRs. However, a HSR needs to become familiar with the relevant legislation, the powers provided and how to exercise those powers, having in mind that these come with responsibilities.

1.1 Purpose of this handbook

The HSR Handbook has been developed by the Seacare Authority for the Australian maritime industry to provide:

- a resource for those attending an accredited HSR training course;
- a guide to HSRs on their powers, role and responsibilities; and
- assistance to HSRs in the exercise of their powers.

This handbook would also be a useful reference for operators, their OHS / HR staff, involved unions and, indeed, all seafarers.

1.2 Contents of this handbook

The HSR Handbook covers:

- key sections of the legislation;
- the role, functions and powers of a HSR;
- consultative arrangements under the legislation;
- responsibilities of HSRs and those of other involved parties;
- procedures for resolving health and safety issues;
- the processes of hazard identification, assessment and control; and
- where to get more information.

References to key sections of the legislation are provided throughout the handbook. There are also a number of flowcharts to explain the process of, and to provide assistance with, resolving health and safety issues.

An explanation of the risk assessment and control process is provided in the Appendices. Contact details for obtaining more information are also provided.

The format for a provisional improvement notice (PIN) and an example of a completed PIN are provided in the **Attachments**.

Space is also provided to record details of OHS contacts.

Note This handbook and a shorter version can be accessed from the Seacare website www.seacare.gov.au.

2 The Act, the Regulations, codes of practice and guidance

Organisations operating under the *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Act) are required to comply with the *Occupational Health and Safety (Maritime Industry) Act 1993* (the Act).

Note The above and other relevant legislation, related legislative instruments (regulations and approved codes of practice) and guidance are listed in Appendix 2 and can be accessed from the Seacare website.

2.1 The Act

The Act (section 6) applies to operators, employees, contractors and other persons, and manufacturers / suppliers / importers of plant or substances used or handled on a prescribed ship or prescribed unit engaged in trade or commerce:

- between Australia and places outside Australia;
- between 2 places outside Australia; or
- between the States; or
- within a territory, between a State and Territory or between 2 Territories.

The Act also applies to an offshore industry vessel to which a declaration under subsection 8A(2) of the *Navigation Act 1912* is in force, a trading ship to which a declaration under subsection 8AA(2) of that Act is in force, and a ship which has a licence under section 286 of that Act to engage in the coasting trade.

The Act does not cover ships that voyage within one state, government ships or vessels to which the *Petroleum (Submerged Lands) Act 1967* (PSLA) applies.

Note The PSLA is administered by the National Offshore Petroleum Safety Authority (NOPSA). NOPSA has produced guidance for Australia's offshore petroleum industry, available at www.nopsa.gov.au.

In general, State and Territory OHS laws do not apply to operators and seafarers covered by the Act and related legislative instruments.

Part 1 of the Act sets out its **objects** (section 3), which are:

- to secure the health, safety and welfare at work of maritime industry employees; and
- to protect people at or near workplaces from risks to their health and safety arising out of the activities of maritime industry employees at work; and
- to ensure expert advice is available on occupational health and safety matters affecting maritime industry operators, maritime industry employees and maritime industry contractors; and
- to promote an occupational environment for maritime industry employees that is adapted to their health and safety needs; and
- to foster a cooperative, consultative relationship between maritime industry operators and maritime industry employees on the health, safety and welfare of maritime industry employees at work.

Part 1 also deals with the **extent** (section 5) and **application** (section 8) of the Act. It also sets out the **functions** (section 9) of the Seacare Authority.

Part 2 of the Act sets out the **general duties** of various parties relating to occupational health and safety (sections 11 to 27).

Part 3 of the Act outlines **workplace arrangements**, including:

- **designated work groups** (sections 34 to 40);
- **health and safety representatives** (sections 41 to 56 and 71 to 72);
- **provisional improvement notices** (sections 57 to 61);
- **duties of operators** toward HSRs (sections 63 to 68);
- **health and safety committees** (sections 73 to 77);
- **emergency procedures** (sections 80 to 81); and
- **access to information** by HSRs (sections 69 to 70) and HSCs (sections 78 to 79).

A HSR should also be familiar with the other areas of the Act. **Part 4** deals with the **functions** (section 82) and **powers** (sections 82 to 106) of the Seacare scheme's OHS Inspectorate, performed by the Australian Maritime Safety Authority (AMSA), including the provision of **advice** (section 83) and the undertaking of **investigations** (sections 87 to 98).

Part 5 of the Act deals with a range of other matters such as: **notifying and reporting accidents and dangerous occurrences** (section 107), **codes of practice** (sections 109 to 110), **prosecutions** (section 116) and **regulations** (sections 120 to 121).

2.2 The Regulations

Regulations give extra, mandatory provisions to help the operation of the Act. Failure to comply with relevant regulations may be a contravention of the general duty of care under the Act. Two sets of regulations have been made under the Act.

The *Occupational Health and Safety (Maritime Industry) Regulations 1995* (the Regulations) cover a range of matters, including:

- **elections** for HSRs conducted by involved unions (regulation 5);
- the **form of a provisional improvement notice** (regulation 6 and form 1); and
- **notifying and reporting of incidents** (regulations 12 to 13).

The *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003* provide mandatory provisions relating to:

- **hazardous substances** (Part 2); and
- **manual handling** (Part 3).

2.3 Approved codes of practice

Codes of practice are a source of expert information about safe work practices in specific circumstances.

A code of practice approved by the Minister under the Act (section 109):

- is a practical guide to people with a duty of care under the Act;
- should be followed, unless there is another way of achieving the same or better standards of health and safety (section 110); and
- is admissible in evidence in proceedings under the Act and the Regulations (section 110).

Approved codes of practice include:

- *Seacare Code of Practice 1/2000*, which incorporates:
 - *The Australian Offshore Support Vessel Code of Safe Working Practice*
 - *Code of Safe Working Practice for Australian Seafarers*; and
- *Approved Code of Practice for Manual Handling (Maritime Industry)*.

2.4 Guidance

The Seacare Authority has produced guidance to assist operators / employers and their employees such as:

- *Guidance on the Prohibition on the use of Asbestos in Australian Maritime Industry Workplaces*
- *Occupational Health and Safety (Seacare brochure #4)*
- *Guidelines for the Accreditation of Health and Safety Representative Training Courses*
- *Guidance Notes - Coverage under the Seafarers Rehabilitation and Compensation Act 1992 (Seafarers Act)*

3 OHS Responsibilities

Under the Act, the primary responsibility for maintaining a healthy and safe workplace lies with the operator (section 11). Other parties with responsibilities are: employees; HSRs; the Seacare Authority; the Inspectorate; manufacturers; importers; suppliers; erectors; installers; constructors; modifiers; repairers; loaders; and unloaders.

The Seacare Authority and the Inspectorate, which is performed by AMSA, administer the Act and Regulations.

3.1 Operators

An operator is defined as being, in relation to a prescribed ship or a prescribed unit, the person who has the management or control of the ship or unit (section 4). Where the employer is in control of the workplace they would be the operator.

3.1.1 Responsibilities to employees

The Act requires an operator to establish workplace processes and a working environment where employees may work in a safe manner and without risk to their health, safety and welfare (subsection 11(3)).

An operator has a duty to take all reasonable steps to protect the health and safety at work of their **employees** (subsection 11(1)). An operator's specific duties under the Act include:

- providing and maintaining a working environment (including plant and systems of work) that is safe for employees and without risk to their health (paragraph 11(3)(a));
- providing adequate facilities for employees' welfare at work (paragraph 11(3)(b));
- providing safe access to and from the workplace without risk to health (subsection 11(4));
- ensuring the health and safety of employees and contractors at work when using, handling, storing or transporting plant or substances (subsection 11(5));
- providing employees necessary information, instruction, training and supervision (in appropriate languages) to allow them to perform their work safely (subsection 11(6));

For example, ensuring that upon receipt of a PIN, that PIN is displayed in a prominent place at or near each workplace subject to that PIN, until the PIN ceases to have effect (paragraph 60(1)(b)).

- monitoring employees' health and safety at work and conditions of workplaces under the operator's control (paragraph 11(7)(a));
- maintaining information and records regarding employees' health and safety (paragraph 11(7)(b));
- providing appropriate medical and first aid services for employees (paragraph 11(7)(c)); and
- notifying and reporting accidents and dangerous occurrences (section 107).

An operator is required to develop health and safety policies in consultation with employees (section 12).

3.1.2 Responsibilities to contractors and third parties

An operator also has a duty of care towards contractors and to **persons, other than employees and contractors, at or near a workplace** of the operator in relation to matters over which the operator has control (sections 13 and 14).

For example, upon receipt of a PIN the person in command must provide a copy to a contractor, if the PIN relates to a contravention of the Act or Regulations by that contractor or their employee (paragraph 58(5)(b)). The PIN must be displayed in a prominent place at or near each workplace subject to that PIN, until the PIN ceases to have effect (paragraph 60(1)(b)).

3.1.3 Responsibilities to HSRs

An operator's specific responsibilities to HSRs include:

- permitting a HSR to take such time off work, without loss of pay or other entitlements, as is necessary to undertake a course of training related to OHS that is accredited by the Seacare Authority (section 47).

Note As HSR training is mandatory, the Seacare Authority expects that training costs should be met by the operator. These costs may include transport and accommodation costs. Within three months of becoming aware of the selection / election of a HSR, the operator should make arrangements for an HSR to attend an accredited training course. All HSR training activities should occur during the employee's work time. Time and resources should be provided to a HSR for any training that involves work based activities. Additional (refresher) training should be considered for a HSR who performs the HSR role for more than one term of office [usually two years].

- when a PIN is issued to the person in command, ensuring that the person in command takes all reasonable steps to inform the HSR issuing the PIN of the action taken to comply with the PIN (section 61);
- consulting with a HSR, or at the request of a HSR, on the implementation of changes at any workplace that may affect the health and safety at work of the employees in their DWG (section 63);
- permitting a HSR for a DWG to:
 - inspect the whole or any part of the workplace and to accompany an inspector during any investigation at the workplace by the inspector (section 64);
 - be present at any interview, about health and safety at work, between an employee in the DWG and an inspector or the operator, the person in command or any other person representing the operator (section 65);
 - take such time off work, without loss of remuneration or other entitlements, as is necessary to exercise the powers of a HSR (section 67);
- upon request, providing a HSR for a DWG access to:
 - any information under the operator's control relating to risks to the health and safety of any employees, except where legal professional privilege for that information is claimed or the information is confidential medical information, unless the employee has given written authority or the information is in a form that does not identify a person (sections 66, 69 and 70); and
 - facilities necessary for the purpose of exercising their powers as a HSR (section 68); and
- upon notice of the resignation of a HSR, inform the employees by way of a notice displayed in a prominent place in the workplace (subsection 71(3)).

Note An operator may make an application for the disqualification of a HSR to the Seacare Authority. Such an application can be on the grounds that action taken by a HSR in the exercise of their power was intended to cause harm to the operator or was unreasonable or where information acquired from the operator was used or disclosed for a purpose not connected to the exercise of a HSR's powers (subsection 72(1)).

3.1.4 Responsibilities to a HSC

An operator has specific responsibilities towards a HSC, such as:

- with regard to HSC meeting minutes, the person in command is required to:
 - keep the minutes of HSC meetings (subsection 73(6));
 - make the minutes of HSC meetings available for inspection at all times (subsection 73(7));
and
 - table the minutes of a HSC meeting at the next meeting of the HSC (subsection 73(8));
- the provision to the HSC of any information under the operator's control relating to risks to the health and safety of any employees, except where legal professional privilege for that information is claimed or the information is confidential medical information, unless in relation to medical information, the employee has given written authority or it is in a form that does not identify a person (sections 77 to 79); and
- permitting any member of the HSC who is an employee to take such time off work, with out loss of remuneration or other entitlements, to enable them to adequately participate in the performance of the committee's functions (section 77).

3.2 Employees

An employee has a duty to:

- not create a risk, or increase an existing risk, to their own health or safety or to the health or safety of other persons at or near the workplace where they are at work (subsection 27(2));
- co-operate with the operator, or with any other person, to the extent necessary to enable the operator or other person to fulfil a duty or obligation under the Act (subsection 27(3)); and
- use equipment supplied by the operator, necessary to protect the health and safety of the employee or other persons at or near the workplace where they are at work, in accordance with any instructions given by the operator consistent with its safe and proper use (subsection 27(4)).

3.3 HSRs

The Act sets out the powers (sections 48 to 52) of a HSR. Their primary role is to represent the employees in their designated work group (DWG) with their operator on matters relating to the health and safety of those employees (section 53).

Note See Chapter 6 for a more detailed explanation of the powers of a HSR and the responsibilities that flow from those powers.

3.4 The Seacare Authority

The Seacare scheme, a national safety, rehabilitation and workers' compensation scheme for seafarers, is overseen by the Seacare Authority. The Seacare Authority consists of a Chairperson and Deputy Chairperson, two employer and two employee representatives appointed by the Minister, and the CEO of AMSA.

3.4.1 Functions

As a regulator, the Seacare Authority performs a range of functions (section 9), including:

- ensuring obligations imposed by the legislation are complied with;
- advising operators, employees or contractors on OHS matters;
- collecting, interpreting and reporting on information relating to OHS;
- formulating policies and strategies relating to the OHS of employees;
- accrediting HSR training courses;
- liaising with other bodies concerned with OHS;
- advising the Minister on the most effective way of giving effect to the objects of the Act, on the making of regulations and on the approval of codes of practice.

Note The Minister may give directions to the Seacare Authority concerning the performance of its functions, and the exercise of its powers, under the Act (subsection 10(1)). The Seacare Authority must comply with these directions (subsection 10(2)).

3.4.2 Responsibilities to HSRs

While the Seacare Authority has a range of responsibilities of relevance to HSRs, such as providing advice on OHS matters, it only has a few responsibilities that are specifically directed at HSRs. These are:

- accreditation of OHS training courses for HSRs (subsection 9(e));
- where there is no involved union in relation to a DWG, authorisation of a person to conduct an election for a HSR (subsection 42(c)); and
- consideration of an application from an operator or an involved union of a DWG, or both, for the disqualification of a HSR (subsection 72(2)).

3.5 The Inspectorate

AMSA performs the OHS maritime inspectorate service for the Seacare Authority. **Part 4** of the Act deals with the role, function and powers of the Inspectorate and inspectors (sections 82 to 106).

The Inspectorate works with the Seacare Authority and the maritime industry to improve awareness of OHS issues on ships and to encourage a safety culture aimed at preventing death or injury in the maritime workplace.

Note A brochure explaining the OHS Inspectorate's role 'OH&S Maritime Inspectorate' is accessible from the AMSA website www.amsa.gov.au.

3.5.1 Functions

The Inspectorate's specific functions (section 82) are:

- to ensure, in accordance with the Act and Regulations, that the obligations imposed by or under the Act or Regulations are complied with;
- to advise operators, employees or contractors on OHS matters affecting them;
- to provide the Seacare Authority with such information as is asked for by the Authority.

The Inspectorate may, in the exercise of its function to provide advice, refer the operator, employee or contractor to a person who has special knowledge or experience relevant to the request (section 83).

3.5.2 Investigations

The Inspectorate may, at any time, conduct an investigation: to ascertain compliance with the Act and Regulations; concerning a contravention of the Act or Regulations; or, concerning an accident or dangerous occurrence (subsection 87(2)).

3.5.3 Responsibilities to HSRs

Upon entering a workplace to conduct an investigation, an inspector must take all reasonable steps to notify a HSR for the DWG the purpose of the investigation (subsection 89(2)). That HSR is entitled to accompany the inspector during the investigation (paragraph 48(1)(c)).

Upon taking possession of the plant, a substance or thing, or a sample of a substance or thing, the inspector must inform the HSR for the DWG in writing of the removal of plant or sample (subsection 91(2)).

Note See Chapter 7 for a more detailed explanation of the powers of the Inspectorate to undertake investigations and enforcement options.

3.6 Others

Manufacturers, importers and suppliers of any plant or substance are responsible for providing services that are safe and do not contribute to any risk to the health and safety of employees. They must also give an operator adequate information about the plant or substance (sections 15 to 19).

Erectors or installers of plant in a workplace must ensure that it is erected or installed in a manner that is safe for employees, contractors or other persons who use the plant and that does not constitute a risk to their health (section 22).

Repairers or maintainers of plant in a workplace must ensure that this is done in a manner that is safe for employees, contractors or other persons who use the plant and that does not constitute a risk to their health (section 23).

Constructors, modifiers or repairers of a structure on a prescribed ship or unit must ensure that this is done in a manner that is safe for employees, contractors or other persons and that does not constitute a risk to their health (section 24).

Loaders or unloaders of a prescribed ship or unit must ensure that this is done in a manner that is safe for employees, contractors or other persons and that does not constitute a risk to their health (section 25).

4 Workplace OHS arrangements

One of the objects of the Act is to foster a cooperative, consultative relationship between operators and employees on the health, safety and welfare of employees at work (section 3).

The Act emphasises consultation and cooperation between the operator, involved unions and employees. In particular, the Act requires the operator to develop a policy relating to the occupational health and safety of employees (subsection 12(1)) and that this policy must be developed in consultation with any involved union and any other persons the operator considers appropriate (subsection 12(2)). The Act also requires that the policy must enable the operator and employees to cooperate effectively in promoting and developing measures to ensure the employees' health and safety at work, and provide for the review of those measures (subsection 12(3)). The Act requires appropriate mechanisms for continuing consultation (subsection 12(4)).

4.1 Designated Work Group

A DWG is a group of employees of the same operator who can be represented by a HSR in relation to health and safety matters in their workplace affecting them. A DWG can be an important source of information about health and safety problems which may otherwise go unnoticed.

DWGs are a key strategy of the Act to foster and maintain a consultative relationship between operators and employees on all OHS issues. The establishment of a DWG is not mandatory, unless requested. The Act describes the process for the establishment and varying of a DWG (sections 34 to 40).

Where practicable, DWGs should be organised in such a way that allows all employees of an operator to be a member of a DWG (section 40(3)). All employees on a prescribed ship or prescribed unit may be in one DWG (section 40(4)).

4.1.1 Requesting or varying

An involved union in relation to the employees of an operator or, where there is no involved union, an employee may request an operator to enter into consultations to establish designated work groups or vary an existing DWG (section 34).

4.1.2 Consultations

Within fourteen days of receiving a request for the establishment or variation of a DWG from either an involved union or an employee the operator must enter into consultations with each involved union or the employee who made the request, where there is no involved union (section 35).

Consultations must be directed principally at determining the grouping of employees that best and conveniently enables the employee's OHS interests to be represented and safeguarded (paragraph 40(1)(a)). The consultations must take into account the need for a HSR to be accessible to the employees in their DWG (paragraph 40(1)(b)).

To achieve this, the Act requires (subsection 40(2)) that consultations on DWGs must have regard to:

- the number of employees; and
- the nature of each type of work performed by the employees; and
- the number and grouping of the employees who perform the same or similar work; and
- the workplaces, and the areas within workplaces, where each type of work is performed; and
- the nature of any risks to health and safety at the workplaces; and
- any extended hours or watch keeping arrangements on the prescribed ship or prescribed unit.

4.1.3 Operator variation

If an operator thinks that a DWG should be varied, the operator may enter into consultations with the involved union or, if there is no involved union, with the HSR of the DWG proposed to be varied (section 36).

4.1.4 Disagreements

If there is disagreement between any of the parties on the manner of establishing or varying a DWG, then any party may refer the matter to the reviewing authority [the Australian Industrial Relations Commission (AIRC)] (subsection 37(1)). The consultation must then be completed in accordance with the resolution by the reviewing authority (subsection 37(2)).

4.1.5 Establishing / varying following consultations

The operator has up to 14 days after completion of consultations to establish a DWG in accordance with the outcome of the consultations and to notify employees (sections 38 and 39).

The person in command is required to maintain a written list of all HSRs for DWGs and make them available to employees, involved unions and inspectors at all reasonable times (section 45).

4.2 Health and Safety Representative

A HSR plays a significant part in the promotion of, and cooperation on, OHS in the workplace through their representation of the health and safety interests of employees in their DWG.

4.2.1 Selection

One HSR may be selected for each DWG by the members of the DWG (subsection 41(1)). To be eligible, the HSR must also be a member of that DWG (subsection 41(2)). The HSR is selected either by unanimous agreement of all the employees in the DWG or by election (subsection 41(3)).

4.2.2 Election

A HSR election may be conducted in a number of ways (section 42). Where there is only one involved union for a DWG, that union may conduct the election. Where there is more than one involved union, the unions must agree on which union will conduct the election – the specified union. If there is no involved union, then the Seacare Authority may authorise a person to conduct the election. Further advice on the conduct of elections can be obtained by contacting the Seacare Authority.

4.2.3 Eligibility

An employee in a DWG can be a candidate in the election, as long as they are not disqualified from being so (subsection 43(a)). If an involved union, in relation to that DWG, is conducting the election, the employee is nominated by that involved union (subsection 43(b)).

4.2.4 Right to vote

All employees in a DWG are entitled to vote in the election for a HSR (subsection 44(1)). If there is only one candidate for the election, that person is taken to have been elected (subsection 44(2)).

4.2.5 Information

Upon selection as a HSR, by unanimous agreement of employees of a DWG, the Act requires the HSR to **inform the person in command** as soon as possible after selection. However, if selection has been by election, then the involved union or other person authorised to conduct the election must inform the person in command as soon as possible after selection (subsection 44(3)).

The person in command is required to inform all employees in a DWG of the name of the HSR selected as soon as practicable after being informed (subsection 44(4)).

The person in command is also required to prepare, maintain and make available for inspection by employees, involved unions, DWGs and inspectors, an up-to-date list of all HSRs (section 45).

4.2.6 Term of office

A HSR holds office for the period beginning from the day of selection / election to the day that person stops serving on a prescribed ship or unit that is part of a DWG, or if agreed (in consultations on DWGs) for a succession of such periods (subsection 46(1) and sections 35 to 36).

The maximum term of office of a HSR for a DWG is two years (subsection 46(2)). However, a person may be re-selected for a further term of office (subsection 46(3)).

A person ceases to be a HSR if:

- the person resigns by notice in writing (paragraph 71(1)(a)); or
- the person stops being an employee in the DWG (paragraph 71(1)(b)); or
- the person's term of office expires, without having been selected for a further term (paragraph 71(1)(c)); or
- the person is disqualified (paragraph 71(1)(d)).

4.2.7 Resignation

Where a HSR resigns, a notice in writing must be provided. Where the selection process for the HSR involved an election run by an involved union that notice must be provided to either the involved union or the person in command. In any other case, the resignation notice in writing must be provided to the person in command (subsection 71(2)).

4.2.8 Disqualification

An application for disqualification may be made to the Seacare Authority by the operator or an involved union, or both (subsection 72(1)). A HSR may be disqualified where that person has:

- exercised their power with the intention of causing harm to the operator or not for the purpose of that power (paragraph 72(1)(a)); or
- used or disclosed information to another person not connected with their exercise of power as a HSR (paragraph 72(1)(b)).

4.2.9 Filling of vacancies

Where a person ceases to be a HSR prior to the end of their term of office (due to death, resignation or disqualification) a process for selection / election of a replacement is required.

4.2.10 Accredited training

A HSR must undertake a course of training related to OHS that is accredited by the Seacare Authority (subsection 47(1)). The operator is required to provide time off, without loss of remuneration or other entitlements, to enable a HSR to undertake such training (subsection 47(2)).

Note A list of current Seacare Authority accredited HSR training course providers can be accessed from the Seacare website at www.seacare.gov.au/OHS/HSR_training_courses.

4.2.11 Operator responsibilities

See Chapters 3 and 5.

4.3 Health and Safety Committee

The purpose of the HSC is to provide operators and employees with a forum at which they can raise, discuss, and if necessary, address issues relating to the health and safety of employees at work. The HSC is a key strategy of the Act to foster and maintain a consultative relationship between operators and employees on all OHS issues.

A HSC is required to be established for a prescribed ship or prescribed unit if:

- the employees are included in one or more DWGs (paragraph 73(1)(a)); and
- the operator is requested to do so by the HSR, in relation to one or more of the DWGs, or an involved union (paragraph 73(1)(b)).

4.3.1 Membership

Membership of the HSC must consist of the person in command and the HSR for each DWG or the person in command and others as agreed between the operator and the involved unions (subsection 73(2)). This agreement would specify operator representatives and provide for the way employee representatives are to be chosen (subsection 73(3)). Preferably, operator representatives would include senior or line managers who have the authority to make decisions about improvements to health and safety and have a good knowledge of the organisation.

4.3.2 Meetings

The Act requires HSC meetings to be held at least once every three months (subsection 73(4)). All procedures at meetings must be determined by the HSC, except for those areas determined by the Act, such as the preparation, storage and availability of the minutes of the meetings. The person in command is required to keep the minutes (subsection 73(6)) and make them available for inspection at all times (subsection 73(7)). The minutes are required to be tabled at the next meeting of the HSC (section 73(8)).

4.3.3 Functions and powers

The functions of a HSC include:

- assisting the operator to develop, implement, review and update measures to protect health and safety (paragraph 74(a));
- facilitating cooperation between the operator and employees in relation to occupational health and safety matters (paragraph 74(b));
- assisting the operator in the dissemination of information relating to the health and safety of employees at work (paragraph 74(c)); and
- such functions as are prescribed (paragraph 74(d)).

The Act also allows a HSC to carry out a variety of other functions agreed between the operator and the HSC (paragraph 74(e)).

Under the Act, the HSC has the power to do all things necessary or convenient to perform its functions (section 75), and limits the liability of members in relation to civil proceedings (section 76).

4.3.4 Operator responsibilities

Note See Chapters 3 and 5.

4.4 HSRs and their links with the HSC

The role of a HSR and the HSC differ but complement each other.

To distinguish between their roles, a HSR tends to concentrate their efforts on addressing the specific OHS issues of employees in their DWG. The HSC tends to address broader organisational issues in accordance with its terms of reference. The HSC would focus on the workplace as a whole, including general trends and root causes of accidents.

A HSR is not required under the legislation to be a HSC member (subsection 73(2)). Where a HSR is not a member of a HSC, it is important to maintain communication with members of the HSC who represent the employees in their DWG. A HSR should seek to know about the committee's activities and issues being addressed. If a HSC exists, a HSR can examine the records of the HSC (paragraph 48(1)(e)).

5 Resources for HSRs and HSCs

An Operator must provide adequate facilities to enable a HSR (section 68) and the HSC (section 12) to exercise their powers.

The provision of appropriate resources should be discussed with the operator and could include:

- filing and storage space to keep records, information and books;
- access to a telephone, photocopier, email facilities; and
- a room or other facility to allow meetings.

An operator must provide HSRs (section 67) and employee members of the HSC (paragraph 77(b)) with time off work, with out loss of remuneration or other entitlements, to undertake their duties.

Note See Appendix 4 for a list of organisations that may be able to provide useful information and advice on OHS matters.

6 Powers and responsibilities of a HSR

The Act describes the powers of a HSR (sections 48 to 52). These powers come with certain responsibilities and obligations. They may only be used for promoting and ensuring the health and safety at work for employees in the DWG (section 53).

6.1 Consultation and record keeping

A HSR is entitled to start procedures to protect the health and safety of members in their DWG, particularly in an emergency (subsection 80(1)). However, the Act emphasises the resolution of issues through consultation (section 57). If this consultation is not successful, it may then be appropriate for a HSR to issue a PIN (subsection 58(1)).

A record of any consultation should be maintained in the form of diary notes, email records or handwritten notes. A copy of each PIN issued and any variation should be kept.

6.2 Powers

A HSR has a broad range of powers under the Act, however these must be used carefully and only in relation to health and safety matters (section 53). A HSR can be disqualified (subsection 72(2)) if their action was taken with the intention of causing harm to the operator or they acted unreasonably (paragraph 72(1)(a)), or they intentionally used or disclosed information gained from the operator in a form not considered connected with the exercise of their powers as a HSR (paragraph 72(1)(b)).

6.2.1 To promote health and safety

A HSR's powers are primarily given to promote the health and safety at work of employees in their DWG (section 48). These include:

- the inspection of the DWG's workplace (paragraph 48(1)(a)) if:
 - there has been a recent accident or dangerous occurrence, or
 - where there is an immediate threat of an accident or dangerous occurrence, or
 - after giving the employer reasonable notice of the inspection;
- requesting an inspector or the Inspectorate to conduct an investigation at the workplace (paragraph 48(1)(b));

Note Where a HSR asks an inspector or the Inspectorate to conduct an investigation at the workplace, the HSR must notify the person in command of the request (subsection 48(2)). An inspector is a person appointed as an inspector under section 84 or a person performing the duties and exercising the powers of an inspector under arrangements under section 106.

- accompanying an inspector during an investigation at the workplace (paragraph 48(1)(c));
- if there is no HSC on the prescribed ship or prescribed unit, representing the members of the DWG in health and safety consultations with the person in command (paragraph 48(1)(d));
- examination of the records of the HSC (paragraph 48(1)(e)).

6.2.2 Other powers

A HSR can also:

- investigate employee health and safety complaints (section 49);
- attend any interview about health and safety at work between an employee and an inspector or the operator (or a person representing the operator, such as the person in command), with the consent of the employee (section 50);
- access any information relating to health and safety risks to any employee at any workplace under the operator's control (section 51), except where:
 - legal professional privilege for that information is claimed (paragraph 55(a)); or
 - the information is confidential medical information, unless the employee has given written authority or the information is in a form that does not identify a person (paragraph 55(b));

Note If the operator is reluctant to provide information relating to any health and safety risk to an employee, a HSR can contact the Inspectorate for advice.

- be assisted by a consultant in the exercise of their powers (subsection 54(1)), although the operator is not liable for expenses or remuneration incurred during a consultant's activities (subsection 54(3));

Note A HSR has to obtain the operator's agreement in writing to the provision of assistance by a consultant at a workplace (paragraph 54(2)(a)) or the giving of information to a consultant (paragraph 54(2)(b)).

- be assisted by a consultant when at an interview between an employee and an inspector or the operator (or a person representing the operator) (subsection 54(4));

Note A HSR has to obtain the employee's agreement to the presence of a consultant (subsection 54(4)).

- issue a PIN, where there is a contravention or likely contravention of the Act or Regulations and agreement on appropriate action cannot be reached, first with the supervisor of the workplace and then the person in command (section 57) [see Section 6.3 for further information];
- request an inspector or the Inspectorate to investigate a matter that is the subject of a PIN if the notice has not been complied with within the specified period and an investigation has not been requested by the operator (section 59);
- initiate emergency stop work procedures, where there is an immediate threat to the health and safety of employees and the supervisor is unavailable (subsection 80(1));

Note When informed of a threat to health and safety, a supervisor must take appropriate action (subsection 80(2)). This action may include directing an employee or employees to stop work. Where the HSR and the supervisor cannot agree on appropriate action, the HSR must inform the person in command (subsection 80(3)).

- ask the Inspectorate or an inspector to investigate the matter, if the HSR and person in command cannot agree on appropriate action (subsection 80(4));

Note Upon entering a workplace for the purpose of an investigation, an inspector must take all reasonable steps to notify the HSR for the DWG (subsection 89(2)).

- appeal to the reviewing authority against an inspector's decision to confirm, vary or cancel a PIN (paragraphs 100(1)(a) and 100(1)(b)); and
- ask the Inspectorate, or an inspector, in writing, to institute proceedings for an offence against the Act where proceedings have not been commenced within six months of the alleged offence (section 116).

6.2.2 Exercise of powers

The Act does not impose any obligations on a HSR to exercise any of their powers. A HSR is not liable under civil proceedings for exercising or not exercising any of the powers outlined in the Act (section 56).

6.3 Provisional improvement notice

A PIN is a means by which a HSR can seek to address an OHS issue impacting on the employees of the DWG that they represent.

6.3.1 Issuing a PIN

A HSR can issue a PIN where, on reasonable grounds, they believe an operator:

- is contravening the Act or Regulations, or
- has contravened the Act or Regulations and the contravention affects or is likely to affect one or more employees in their DWG (subsection 57(1)).

However, a HSR must first consult with the relevant supervisor in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention (subsection 57(1)). If agreement on the resolution of a contravention cannot be reached within a reasonable time, the HSR must then consult with the person in command in an attempt to reach agreement (subsection 57(2)). If the HSR thinks that the agreement is not reached within a reasonable time they may issue a PIN to the person in command (subsection 58(1)).

The Act requires (section 58(2)) that the PIN must specify:

- which part of the Act or Regulations is being contravened or is likely to be contravened;
- the reasons the Act or Regulations is being contravened or is likely to be contravened; and
- specify a period of not less than seven days after the day of issue of the PIN in which the person in command is to take action necessary to prevent any further or likely contravention.

The PIN may also specify the action the person in command is to take during the period specified in the PIN (subsection 58(3)).

If considered appropriate to do so, a HSR may extend the period specified (subsection 58(4)). This must be in writing and before the expiry date of the specified period.

A copy of each PIN issued, and any variation, should be kept. The Inspectorate should be informed of any PIN issued.

Note Attachment A provides a copy of Form 1 – Provisional improvement notice. Attachment B provides an example of a completed PIN.

6.3.2 Action to be taken by person in command

Upon receipt of a PIN, the person in command must provide a copy to:

- the owner of any workplace, plant, substance or thing to which the PIN relates (paragraph 58(5)(a)); and
- a contractor, if the PIN relates to a contravention of the Act or Regulations by that contractor or their employee (paragraph 58(5)(b)).

The person in command must also:

- notify each employee affected by the issue of the PIN (paragraph 60(1)(a)); and
- ensure a copy of the PIN is displayed in a prominent place at or near each workplace subject to that PIN, until the PIN ceases to have effect (paragraph 60(1)(b)).

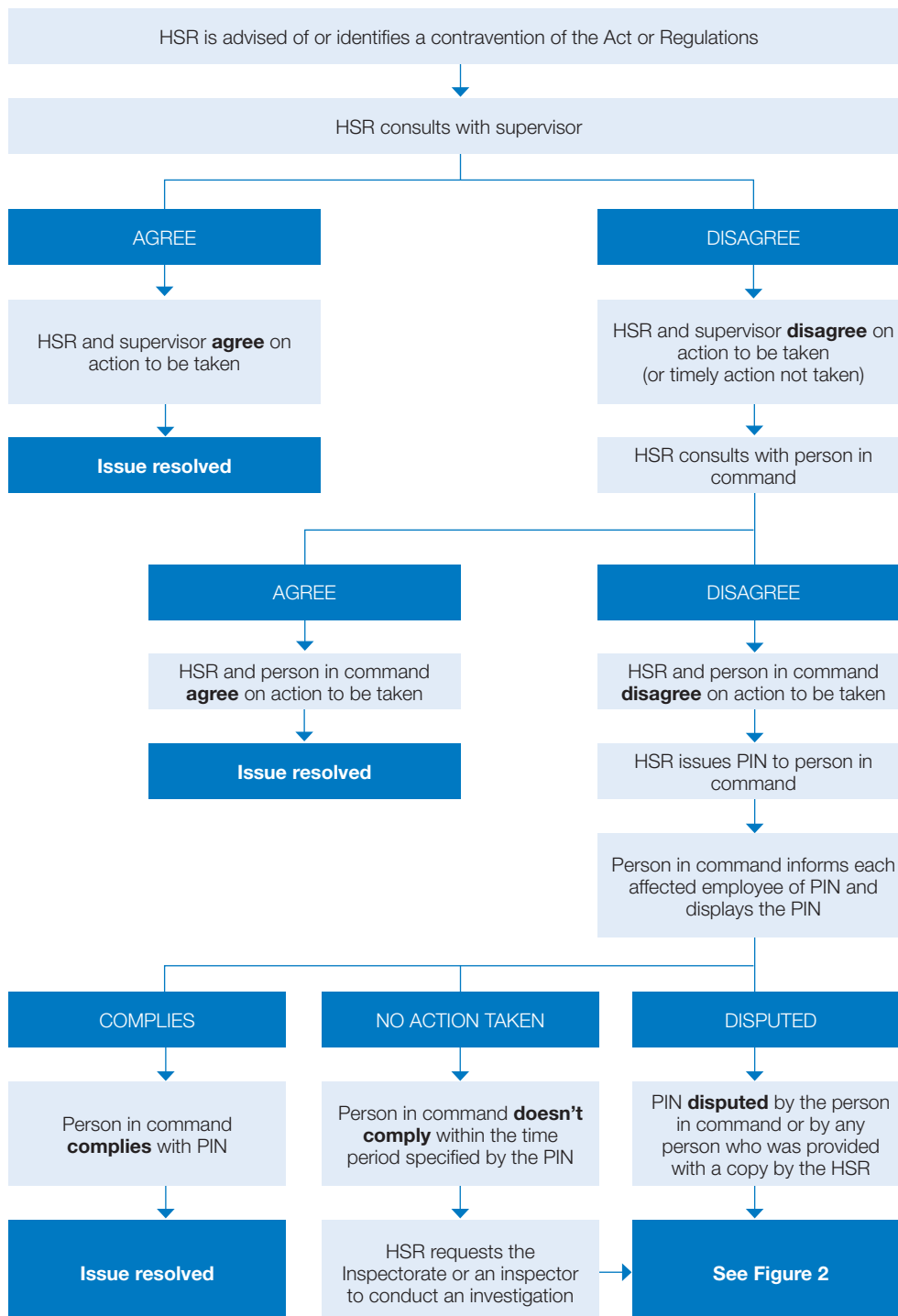
The person in command must:

- to the extent possible, comply with the PIN (paragraph 61(a));
- take reasonable steps to inform the HSR who issued the PIN of the action taken to comply with the PIN (paragraph 61(b)).

Figure 1 shows the process where a HSR suspects a contravention of the Act or Regulations.

Figure 1: Suspected contravention of the Act or Regulations

HSR is advised of or identifies a contravention of the Act or Regulations



Scenario 1: Suspected contravention of manual handling regulations

At a toolbox meeting a crew member raises concerns with the process for getting rid of scrap and garbage that needs to go ashore. The process involves the removal of this scrap or garbage and its placement in a wheelie bin, which was then required to be lifted over the stern steps to get the rubbish off the ship. The crew member is concerned that someone may be injured during this process.

The HSR considers this issue and concludes that there is a possible contravention of manual handling regulations. In particular, the HSR notes that the employer does not appear to have undertaken a risk assessment for the manual handling task (as required by regulation 3.04), which is also required by the ship's safety management system.

The HSR decides to notify the Master and propose action, including the undertaking of a risk assessment of the task and the identification of controls to be put in place to restrict the lifting of heavy scrap or garbage. If the Master does not comply the HSR proposes to issue a Provisional Improvement Notice and to notify the Inspectorate.

The Master agrees to comply with the request from the HSR and implements a process to address the manual handling issue.

6.3.3 Effect

Within seven days after being issued a PIN, the person in command or the owner or contractor to whom the PIN has been copied may ask the Inspectorate or an inspector to conduct an investigation (subsection 59(1)). On the request being made, the PIN is suspended pending determination of the matter by an inspector (subsection 59(2)).

6.3.4 PIN disputed or not complied with

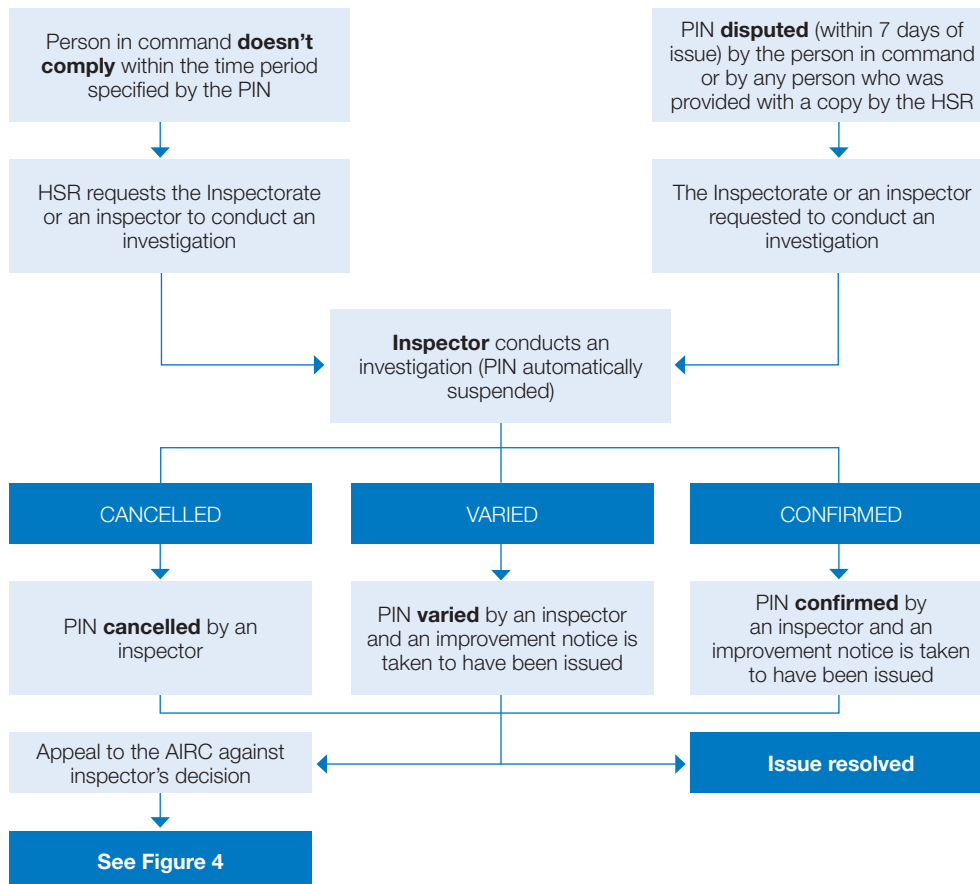
If the person in command wishes to dispute the PIN they can request the Inspectorate or an inspector to conduct an investigation within seven days after the PIN is issued. The person in command can not ignore the PIN.

If the person in command does not take action within the period specified within the notice, and they haven't made a request to the Inspectorate that an investigation be conducted, the HSR may request the Inspectorate or an inspector to conduct an investigation (subsection 59(1)). An investigation must be conducted as soon as possible after a request is made.

Although it is suspended after the request for an investigation is made and during the investigation, the PIN remains on display until it is cancelled, varied or the problem described in the PIN is fixed.

Figure 2 provides more information on the process when a PIN is disputed or not complied with.

Figure 2: PIN disputed or not complied with



Scenario 2: PIN disputed

Entry to a fuel oil tank is about to take place for the purpose of an inspection. A 'permit to work' has been issued as per the requirements of the regulations and the safety management system on board the ship. The permit covers access to the confined space and the 'hot work' task to be undertaken.

The crew who will undertake the work have conducted atmosphere testing and are ready to enter the confined space. A crew member notices that the gas monitor used for testing has not been calibrated on the correct date; this should have been done over one month ago. A crew member informs the onboard HSR and gets the calibration gas to carry out a calibration on the gas monitor. The HSR checks the calibration gas and finds that the gas expired more than three years ago.

At their toolbox meetings, crew members had identified the need for the calibration gas to be replaced and gas monitors to be regularly calibrated. The HSR had raised this matter at the health and safety committee, on a number of occasions.

The HSR stops the confined space entry and meets with the immediate supervisor and then the Master to explain the issue. The HSR proposes the replacement of the calibration gas and that the gas monitor is calibrated by a competent person. However, the supervisor and the Master disagree with the HSR on the proposed action, as the tank needs to be inspected as soon as possible. They propose only the use of another calibrated gas monitor.

As no agreement is reached on the action to be taken, the HSR issues a Provisional Improvement Notice requiring the Master to cease work on the fuel oil tank until the proposed action is taken. Within the time period specified by the PIN, the Master requests the Inspectorate investigate the matter. Upon commencement of the investigation, the PIN is suspended.

The outcome of the investigation is that the inspector cancels the PIN and issues an improvement notice, allowing the work to commence using the replacement gas monitor, but requiring the replacement of the calibration gas and that all gas monitors be calibrated.

6.3.5 When does a PIN cease?

The PIN ceases to have effect if:

- it is cancelled by an inspector or the HSR who issued the PIN (paragraph 60(2)(a)); or
- the person in command takes action as specified by the PIN or, if no action is specified, takes action to prevent further or likely contravention of the Act (paragraph 60(2)(b)).

6.3.6 Role of an inspector

The inspector undertaking the investigation must:

- confirm, vary or cancel the PIN;
- notify the person in command and any other person to whom a copy of the PIN has been provided; and
- make decisions and exercise powers, as are necessary, to the extent provided for in Part 4 of the Act (subsection 59(3)).

If the inspector varies the PIN, this takes effect as if it has always had effect (subsection 59(4)).

6.4 Hazard identification and workplace inspections

HSRs may be involved in the hazard identification process and should have a general understanding of risk management steps. However, risk management is the operator's responsibility. Risk management includes applying management policies, procedures and practices to identify, assess, control and monitor risks.

The operator is responsible for:

- identifying and assessing all reasonably foreseeable workplace hazards which may affect the health or safety of employees or others at work;
- eliminating or minimising the risk of exposure to these hazards; and
- identifying and assessing risks to health or safety before the introduction of:
 - any plant or substance;
 - a work practice or procedure; and
 - change to a workplace, work practice, activity, or process.

Note Appendix 1 provides more information on risk management.

6.4.1 Identification of hazards

Before workplace hazards can be controlled they need to be identified. The operator has the major responsibility for identifying hazards.

Hazards like slippery walking surfaces, poor lighting and obstructed passages may be relatively obvious. Other hazards like poor indoor air quality may not be quite so easy to identify and may require specialist skills and / or technology to identify them adequately.

6.4.2 How a HSR can be involved

A HSR may help to manage risks for employees in their DWG by:

- doing inspections to help identify and record workplace hazards (section 48).
- consulting with the operator on changes to the workplace which may affect the health and safety of members of the DWG (section 63).

6.4.3 Workplace inspection / investigation

The Act allows a HSR to undertake an inspection of the whole or part of a workplace where work is performed by employees in their DWG (paragraph 48(1)(a)) or request an investigation of the workplace (paragraph 48(1)(b)). These may fall into the following three basic types:

- accident inspection;
- special investigation; and
- regular inspection.

6.4.4 Accident inspection

A HSR may carry out an inspection in their DWG when there has been an accident or dangerous occurrence or there is an immediate threat of one occurring (paragraph 48(1)(a)(i)).

This inspection can be done jointly with the supervisor or other management representative. This does not mean the two parties must necessarily agree on the findings.

6.4.5 Special investigation

An investigation should be carried out in response to significant changes to the workplace such as the introduction of new technology.

A HSR is able to ask an inspector or the Inspectorate to conduct an investigation at the workplace (paragraph 48(1)(b)) and is able to accompany an inspector during any investigation of the workplace by the inspector (paragraph 48(1)(c)).

6.4.6 Regular inspection

Regular workplace inspections should be part of an audit program of the safety in the workplace. Their frequency should be related to the size of the workplace, the number of employees involved, and any other relevant factors, such as the prevalence or presence of OHS risks.

Such inspections should preferably be done jointly with the supervisor or another representative of the operator. Reasonable notice of an inspection must be given to the operator (paragraph 48(1)(a)(ii)).

A plan of the workplace would assist with such an inspection by providing information on the location of specific equipment (eg fire fighting and first aid), emergency exits and other relevant features. Checklists can also form a basis for a comprehensive review of the workplace on an ongoing basis. Checklists can vary according to the type of work and workplace. They can be compiled by a HSR or the operator, found in OHS publications or obtained from some of the organisations listed in Appendix 4, although such lists may need to be modified so that they are suitable to the particular workplace.

6.4.7 Accidents and dangerous occurrences

The operator has an obligation under the Act and regulations to notify and report certain accidents and dangerous occurrences to the Inspectorate, and to keep records of accidents and dangerous occurrences (section 107 & Regulations).

Information and statistics on accidents and dangerous occurrences can help to assess the effectiveness of health and safety procedures and may alert HSRs to areas or activities that require attention.

Employees should be encouraged to report all accidents, dangerous occurrences and near misses to their supervisor and their HSR. Such reports provide an alert to hazards that can or should be addressed. This will help to prevent similar occurrences in the future.

6.4.8 OHS survey

If a health and safety hazard in the workplace is suspected, further information can be obtained by surveying employees in the DWG. Information collected from such a survey may confirm that a hazard exists and can also provide additional back-up to support a claim to the operator to control the hazard.

6.4.9 Investigation of employee OHS issues

An employee may raise OHS issues with their HSR, such as problems over hazards in their workplace. A HSR should fully investigate such matters.

6.4.10 Substances used in the workplace

Many substances (including chemicals) used in the workplace are potentially hazardous. To determine whether a chemical or a process in which chemicals are used is a hazard, identify the chemical and find out as much information about it as possible.

All employees are entitled to have access to this information to the extent necessary to enable them to perform their work in a way that is safe and without risk to their health (subsection 11(6)).

Information collected might include health effects, correct handling procedures, storage and transport. Manufacturers and suppliers of hazardous substances provide this information. The information may be in the form of a material safety data sheet (MSDS). Information on hazardous substances can also be obtained from the Australian Safety and Compensation Council (ASCC) *Hazardous Substances Information System* (HSIS), which can be accessed from the ASCC website www.ascc.gov.au.

6.4.11 Use of monitoring equipment

Some hazards may be identified by the use of monitoring equipment which measure the level of concentration of the hazard, for example, noise, temperature, lighting, fumes, dusts and radiation.

A HSR may be able reach an agreement that the operator:

- do the testing, under the HSR's observation; and
- provide the HSR with a copy of the results.

A HSR may bring an investigator or consultant into the workplace if the operator agrees to the services of a consultant to conduct such tests (section 54).

6.4.12 Use of consultant

Where appropriate, such as where a HSR does not have relevant expertise, a HSR is entitled to be assisted in the exercise of their powers by a consultant and may share information given to them by the operator (subsection 54(1)). However, written approval must be obtained from the operator before making these arrangements and before handing over any information (subsection 54(2)).

The operator is not liable for any remuneration or other expenses incurred in connection with the consultant's activities (subsection 54(3)). A HSR needs to ensure funding for the services of a consultant is available before their engagement. This may be available from an involved union or even the operator, upon request.

With the consent of an employee in the DWG, a consultant assisting the HSR may be present with the HSR at any interview about health and safety at work between that employee and

- an inspector; or
- the operator, the person in command or any other person representing the operator (subsection 54(4)).

A consultant can not have access to information for which the operator may claim, and does claim, legal provisional privilege (paragraph 55(a)). A consultant can only have access to information of a confidential medical nature where the person whom the confidential medical information refers, gives the operator written authority allowing access or the information is in a form that does not identify, or enable the identification of, the person concerned (paragraph 55(b)).

6.4.13 Access to confidential information

A HSR can not have access to information which the operator may claim, and does claim, legal provisional privilege (paragraph 55(a)). A HSR can only have access to information of a confidential medical nature where the person to whom the confidential medical refers, gives the operator written authority allowing access, or the information is in a form that does not identify, or enable the identification of, the person concerned (paragraph 55(b)).

6.4.14 Liability

A HSR is not required to exercise any power conferred on them by the Act (paragraph 56(a)) or can not be liable under civil proceedings (paragraph 56(b)).

6.4.15 DWG meetings

DWG meetings can provide a HSR with important information about health and safety problems which may go unnoticed in normal workplace inspections.

6.5 Emergency procedures

6.5.1 Action

If a HSR believes there is an immediate threat to health and safety, they must inform a supervisor immediately (subsection 80(1)). If that is not possible they must:

- direct the employee(s) to stop work in a safe manner; and
- notify the supervisor as soon as practicable.

6.5.2 Operator's response

The supervisor must take appropriate action to remove a threat to health and safety of one or more of the employees when informed of an immediate threat to health and safety identified by a HSR (subsection 80(2)).

If a HSR and supervisor are unable to agree that the threat to health and safety has been removed or that an order to cease work was justified, the HSR must inform the person in command of the threat to health or safety of persons performing work (subsection 80(3)).

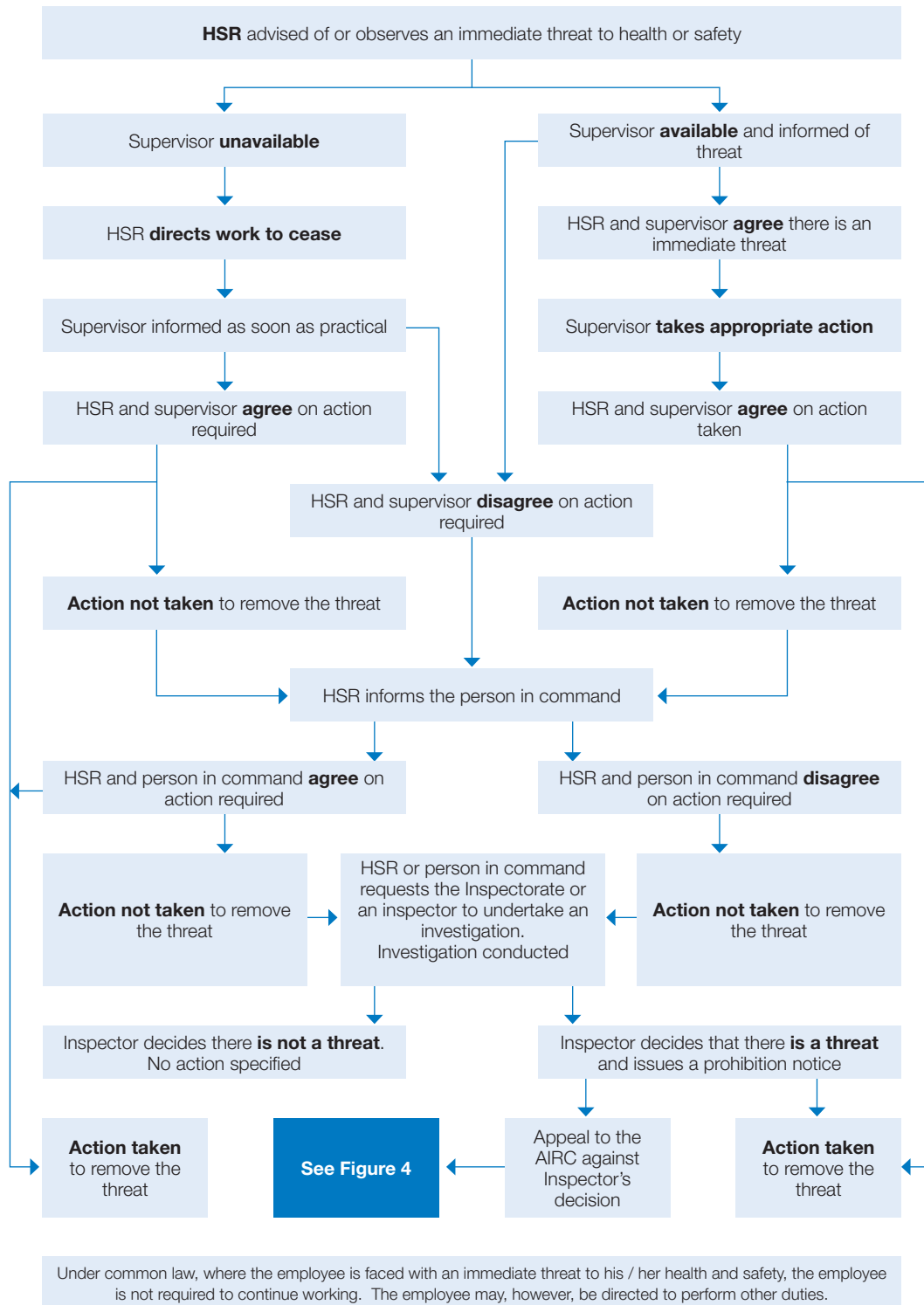
6.5.3 Investigation

Where a HSR and the person in command are unable to agree that the threat to health and safety has been removed or that an order to cease work was justified, the HSR or the person in command may request the Inspectorate or an inspector to conduct an investigation of the work that is the subject of the disagreement (subsection 80(4)). An investigation must then be carried out as soon as possible after such a request (subsection 80(5)).

Where an employee has stopped work at the direction of a HSR, the person in command may direct the employee to carry out suitable alternative work without affecting the terms and conditions of their employment (section 81).

Figure 3 illustrates the steps for taking emergency action.

Figure 3: Emergency action



Scenario 3: Emergency action

Crew members are instructed to work on the drive mechanism for hatch covers. This requires the covers to be partially opened and secured to the manufacturer's specifications whilst work is being carried out. The HSR checks the operations and discovers that the covers are not secured with the pin supplied for this purpose. The covers are able to move freely with no securing device being used at all. Without securing devices, there is a high risk of the covers "running" away in an uncontrolled manner. The disconnection of the hydraulic motor means that there is no provision for locking the covers in place.

The HSR immediately stops the operation to discuss with the crew and their supervisor the immediate threat to the crew's safety. The Master is informed and joins the crew and the HSR on the deck to discuss the issue. The HSR requires that action be taken to remove the threat to safety including, as a priority, the undertaking of a job safety analysis (JSA) to assess the risk and identify control measures to be put in place to reduce the high risk.

The Master does not consider that there is a need for the use of securing pins when in port and that the work should continue. In light of the high risk of injury, the HSR does not agree with the Master's opinion and requests the Inspectorate undertake an investigation.

The inspector decides that there is an immediate threat to the safety of the crew and issues a prohibition notice to the Master prohibiting the practice and prohibiting the work on the covers until they can be secured in an open position. The Master is able to direct the relevant crew to carry out suitable alternative work until this matter is resolved.

7 Powers of the Inspectorate

AMSA performs the Inspectorate role under the Act. Part 4 of the Act deals with the role, function and powers of the Inspectorate and inspectors (sections 82 to 106). The Inspectorate works with the Seacare Authority and the maritime industry to improve awareness of OHS issues on prescribed ships and to encourage a safety culture aimed at preventing death or injury in the maritime workplace.

Note A brochure explaining the OHS Inspectorate's role 'OH&S Maritime Inspectorate' is accessible from the AMSA website www.amsa.gov.au.

7.1 Investigations

An inspector may conduct an investigation at any time to determine whether the Act or regulations are being complied with, whether there is a contravention or a possible contravention of the Act or regulations or whether an accident or dangerous occurrence has happened (subsection 87(1)). The Inspectorate may direct an inspector to conduct an investigation for the same reasons mentioned above (subsection 87(2)). The Inspectorate may also receive a request for a workplace investigation (such as from a HSR, an involved union or person in command).

7.1.1 Powers of the inspector

In conducting an investigation, an inspector may:

- stop and detain a prescribed ship or prescribed unit (paragraph 89(1)(a));
- board a prescribed ship or prescribed unit and enter a workplace on the ship or unit to search the workplace at any reasonable time during the day or night (paragraph 89(1)(b));
- search the workplace (paragraph 89(1)(c));
- inspect, examine, take measurements, conduct tests (paragraph 89(1)(d));
- take photographs or make sketches (paragraph 89(1)(e));
- require assistance or further information (subsection 90(1));
- take possession of plant, take samples of substances etc (section 91);
- direct that workplace etc. not to be disturbed (section 92);
- issue prohibition notices (section 93);
- issue improvement notices (section 98).

7.1.2 Inspector to notify HSR

Upon entering a workplace, an inspector must take all reasonable steps to notify the person in command and a HSR for the DWG of the purpose of the investigation (subsection 89(2)). That HSR is entitled to accompany the inspector during the investigation (paragraph 48(1)(c)).

7.1.3 Removal of plant, take samples etc

During an investigation, an inspector may take possession of plant, a substance or a thing at a workplace and remove it from the workplace for the purpose of inspecting, examining, measuring or conducting tests in connection with the investigation (subsection 91(1)).

Upon taking possession of plant, a substance or thing, or a sample of a substance or thing, the investigator must inform the person in command and the HSR for the DWG in writing (subsection 91(2)).

7.1.4 'Do not disturb' notices

During an investigation, an inspector may issue a 'do not disturb' notice (subsection 92(1)) to the person in command in order to:

- remove an immediate threat to the health or safety of any person; and
- allow the inspection, examination or taking of measurements, or the conduct of tests concerning a workplace or any plant, substance or thing.

The person in command must display the 'do not disturb' notice in a prominent place and inform the relevant HSR (subsection 92(4)).

7.2 Enforcement options

There are a number of actions that can be taken by the inspector during or following an investigation.

7.2.1 Prohibition notice

During the investigation, an inspector may issue a prohibition notice to the employer to remove an immediate threat to the health and safety of any person (subsection 93(1)).

The prohibition notice must:

- specify, with reasons, the activity which the investigator believes is a threat to health or safety (subsection 93(2)); and
- direct an operator to either stop the activity altogether or ensure that the activity is not continued (subsection 93(3)). For example, any plant or substance that is not to be used in connection with an activity.

The person in command must give a copy of the prohibition notice to the relevant HSR and have the prohibition notice displayed in a prominent place at or near the workplace (section 96).

7.2.2 Improvement notice

If an inspector forms the opinion that the legislation is being contravened during an investigation, the inspector can issue an improvement notice to the person in command (subsection 98(1)).

The improvement notice:

- must specify, with reasons, the nature of the contravention (paragraphs 98(2)(a)&(b));
- must specify a period within which any remedial action must be taken (paragraph 98(2)(c)); and
- may specify action the investigator believes is required (subsection 98(3)).

The person in command must give a copy of the improvement notice to the relevant HSR and have the improvement notice displayed in a prominent place at or near the workplace (section 99).

7.2.3 Notices not to be tampered with or removed

A person who removes or disturbs a notice may be subject to imprisonment for six months (section 105).

The Act specifies that a person must not, without reasonable excuse, tamper with the following notices when they are displayed (paragraph 105(1)(a)):

- a notice of removal of plant or sample;
- a do not disturb notice;
- an improvement notice; and
- a prohibition notice.

A person must not remove any notice until (paragraph 105(1)(b)):

- the notice has expired, been revoked, or a new notice issued; or
- the plant or substance to which the notice refers is returned to the workplace from which it was removed.

7.2.4 Prosecutions

Criminal prosecutions are available for serious contraventions of the Act. Proceedings may be begun by the Inspectorate or by an inspector (subsection 116(1)).

A HSR or involved union may request in writing that the Inspectorate begin proceedings if proceedings have not begun within six months of an occurrence or omission that a HSR, involved union or DWG thinks constituted an offence against the Act (subsection 116(2)).

Upon receiving such a request, the Inspectorate must advise the HSR or involved union, within three months if proceedings have or will be begun and, if not, give reasons why not (subsection 116(3)).

8 Appeals and investigation reports

8.1 Appeal against an investigator's decision

Under the Act, an appeal against a decision of an inspector (subsection 100(1)) may be made to the reviewing authority (subsection 100(2)) by the following:

- an operator affected by the decision;
- a person in command to whom a PIN or improvement notice has been issued;
- a person to whom a PIN has been given;
- a HSR for a DWG that includes an employee affected;
- an involved union in relation to such a DWG;
- if there is no DWG, an involved union in relation to an employee who is affected by the decision; or
- a person who owns any plant, substance or thing referred to in a PIN, a notice removing plant etc, a do not disturb notice or an improvement notice.

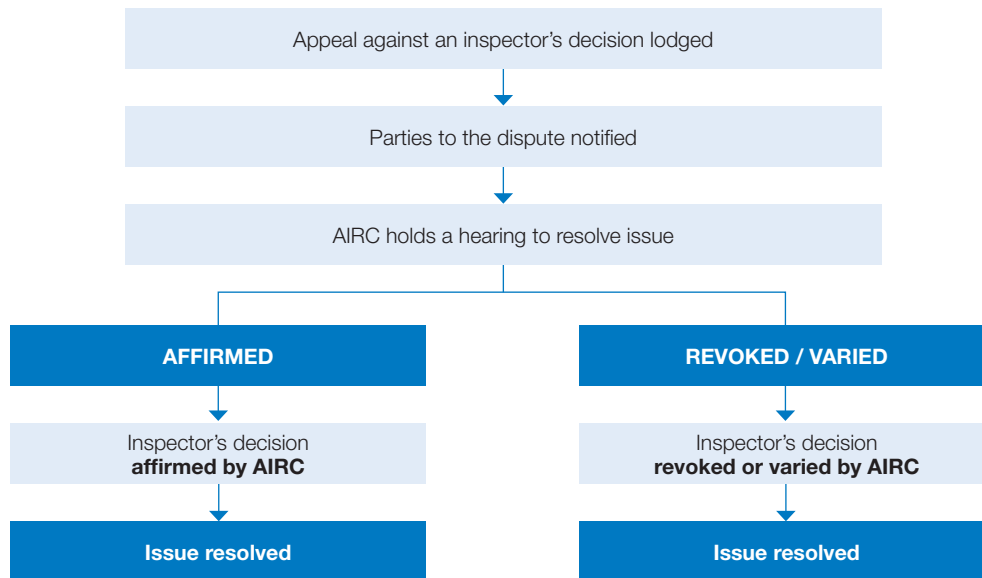
A HSR for a DWG, or an involved union in relation to a DWG, may also appeal against a decision by an inspector to cancel a PIN or Prohibition Notice (subsection 100(3)).

8.2 Investigation reports and the Inspectorate

If an inspector provides any written advice in relation to OHS to any of the following then that advice must be made available to any interested parties (section 88). These are: the person in command; an operator; a contractor; an involved union; a HSR or an employee.

Figure 4 outlines the process involved in appealing against an inspector's decision.

Figure 4: Appeal against an inspector's decision



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Appendix 1

Risk management

Introduction

- 1.1 Risk management, in the occupational health and safety context, refers to a systematic process by which management policies, procedures and practices are applied to identify the workplace hazards, assess the risks associated with those hazards, determine the appropriate control measures and monitor and review the risk management process for efficacy in providing a safe and healthy workplace.
- 1.2 Workplace injury and disease have a significant impact on the human and financial resources of organisations. An effective risk management strategy can assist an operator to meet their statutory obligations and reduce costs, increase productivity, raise staff morale, improve workplace relations and enhance health and safety performance generally.
- 1.3 An operator has general duties under the Act to take all reasonable steps to protect the health and safety of their employees. In addition, the Regulations impose specific requirements on an operator in relation to the matters covered by those regulations. These include the identification of all reasonably foreseeable hazards arising from work that may affect the health and safety of employees or others at work, carry out risk assessments and implement risk control measures.

Purpose

- 1.4 The purpose of this Appendix is to provide practical guidance to assist operators, HSRs and others to identify hazards, assess the risk and implement risk control measures in the workplace.

Definitions

‘Consequence’ – means outcome or impact of an occurrence.

‘Exposure’ – occurs when a person is exposed to a hazard.

‘Frequency’ – means a measure of the number of occurrences per unit time.

‘Generic risk assessment’ – means a risk assessment, which may be used across areas and job sites because the hazards and risks have been deemed similar.

‘Harm’ – is death, injury, illness (including psychological illness) or disease that may be suffered by a person because of a hazard or risk.

‘Hazard’ – means something that can or has the potential to cause injury or illness.

‘Likelihood’ – describes the probability or frequency of an injury or illness occurring.

‘Monitor’ – means to check, supervise, observe critically or measure the progress of an activity, action or system on a regular basis in order to identify change from the performance level required or expected.

‘Probability’ – a measure of the chance of occurrence expressed as a number.

‘Residual risk’ – means the remaining risk after implementation of the risk control measures.

‘Risk’ – means the probability or likelihood and consequences of a hazard causing injury or illness.

‘Risk assessment’ – means the overall process of risk analysis and risk evaluation (AS/NZS 3931). It is the process of evaluating the probability and consequences of injury or illness arising from exposure to an identified hazard or hazards.

‘Risk analysis’ – mean the analysis of risk by use of a table or other process which may be qualitative, quantitative or a combination of these methods to assist in the evaluation of a hazard according to the probability or likelihood and consequence of injury or illness.

‘Risk evaluation’ – is the decision making process of the assessed risks to determine which risks require control and control priorities in an organisational context.

‘Risk control’ – means the process of managing the elimination or minimisation of a risk. This may be an object, work process or system of work.

‘Risk management’ – means the culture, processes and structures that are directed towards promoting health and safety by the management of hazards and risks within an organisation.

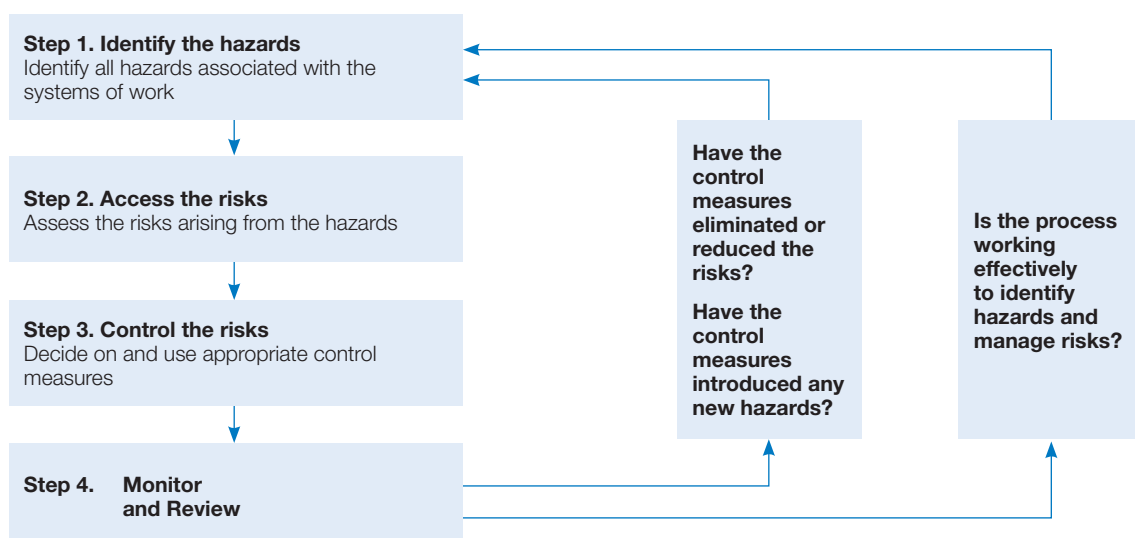
‘Risk management framework’ – means a set of elements in a system which may include strategic planning, decision making, processes, policies and procedures for dealing with the risks.

‘Risk retention’ – means the loss or benefit remaining from a particular risk.

Risk management process

- 1.5 Risk management involves the establishment of an appropriate framework and culture for health and safety within an organisation. It is an ongoing systematic method of firstly identifying hazards then analysing, evaluating, treating, monitoring and communicating risks associated with any activity, function or process with the objective of minimising the risk of harm or injury from a hazard.
- 1.6 To ensure that risks are managed in accordance with the duties under the Act and the specific requirements set out in the Regulations, an operator should undertake the following four-step risk management process:
- Step 1 identify the hazard;
 - Step 2 assess the risk associated with the hazard;
 - Step 3 control the risk; and
 - Step 4 review the process.
- 1.7 When undertaking the risk management process, an operator should be practical about the ways in which they identify hazards and the potential risks associated with them. They should consider what actually occurs in the workplace as opposed to what may occur in theory.
- 1.8 An operator should conduct hazard identification and risk assessment from the design and planning phases through to workplace operations where employees use plant, equipment, hazardous substances and dangerous goods.

The risk management process



Responsibility to consult

- 1.9 Communication and consultation is integral to every step of the risk management process. An operator should consult with employees, and / or their representatives or HSRs and HSCs where appropriate. Consultation should occur when:
- a) identifying hazards;
 - b) assessing the risks;
 - c) determining and implementing control measures;
 - d) developing policy and procedures;
 - e) deciding on the training requirements; and
 - f) supervising and monitoring the risk control measures.

Identify hazards

- 1.10 An operator should identify all reasonably foreseeable hazards arising from work mindful that some hazards may be obvious and readily identifiable while other hazards, such as exposure to noise, chemicals or psychological injury for example, may be less so.
- 1.11 An operator may classify hazards in a number of ways. For example, some common workplace hazard types can include:
- a) gravitational – this includes, but is not limited to, activities where a person can fall or an object can fall on to a person;
 - b) body stressing or impact hazard – activities that cause stress to muscles and /or skeleton including manual handling, occupational overuse and slips, trips or falls on the same level;
 - c) mechanical – this includes, but is not limited to, plant, equipment and items that have the potential to cut, tear, rip, abrade, crush, penetrate, produce projectiles or cause sudden impact;
 - d) source of energy – this includes, but is not limited to, electricity, heat, cold, noise, radioactive sources and high powered light;
 - e) chemical and biological – this includes, but is not limited to, chemical compounds, acids and poisons, powders, dusts, vapours, bacteria, viruses, mould and mildew from various processes which have the potential to impair health, have adverse effects on human reproduction, cause diseases or may have explosive, flammable, toxic or corrosive properties; and
 - f) psychosocial environment – this includes workplace stressors, which arise from a variety or combination of sources, and includes, but is not limited to, bullying and harassment.

- 1.12 In carrying out hazard identification, an operator should consider the following sources of information:
- a) examination of injury and dangerous occurrence data;
 - b) technical and scientific evaluation;
 - c) visual inspection of the workplace in a direct way with walk-through inspection of plant and equipment;
 - d) quantitative hazard analysis;
 - e) testing and auditing reports from the workplace;
 - f) consultation with employees, health and safety representatives and health and safety committee members; and
 - g) discussions with designers, manufacturers, suppliers, importers, or any other relevant party who may assist in the identification of a potential hazard or hazardous situation in the workplace.

Assess the risks

- 1.13 Where an operator has identified a hazard, they should ensure that an assessment is made of the risks associated with that hazard.
- 1.14 An operator should ensure that, as a minimum, a risk assessment is conducted before:
- a) the introduction of any new plant or substances;
 - b) the introduction of a new work practice or procedure; and
 - c) any change in a workplace, work practice, activity or process where the change may give rise to a health or safety risk.
- 1.15 The level of risk increases exponentially with the injury or disease causing potential of a hazard. Therefore, risk is the probability and consequence of a hazard causing injury, ill health or disease. A risk assessment is a process for determining the likelihood and severity of an injury or a disease resulting from exposure to that hazard.
- 1.16 When the hazard has been identified, an operator should consider whether there are specific regulations that deal with that hazard. For example, there are regulations which deal specifically with the risk management of hazardous substances, manual handling and confined spaces. In circumstances where there are no governing regulations, an operator should conduct a risk assessment as described in this Appendix.

- 1.17 When conducting a risk assessment an operator should:
- a) gather information about each identified hazard;
 - b) consider the number of people exposed, or likely to be exposed to each hazard;
 - c) consider the duration of the exposure; and
 - d) use the information obtained to assess the likelihood and consequences of exposure to the hazard.
- 1.18 A hazard may have the potential to cause a range of consequences from minor discomfort to a serious disabling injury, illness or death. When determining the potential consequences of identified hazards, an operator should consider:
- a) the nature of the hazard posing the risk;
 - b) any combinations of hazards such as heat and manual handling tasks;
 - c) the types of injuries or illnesses foreseeable from exposure;
 - d) the duration and level of exposure to the hazard; and
 - e) the existing control measures in place.
- 1.19 Once the consequences of a hazard have been determined, an operator should assess the likelihood of that hazard causing harm. Factors which may affect the likelihood of an incident occurring are:
- a) how often the hazard has the potential to harm – when the same hazardous task is repeated the more likely an incident will occur, for example, when an employee continuously or frequently carries a load, pushes a trolley or uses a vibrating hand tool;
 - b) the number of people exposed to the hazard – the greater the number of people exposed to a hazard, the more likely an incident will occur;
 - c) the duration of exposure – the longer a person is exposed to a hazard, the more likely an incident will occur;
 - d) the quantities of materials or multiple exposure points involved;
 - e) the position of the hazard relative to employees and to other hazards – for example, employees located next to a noisy machine are more likely to suffer hearing related conditions than those working further away, or some stored chemicals such as methylated spirits may only represent a hazard if located near a heat source;
 - f) the skills and experience level of persons exposed – an employee with extensive experience may be less likely to make a mistake which results in an incident than one who is new to the role or conversely, a more experienced employee may become complacent;

- g) the special characteristics of persons exposed – for example colour blindness or hearing impairment;
- h) other elements of the work environment such as distractions – for example, employees listening to music on their headphones may increase their chances of being hit by objects;
- i) environmental conditions – there may be conditions which increase the likelihood of an incident occurring such as water in the vicinity of an electrical hazard;
- j) the work organisation, such as rostering and shift arrangements or the pace at which work should be performed;
- k) the introduction of new work processes; and
- l) the effectiveness of existing control measures.

1.20 The likelihood and consequences may be estimated using statistical analysis and numerical calculations. Where no reliable or relevant past data is available, subjective estimates may be made.

1.21 The identified hazard may require a simple or a complex risk analysis depending on the risk of harm to people in the workplace. The types of risk assessment that may be undertaken will vary with the degree of analysis required. An operator may use, but is not limited to, some of the following:

- a) Qualitative analysis – this type of analysis is descriptive and involves a subjective assessment of the likelihood and consequences of an event occurring. This type of analysis includes:
 - (i) evaluation using multi-disciplinary groups;
 - (ii) specialist and expert judgement; and
 - (iii) structured questionnaires;
- b) Quantitative analysis – this type of analysis uses a numerical value rather than a descriptive scale for both consequences and likelihood. The way in which consequences and likelihood are expressed and the way they combine provide the level of risk. Methods of analysis include:
 - (i) consequence analysis;
 - (ii) statistical analysis of historical data;
 - (iii) fault tree and event tree analysis;
 - (iv) influence diagrams;
 - (v) life cycle cost analysis;
 - (vi) network analysis;
 - (vii) simulation and computer modelling;

- (viii) statistical and numerical analysis;
- (ix) test marketing and market research; and
- (x) probability analysis.

1.22 A simple qualitative form of analysis can be illustrated by means of a risk assessment matrix, see diagram below. Refer to AS/NZS 4360:2004 – Risk management and HB 436:2004 – Risk management guidelines for detailed information on risk assessment options.

1.23 The level of risk is determined by the relationship between likelihood and consequence.

Simple qualitative risk assessment matrix

		Likelihood			
		Very likely	Likely	Unlikely	Highly Unlikely
Consequences	Fatality	High risk	High risk	High risk	Medium risk
	Major injuries	High risk	High risk	Medium risk	Medium risk
	Minor injuries	High risk	Medium risk	Medium risk	Low risk
	Negligible injuries	Medium risk	Medium risk	Low risk	Low risk

1.24 Likelihood or the chance of each of the events actually occurring can be determined and rated in the following way:

- a) very likely (exposed to hazard constantly);
- b) likely (exposed to hazard occasionally);
- c) unlikely (could happen but only rarely); or
- d) highly unlikely (could happen but probably never will).

1.25 Determining consequences involves making a judgement about the level of harm that can occur because of exposure to the hazard. Consequences can be rated in the following way:

- a) fatality;
- b) major or serious injury (serious damage to health that may be irreversible, requiring medical attention and ongoing treatment). This is likely to involve significant time off work;

- c) minor injury (reversible health damage that may require medical attention but limited ongoing treatment). This is less likely to involve significant time off work. A minor injury is unlikely to involve more than 1 day off work; and
- d) negligible injuries (might sustain slight injury and may require only primary first aid) and no time off work.

1.26 In circumstances where there is uncertainty about the level of risk, inadequate information or uncertainty about the degree of exposure even after having completed a risk assessment, an operator should consider the actions listed below:

- a) seek more information – apply good practice to minimise exposure until more information is available;
- b) seek specialist advice if necessary;
- c) conduct surveys, environmental and medical monitoring;
- d) analyse records and data regarding dangerous occurrences, employee complaints, sick leave, unscheduled absences and staff turnover;
- e) examine organisational culture and behaviour as a risk factor; and
- f) assess the competency and training levels.

Implement risk control measures

Hierarchy of control measures

1.27 Where restrictions on available funds or other resources, or physical practicalities, mean that not all identified controls for hazards can be implemented immediately, an operator should determine the most effective control measure for the identified hazard and prioritise the implementation process according to the risk profile of each hazard. Controls for hazards assessed as high risk should be put into operation before those assessed as a medium or low risk.

1.28 An operator should ensure that any risks to the health and safety of employees, arising from the workplace or any work related activity, are:

- a) eliminated; or
- b) if it is not reasonable to eliminate the risks, then minimise the risk.

- 1.29 An operator should ensure that the control measures selected:
- a) adequately control exposure to the risk;
 - b) do not create a new hazard; and
 - c) allow employees and contractors to do their work without undue discomfort or distress.
- 1.30 An operator should use the hierarchy of control to determine the most appropriate method with respect to risk control. This approach involves designing out or removing hazards at the source and controlling any residual risks by engineering or organisational means. An operator should start at the top of the hierarchy of control and work their way down. The hierarchy of control is structured in the following way:
- a) eliminate the hazard. If this is not possible then;
 - b) substitute or modify the hazard. If this is not possible then;
 - c) isolate the hazard. If this is not possible then;
 - d) use engineering controls to control the hazard at its source. If this is not possible then;
 - e) use administrative controls. If this is not possible then;
 - f) use personal protective equipment (PPE).

Hierarchy of control

Most effective	Elimination	Eliminate the hazard entirely
–	Substitution Controls	Replace the hazard with a safer alternative
–	Isolation Controls	Remove the hazard as far as practicable from the workplace
–	Engineering Controls	Modify tools or equipment
–	Administrative Controls	Change work practices and organisation
–	Personal protection	Provide personal protective equipment (PPE)
Least effective		

Elimination

- 1.31 An operator should first ensure, where practicable, that any hazards identified are eliminated. Elimination of hazards is the most effective control measure. Elimination prevents factors, such as human error, lack of awareness, stress, fatigue, acting reflexively or giving priority to operational or production demands, from influencing the selection of the most appropriate control measure. Elimination of a hazard might include:
- a) removing trip hazards that clutter corridors;
 - b) disposing of unwanted chemicals;
 - c) removing hazardous plant or substances;
 - d) promptly repairing damaged equipment;
 - e) ceasing a dangerous work practice; and
 - f) ensuring new equipment meets the ergonomic needs of users.
- 1.32 Elimination of a hazard is best achieved at the design stage of any plant, equipment or process. This is often referred to as 'safe design' and is a concept which can be applied across all industries to eliminate hazards at the source. The implementation of safe design practices has a positive impact on health and safety in the workplace. Where no hazard exists, no risk of injury or illness exists.

Substitution controls

- 1.33 Where elimination of the hazard is not reasonable, an operator should minimise the risk using control measures individually or in combination. The hierarchy of controls next advocates substitution as a means of minimising the risk to employees from an identified hazard.
- 1.34 An operator should consider substitution of the hazard with something with a lesser risk that still performs the same task in a satisfactory manner. Substitution means that a hazard may still exist, as the risk has only been reduced rather than eliminated. Examples of substitution controls might include:
- a) substitution of a hazardous substance with a less hazardous substance;
 - b) substitution of a smaller package or container to reduce the risk of manual handling injuries such as back strain.

Isolation controls

- 1.35 If elimination or substitution is not possible, an operator should consider isolating the hazard from employees or separating employees from the hazard. This may be achieved by using separate purpose built rooms, barricades or sound barriers. Isolation removes the hazardous process from the main work area. Examples of isolation controls might include:
- a) use of a fume cupboard to isolate and store chemicals; and
 - b) use of remote handling equipment for hazardous substances or procedures.

Engineering controls

- 1.36 An operator should consider engineering controls as the next option on the hierarchy of controls to minimise the risk to an identified hazard. This can include engineering modifications to plant or it may involve a change to systems of work. Examples of engineering controls include the:
- a) modification to plant;
 - b) installation of appropriate guarding on machinery; and
 - c) use of a ventilation system to remove chemical fumes or dust.

Administrative controls

- 1.37 If engineering controls do not control the risk or cannot be utilised, an operator should apply administrative controls such as safe work practices. Administrative controls should not be the first option to control the risk but can be used if controls higher on the hierarchy of control cannot be applied or, having been applied, do not adequately control the risk.
- 1.38 An operator should use administrative controls to back up or supplement other more effective control measures. It may be necessary to use administrative controls while elimination or minimisation control measures are being evaluated and applied. Examples of administrative controls include the use of procedures and instruction and include:
- a) regular maintenance programs for plant and equipment;
 - b) written work procedures for all hazardous tasks and equipment; and
 - c) a training, education and supervision program for employees / contractors, which includes preventative maintenance and housekeeping procedures.

Provide personal protective equipment (PPE)

- 1.39 If the application of administrative controls including safe work practices do not minimise the risk, an operator should provide appropriate PPE to employees and / or contractors, such as respirators and hearing protection. PPE should only be used when higher order controls are not practicable or adequately effective.
- 1.40 PPE is often used in combination with other control measures as a final barrier between the employee and the hazard. PPE does not control the hazard at the source and relies on behaviour modification and correct use of the equipment to be successful. Where it is used, an operator must make available to employees and/or contractors suitable and correctly fitted PPE free of charge. The PPE must be maintained according to the manufacturer's instructions.
- 1.41 An operator should ensure that employees and / or contractors are trained in the correct use and maintenance of the PPE and that supervision is provided to ensure compliance with the training and instruction.
- 1.42 PPE has a number of limitations as an effective control method. PPE should be considered as a last resort, and at best an interim measure, until more effective control strategies are implemented. In some instances PPE may:
- a) not be able to provide full protection, depending on the extent of the hazard;
 - b) not be properly maintained or fitted and so fail to provide the intended level of protection;
 - c) make the job more difficult to perform;
 - d) restrict an employees sensory awareness, and their ability to perceive danger;
 - e) cause other health problems;
 - f) be uncomfortable, causing employees to remove it
 - g) not be used at all.

Monitor and review the risk management program

- 1.43 An operator should ensure that the monitoring and review of the risk management program captures information such as:
- a) whether control measures are being implemented and used correctly;
 - b) whether solutions to workplace hazards are achieving the desired results;
 - c) whether risk management processes and initiatives are working;
 - d) what has been done to control risks and what remains to be done;
 - e) whether there are any new problems which have resulted from the introduction of risk control measures; and
 - f) whether new risk control measures are required.
- 1.44 An operator should conduct systematic monitoring and review of the workplace to ensure that no new hazards are introduced. New hazards may arise through:
- a) the use of new technology, equipment or substances;
 - b) the introduction of new work practices or procedures;
 - c) a change in work environment (new workplace); or
 - d) the introduction of new staff with different skills or knowledge levels.
- 1.45 Ensuring that hazards and risks are effectively controlled requires ongoing monitoring and review to check that control measures are implemented, are working effectively and are maintained. Factors that affect a risk assessment and change the level of risk include the financial and human resource input involved in implementing and maintaining control measures.
- 1.46 'Residual Risk' is the risk that remains after risk control measures have been implemented. An operator should be aware of the nature and extent of the residual risk. It should be documented and subject to a monitoring and review process.
- 1.47 Monitoring and review should be cyclical and form part of the risk management process. This requires forward planning with regular evaluation points over a set period to review the hazards, risks and control measures.

1.48 For hazards covered by the Regulations, an operator is required to conduct a risk assessment prior to the introduction of plant or substance, and before introducing work procedure and processes, or changing them where the change may affect health or safety. An operator does this for all other hazards. Prior planning should ensure that a risk assessment is part of the procedure when purchasing equipment and materials and is considered as part of the tender specifications for new equipment and services.

Keep records

1.49 The monitoring and review process is also assisted by effective record keeping. Records help to identify hazards and review the effectiveness of risk control measures. An operator should keep records that show:

- a) details of workplace inspections and audits;
- b) methods used to assess risks;
- c) control measures implemented;
- d) reviews of systems of work;
- e) any action that has been taken to address particular hazards;
- f) instruction, education or training provided;
- g) any atmospheric monitoring and health surveillance results; and
- h) the maintenance schedules for plant and equipment.

Responsibilities of employees

1.50 Employees must cooperate with the operator in relation to any duty or obligation imposed to ensure the workplace is safe and healthy.

1.51 Employees must use PPE in accordance with their training and consistent with the manufacturers safety requirements.

What does 'reasonable' mean?

- 1.52 Operators and others have duties to 'take all reasonable steps' to protect the health and safety at work of employees. The term 'reasonable' is not defined in the Act. However, some other jurisdictions do define 'reasonable' or 'reasonably practicable'.
- 1.53 These indicate that, generally, the measures put in place to eliminate or reduce risk must have regards to:
- a) the severity of any potential injury or harm to health
 - b) the likelihood of the injury or harm occurring
 - c) the state of knowledge about the risk of injury or harm
 - d) the availability, suitability and cost of removing or mitigating the risk.
- 1.54 What this means is that every identifiable hazard must be evaluated in terms of the risk it poses and a response which is proportionate and practically achievable adopted. However, there may be no single solution for risk control that can be adopted everywhere.
- 1.55 For example, the solution to a hazard with a high level of risk may be expected to require more effort and resources to control it effectively.
- 1.56 Also, the solution should depend on the state of knowledge. If the nature of the hazards and risks is well understood and there are known and proven solutions, perhaps in regulations, codes of practice or published standards, these solutions would generally be preferred. However, if the nature of the hazards and risks is unusual, and not particularly well understood, it is unlikely that standards will provide the solution. They would therefore need to be worked out case by case.
- 1.57 It is important for a range of people, including employees and HSRs, to be involved in risk assessments. This will assist in ensuring that available experience and knowledge about risks and potential control measures is applied to the problem.

Appendix 2

Relevant legislation, legislative instruments and guidance

The following documents can be accessed from the Seacare website www.seacare.gov.au

Legislation

Seafarers Rehabilitation and Compensation Act 1992 [Seafarers Act]

Establishes a rehabilitation and workers' compensation scheme for seafarers employed on certain ships engaged in trade or commerce within a Territory, interstate or overseas, and on other vessels declared by the Australian Maritime Safety Authority (AMSA). Establishes the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority).

Occupational Health and Safety (Maritime Industry) Act 1993 [OHS(MI) Act]

Provides an OHS regime to promote the occupational health and safety of persons employed in the maritime industry, and for related purposes, employed on prescribed vessels and offshore industry mobile units that are engaged in trade or commerce within a Territory, interstate or overseas.

Related Legislation

Navigation Act 1912

An Act relating to Navigation and Shipping.

Regulations

Seafarers Rehabilitation and Compensation Regulations 1993 [Seacare Regs]

Provides arrangements for specific sections of the *Seafarers Rehabilitation and Compensation Act 1992*, as follows:

- sets the amount of liability of the Seafarers Safety Net Fund (the Fund) for a single event which results in an injury to one or more employees for which an employer.
- sets the fee and related expenses that Comcare can charge for assisting an employer in reconsidering a determination of a compensation claim.

Occupational Health and Safety (Maritime Industry) Regulations 1995 [OHS(MI) Regs]

Sets specific requirements relating to sections of the OHS(MI) Act, such as for: the conduct of an election for a health and safety representative; the form of provisional improvement notices; and incident notification and reporting.

Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003 [OHS(MI)(NS) Regs]

Sets specific requirements relating to certain OHS issues, such as for: hazardous substances; and manual handling.

Codes of Practice

Seacare Authority Code of Practice 1/2000

Provides guidance to employers and seafarers etc to assist them to carry out their roles and meet their obligations under the Occupational Health and Safety (Maritime Industry) Act 1993.

Incorporates:

The Australian Offshore Support Vessel Code of Safe Working Practice

Provides guidance to operators, managers / superintendents of offshore installations, masters and owners of offshore support vessels, so as to avoid or reduce to a minimum the hazards which affect offshore vessels in their daily interface with both offshore and onshore installations.

and

The Code of Safe Working Practice for Australian Seafarers

Provides practical guidance on health and safety in shipboard work with a view to:

- preventing accidents, diseases and other harmful effects on the health of seafarers arising from employment on board ships at sea and in port;
- ensuring that the responsibility for health and safety is understood and remains a priority for all concerned with maritime transport, including governments, shipowners and seafarers; and
- promoting consultation and cooperation among government agencies, shipowner organisations and maritime unions in the improvement of health and safety on board ships.

Also provides guidance in the implementation of the provisions of the *Prevention of Occupational Accidents to Employees Convention, 1970* (No 134), and Recommendation, 1970 (No 142), as well as other relevant ILO Conventions and Recommendations.

Approved Code of Practice for Manual Handling (Maritime Industry)

Provides practical guidance relating to the identification, assessment and control of risks arising from manual handling activity in a maritime environment.

Guidance

Guidance on the Prohibition of the Use of Asbestos in Australian Maritime Industry Workplaces

Occupational Health and Safety (Seacare brochure #4)

Provides an outline of occupational health and safety for seafarers under the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act).

Guidelines for the Accreditation of Health and Safety Representative Training Courses

Information package for applicants for the accreditation of occupational health and safety representatives (HSR) training courses

Guidance Notes - Coverage under the Seafarers Rehabilitation and Compensation Act 1992 (Seafarers Act)

Provides a guide to the application of the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) to assist employers, brokers, insurers and other stakeholders in determining if the Act applies to particular employers, vessels and employees.

Appendix 3

Relevant voluntary Australian standards

The following Standards Australia publications are available from the SAI-Global Ltd website www.saiglobal.com/shop.

Risk Management

AS/NZS 4360 Risk Management

This Standard provides a generic guide for managing risk. It may be applied to a wide range of activities or operations of any public, private or community enterprise, or group.

The Standard specifies the elements of the risk management process, but it is not the purpose of this Standard to enforce uniformity of risk management systems. It is generic and independent of any specific industry or economic sector. The design and implementation of the risk management system will be influenced by the varying needs of an organization, its particular objectives, its products and services, and the processes and specific practices employed.

HB 436 Risk Management Guidelines – Companion to AS/NZS 4360

This Handbook provides generic guidance for establishing and implementing effective risk management processes in any organization. It demonstrates how to establish the proper context, and then how to identify, analyse, evaluate, treat, communicate and monitor risks.

This Handbook is based on the Joint Australian/New Zealand Standard AS/NZS 4360 - Risk Management. Each Section contains an extract from the Standard, followed by practical advice and relevant examples.

This basic guide provides a generic framework for managing risk.

OHS management systems

AS/NZS 4801:2001

Occupational health and safety management systems – Specification with guidance for use

This Standard specifies requirements for an occupational health and safety management system (OHSMS), to enable an organization to formulate a policy and objectives taking into account legislative requirements and information about hazards or risks. It applies to those hazards or risks over which the organization may exert control and over which it can be expected to have an influence. It does not state specific OHS performance outcomes.

This Standard is applicable to any organization that wishes to—

- (a) implement, maintain and improve an OHSMS;
- (b) assure itself of its conformance with its stated OHS policy;
- (c) demonstrate such conformance to others;
- (d) seek certification/registration of its OHSMS by an external organization; or
- (e) make a self-determination and declaration of conformance with the Standard.

All the requirements in the Standard are intended to be incorporated into any OHSMS. The extent of the application will depend on such factors as the OHS policy of the organization, the nature of its activities and the conditions in which it operates.

Effective implementation of an OHS management system should seek to ensure the organization complies with relevant OHS legislation, standards and codes of practice. However, the implementation of any of the requirements of this Standard, whether or not the organization has gained certification from a third-party certification body or is otherwise recognized, does not in any way assure compliance with legal requirements, or other obligations placed upon the organization by a statutory body. Hence, the implementation, either actual or intended, of this Standard, or parts thereof, would not preclude any action by a statutory body.

Notes

- 1) The Standard also provides informative guidance on the use of the specification in Appendix A, a bibliography for further reading in Appendix B, and a correspondence of the requirements of this Standard with AS/NZS ISO 14001 and AS/NZS ISO 9001 in Appendix C.
- 2) For ease of use, the clauses of the specification and Appendix A have related numbers.

AS/NZS 4804:2001

Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques

This Standard provides guidance on the development and implementation of occupational health and safety management systems (OHSMS) and principles, and their integration with other management systems. The Guidelines are applicable to any organization, regardless of size, type, or level of maturity, which is interested in developing, implementing or improving an OHSMS.

The Guidelines are intended for use as a voluntary, internal management tool and are not intended for use by OHSMS certification/registration bodies as a specification standard.

Effective implementation of an OHS management system should seek to ensure the organization complies with relevant OHS legislation, standards and codes of practice. However, the implementation of any of the part of this Standard, does not in any way assure compliance with legal requirements, or other obligations placed upon the organization by a statutory body. Hence, the implementation, either actual or intended, of this Standard, or parts thereof, would not preclude any action by a statutory body.

Appendix 4

Where to obtain more information

Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority)

Post Seacare Management Section
Comcare
GPO Box 9905
Canberra ACT 2601

Phone (02) 6275 0070
Fax (02) 6275 0067

Email seacare@comcare.gov.au
Website www.seacare.gov.au

Australian Maritime Safety Authority (AMSA) (Seacare Authority member)

Post OHS Inspectorate
Australian Maritime Safety Authority
GPO Box 2181
Canberra ACT 2601

Phone (02) 6279 5000
Fax (02) 6279 5950

Email www.amsa.gov.au/contact_us
Website www.amsa.gov.au

Incident reporting

Phone Advice – Rescue Coordination Centre – 1800 021 098
Fax Incident Alert (Form AMSA 18) – (02) 6230 6868 or 1800 622 153
Incident Report (Form AMSA 19) – (02) 6279 5058

Email reports@amsa.gov.au
Website www.amsa.gov.au/Shipping_Safety/Incident_Reporting/

Your operator's OHS / HR staff

Other organisations:

Australian Institute of Marine & Power Engineers (AIMPE) (Seacare Authority member)

Post Australian Institute of Marine & Power Engineers
52 Buckingham Street
Surry Hills NSW 2010

Phone (02) 9698 3999

Fax (02) 9319 7505

Email hoadmin@aimpe.asn.au

Website www.aimpe.asn.au

Australian Maritime Officers Union (AMOU) (Seacare Authority deputy member)

Post Australian Maritime Officers Union
PO Box 407
Haymarket NSW 1240

Phone (02) 9264 2388

Fax (02) 9267 4766

Email amou@amou.com.au

Website www.amou.com.au

Australian Mining and Metals Association (AMMA) (Seacare Authority member)

Post Australian Mining and Metals Association
Level 10, 607 Bourke Street
Melbourne VIC 3000

Phone (03) 9614 4777

Fax (03) 9614 3970

Email vicamma@amma.org.au

Website www.amma.org.au

Australian Safety and Compensation Council (ASCC)

Post Office of Australian Safety and Compensation Council
Department of Education, Employment and Workplace Relations
GPO Box 9879
Canberra ACT 2601

Phone (02) 6121 5317

Fax (02) 6121 9248

Email info@ascc.gov.au

Website www.ascc.gov.au

Australian Shipowners Association (ASA) (Seacare Authority member)

Post Australian Shipowners Association
Level 1, 4 Princes Street
Port Melbourne VIC 3207

Phone (03) 9626 0755

Fax (03) 9646 2256

Email www.asa.com.au/contacts.asp

Website www.asa.com.au

Maritime Union of Australia (MUA) (Seacare Authority member)

Post Maritime Union of Australia
Level 2, 365 Sussex Street
Sydney NSW 2000

Phone (02) 9267 9134

Fax (02) 9261 3481

Email muano@mua.org.au

Website www.mua.org.au

National Offshore Petroleum Safety Authority (NOPSA)

Post National Offshore Petroleum Safety Authority
GPO Box 2568 or PO Box 7104
Perth WA 6001 St Kilda VIC 3004

Phone (08) 6461 7000 or (03) 8866 5700

Fax (02) 6461 7037 or (03) 8866 5706

Email info@nopsa.gov.au

Website www.nopsa.gov.au

Providers of Seacare Authority accredited HSR training courses

A list of current Seacare Authority accredited HSR training course providers can be accessed from www.seacare.gov.au/OHS/HSR_training_courses

Standards Australia

Post Standards Australia
GPO Box 476
Sydney NSW 2001

Phone (02) 9237 6000 or 1800 035 822 (Customer Information Service)

Fax (02) 9237 6010

Email mail@standards.org.au

Website www.standards.org.au

Standards Australia publications can be ordered from SAI-Global Ltd:

Post Business Publishing
SAI-Global Ltd
GPO Box 5420
Sydney NSW 2001

Phone 131 242 or 1800 035 822 (Customer Information Service)
Fax 1300 654 949

Email sales@saiglobal
Website www.saiglobal.com/shop

State and Territory OHS regulators

State and Territory OHS laws do not apply to the Seacare scheme; however some regulations (eg training competencies) and published guidance material may be relevant. These are available from:

- WorkCover NSW www.workcover.nsw.gov.au
- WorkSafe Vic www.worksafe.vic.gov.au
- Workplace Health & Safety Qld www.deir.qld.gov.au/workplace
- WorkSafe WA www.worksafe.wa.gov.au
- WorkSafe SA www.safework.sa.gov.au
- WorkCover Tas www.workcover.tas.gov.au
- WorkCover ACT www.workcover.act.gov.au
- WorkSafe NT www.worksafe.nt.gov.au

Attachments

Attachment A – Form 1 - Provisional improvement notice

Attachment B – Example of a completed PIN

Attachment A

Form 1 Provisional improvement notice (regulation 6)

OCCUPATIONAL HEALTH AND SAFETY (MARITIME INDUSTRY) REGULATIONS 1995

Provisional improvement notice

To the person in command of

_____ *(insert name of prescribed ship or prescribed unit)*

I,

_____ *(insert name of the health and safety representative issuing the notice)*

selected as the health and safety representative under section 41 of the *Occupational Health and Safety (Maritime Industry) Act 1993* for

_____ *(insert name of the prescribed ship or prescribed unit)*

after consultation in accordance with subsection 57 (1) of the Act, believe that the following contravention of the Act or Regulations is occurring, or has occurred and is likely to occur again:

The contravention is

_____ *(give a brief description)*

The contravention is occurring at

_____ *(specify location)*

The reasons for my opinion are as follows:

_____ *(give reasons briefly)*

In accordance with paragraph 58 (2) (c) of the Act, action necessary to prevent the contravention, or the likely contravention, of the provision or provisions referred to above must be taken before

_____/_____/_____

(insert the date of a day that is:

(a) not less than 7 days after the day when the notice is issued; and

(b) reasonable in the opinion of the health and safety representative).

In the meantime, the following action should be taken in accordance with subsection 58 (3) of the Act:

(give a brief description)

Dated ____/____/_____

(signature)

Health and safety representative

Notes

1. Under subsection 59 (1) of the Act, a person to whom a provisional improvement notice is given may, within 7 days, request the Inspectorate or an inspector to conduct an investigation into the subject matter of the notice.
2. Under subsection 59 (2) of the Act, the operation of a provisional improvement notice is suspended if a request is made for an investigation into the subject matter of the notice. The suspension remains in effect until an inspector makes a determination that confirms, varies or cancels the notice.
3. Subsection 60 (1) of the Act requires the person in command to whom a provisional improvement notice is given:
 - to notify each employee who is affected by the notice of the fact that the notice has been issued; and
 - to display a copy of the notice at or near each workplace at which work that is the subject of the notice is being performed.

4. Under subsection 60 (2) of the Act, a provisional improvement notice ceases to have effect if:
notice ceases to have effect if:
 - it is cancelled by the health and safety representative or an inspector; or
 - the person in command, or a person who is given a copy of the notice under subsection 58 (5), takes the action specified in the notice or, if no action is specified, takes the action that is necessary to prevent the contravention, or likely contravention, with which the notice is concerned.

5. Section 61 of the Act requires the responsible person:
 - to ensure, as far as practicable, that a provisional improvement notice is complied with;
and
 - to inform the health and safety representative who issued the notice of the action taken to comply with the notice.

6. Under subsection 100 (2) of the Act, if an inspector has confirmed, varied or cancelled a provisional improvement notice the following persons may request the Australian Industrial Relations Commission in writing to review the decision of the inspector:
 - the operator affected by the inspector's decision;
 - the person in command;
 - the person to whom the notice was given by the person in command under subsection 58 (5) of the Act;
 - the health and safety representative for the designated work group that includes an employee who is affected by the decision or an involved union;
 - if there is no designated working group of that kind – an involved union in relation to the affected employee;
 - the owner of any plant, substance or thing to which the decision relates.

Attachment B

Example of a completed PIN

Form 1 Provisional improvement notice (regulation 6)

OCCUPATIONAL HEALTH AND SAFETY (MARITIME INDUSTRY) REGULATIONS 1995

Provisional improvement notice

To the person in command of Capt Barbe Rouge, SS Jolly Roger
(insert name of prescribed ship or prescribed unit)

I, Erix the Viking
(insert name of the health and safety representative issuing the notice)

selected as the health and safety representative under section 41 of the *Occupational Health and Safety (Maritime Industry) Act 1993* for

SS Jolly Roger
(insert name of the prescribed ship or prescribed unit)

after consultation in accordance with subsection 57 (1) of the Act, believe that the following contravention of the Act or Regulations is occurring, or has occurred and is likely to occur again:

The contravention is

that the work system in relation to manual handling of containers constitutes a risk to health and safety. No risk assessment has been conducted in relation to manual handling tasks (Regulation 3.04), nor have control measures been put in place (Regulation 3.05).

(give a brief description)

The contravention is occurring at

Ship's hold and deck

(specify location)

The reasons for my opinion are as follows:

The handling of heavy and awkward cases containing equipment for field work is causing back strains. Despite formal requests, interim safety measures are inadequate and there has not been a risk assessment followed by permanent control measures.

(give reasons briefly)

In accordance with paragraph 58 (2) (c) of the Act, action necessary to prevent the contravention, or the likely contravention, of the provision or provisions referred to above must be taken before

25 / 02 / 2008

(insert the date of a day that is:

(a) not less than 7 days after the day when the notice is issued; and

(b) reasonable in the opinion of the health and safety representative).

In the meantime, the following action should be taken in accordance with subsection 58 (3) of the Act:

Meet the requirements of the Manual Handling Regulations (Part 3 of the Occupational Health & Safety (Maritime Industry) (National Standards) Regulations 2003), referring also to the Approved Code of Practice for Manual Handling (Maritime Industry).

(give a brief description)

Dated 17 / 02 / 2008

Erix the Viking

(signature)

Health and safety representative

OHS contacts

Record details of your OHS contacts here

Name _____

Position _____

Organisation _____

Location _____

Postal address _____

Phone number _____ Fax number _____

Email address _____

Website _____

Name _____

Position _____

Organisation _____

Location _____

Postal address _____

Phone number _____ Fax number _____

Email address _____

Website _____

Name _____

Position _____

Organisation _____

Location _____

Postal address _____

Phone number _____ Fax number _____

Email address _____

Website _____

