

**MEMORANDUM OF UNDERSTANDING**

**RELATING TO THE ADMINISTRATION AND  
OPERATION OF THE *OCCUPATIONAL HEALTH  
AND SAFETY (MARITIME INDUSTRY) ACT 1993***

**BETWEEN**

**THE SEAFARERS SAFETY, REHABILITATION  
AND COMPENSATION AUTHORITY  
(SEACARE AUTHORITY)**

**AND**

**THE AUSTRALIAN MARITIME SAFETY  
AUTHORITY  
(AMSA)**

**FEBRUARY 2003**

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## **1. Purpose of this Memorandum of Understanding (MOU)**

- 1.1 This MOU is intended to cover the administrative and operational responsibilities of, and relationship between, the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) and the Australian Maritime Safety Authority (AMSA) in exercising their respective roles under the *Occupational Health and Safety (Maritime Industry) Act 1993* (the OH&S(MI) Act) and OH&S(MI) regulations.
- 1.2 The Seacare Authority and AMSA hereby agree to maintain and further develop cooperative arrangements in the performance of their statutory functions under the OH&S(MI) Act, aimed at improving occupational health and safety (OHS) performance in the Australian maritime industry and ensuring high standards of compliance with the OH&S(MI) Act and OH&S(MI) regulations.

## **2. The parties**

- 2.1 The Seacare Authority is a statutory authority established by the *Seafarers Rehabilitation and Compensation Act 1992*, supported by the Department of Employment and Workplace Relations and co-located with Comcare. The Seacare Authority performs the functions of the Authority under the OH&S(MI) Act and is responsible for the overall administration of that Act and the OH&S(MI) regulations.
- 2.2 AMSA is a statutory authority established under the *Australian Maritime Safety Authority Act 1990* and is located within the Transport and Regional Services portfolio. AMSA is designated as and performs the functions of the OHS Inspectorate under section 4 of the OH&S(MI) Act.
- 2.3 The respective statutory roles of the Seacare Authority and AMSA are set out in **Schedule 1**.

## **3. The international and national OHS framework**

- 3.1 The parties acknowledge that OHS in the maritime industry is integrally linked to international standards and procedures developed by the International Maritime Organization and the International Labour Organization, as defined in treaties adopted by Australia.
- 3.2 The parties also acknowledge that the National OHS Strategy endorsed by Workplace Relations Ministers' Council in May 2002 and the Seacare Authority OHS Strategy of August 2002 provide guidance for improvement of OHS in the Australian maritime industry.
- 3.3 The parties agree that in applying the National OHS Strategy, the Seacare Authority OHS Strategy and in considering the applicability of OHS standards to the maritime industry, the requirements of international treaty obligations for maritime OHS will be fully considered, aimed at avoiding adoption of Australian standards which are inconsistent with international treaty obligations.

#### **4. OHS strategies**

- 4.1 The parties agree on the following strategies to improve OHS outcomes in the Australian maritime industry:
  - 4.1.1 To promote prevention as the primary means of reducing the human and financial cost of injury and disease, including identifying and targeting prevention priorities and evaluating results; and
  - 4.1.2 To ensure strong accountability by stakeholders within a flexible, performance-based systems approach, utilising modern risk management and enforcement/compliance techniques.
- 4.2 The parties agree to collaborate annually on approaches to meeting OHS improvement targets in the maritime industry, derived from the National OHS Strategy and Seacare Authority OHS Strategy, and to consult as necessary with the National Occupational Health and Safety Commission (NOHSC) in developing relevant strategies for meeting those targets.

#### **5. Application of NOHSC standards and codes of practice**

- 5.1 The Seacare Authority and AMSA will consult on NOHSC standards and codes declared under subsection 38(1) of the NOHSC Act, to assist the Seacare Authority identify those standards and codes which are appropriate for application to the maritime industry.
- 5.2 The Seacare Authority and AMSA will consult on the most appropriate means by which agreed NOHSC standards and codes applicable to the maritime industry are to be adopted for application within the maritime industry.

#### **6. Updating the legislation**

- 6.1 The Seacare Authority is responsible for advising on the OH&S(MI) Act and OH&S(MI) regulations, implementing relevant policies, and ensuring that the Seacare Authority and AMSA can perform their roles effectively and efficiently.
- 6.2 The parties agree to consult as necessary on amendments to the OH&S(MI) Act or OH&S(MI) regulations and to identify matters requiring legislative action.
  - 6.2.1 AMSA agrees to promptly inform the Seacare Authority of any perceived deficiencies in the OH&S(MI) Act or OH&S(MI) regulations that adversely affect the performance of its roles and responsibilities under that legislation.
  - 6.2.2 The Seacare Authority agrees to advise AMSA, within three (3) months of AMSA notification of a deficiency in the OH&S(MI) Act or OH&S(MI) regulations, of any action being taken by the Government to address the deficiency or proposal as soon as the Seacare Authority becomes aware of proposed Government action.
  - 6.2.3 The Seacare Authority agrees also to keep AMSA informed as far as possible of all significant developments and steps in progressing legislative amendments.

**7. Consultation and exchange of information**

- 7.1 The parties agree to consult with each other and exchange information/data in relation to the matters set out in Schedule 2. Consultation should occur such that, wherever possible, there is sufficient opportunity for the parties to seek to reach an understanding on positions prior to public announcements or provision of advice to Ministers.
- 7.2 The parties will have regard to their obligations under the *Privacy Act 1988* and *Crimes Act 1914* in the performance of this section of the agreement. Any additional limits applying to the use of information will be advised to the respective parties.
- 7.3 The parties agree to consult on and identify differences in interpretation of incident statistics prior to publication or public commentary on the incident statistics.

**8. Costs of the parties in conforming with the MOU**

- 8.1 Each party is responsible for meeting its own costs in conforming with this MOU.
- 8.2 The Seacare Authority is responsible for meeting the costs of secretariat services associated with joint Seacare Authority/AMSA meetings or consultations arising from conformance with this MOU.

**9. Contact officers**

- 9.1 The parties agree that in the performance of this MOU, the Manager, Seacare Authority Secretariat and the Manager, Marine Standards, AMSA will be the respective points of contact.

**10. Commencement, variation, extension or termination**

- 10.1 This MOU will operate from the date that it is executed, subject to the provisions of Clauses 10.2 and 10.3.
- 10.2 Either party may terminate the agreement upon three months notice in writing to the other party.
- 10.3 This MOU may be varied or extended at any time by agreement in writing by both parties.

**11. Signatories**

SIGNED for and on behalf of  
Seafarers Safety, Rehabilitation and Compensation Authority by:

.....  
Noel Swails  
Deputy Chief Executive Officer  
Comcare  
(and Deputy Chair, Seafarers Safety, Rehabilitation and Compensation Authority)

Date .....

SIGNED for and on behalf of  
Australian Maritime Safety Authority by

.....  
Clive Davidson  
Chief Executive Officer  
Australian Maritime Safety Authority

Date .....

**Statutory responsibilities of the Seacare Authority and AMSA under the *Occupational Health and Safety (Maritime Industry) Act 1993***

**1. The Seacare Authority's role and responsibilities:**

- 1.1 The Seacare Authority has overall responsibility for administration of the OH&S(MI) Act. Under section 9 of the OH&S(MI) Act, the Seacare Authority is required to:
  - 1.1.1 ensure, in accordance with the OH&S(MI) Act and the regulations, that the obligations imposed by or under the OH&S(MI) Act and the regulations are complied with;
  - 1.1.2 advise operators, employees, or contractors, either on its own initiative or on being asked, on OHS matters;
  - 1.1.3 collect, interpret and report information relating to OHS;
  - 1.1.4 formulate policies and strategies relating to OHS of employees;
  - 1.1.5 accredit OHS training courses for the purposes of section 47 of the OH&S(MI) Act;
  - 1.1.6 liaise with other bodies concerned with OHS; and
  - 1.1.7 advise the Minister on the most effective means of giving effect to the objects of the OH&S(MI) Act, the making of regulations and the approval of codes of practice under section 109(1).
- 1.2 The Seacare Authority must comply with directions issued by the Minister under section 10 of the OH&S(MI) Act.
- 1.3 Under section 109 of the OHS (MI) Act, the Seacare Authority may prepare codes of practice, which must include incorporation of NOHSC standards or codes that are appropriate for application to the maritime industry, for approval by the Minister.
- 1.4 The Seacare Authority must prepare an annual report on the operation of the OH&S(MI) Act and the regulations as soon as practicable after 30 June each year, which shall report:
  - 1.4.1 statistics of all accidents and dangerous occurrences notified to the Inspectorate;
  - 1.4.2 details of all prosecutions;
  - 1.4.3 statistics with appropriate details of all investigations conducted; instances of the taking of possession of plant, substances or things, or of the taking of samples of substances or things under section 91 of the OH&S(MI) Act; directions issued under section 92, notices issued under sections 93 and 98, and appeals instituted under section 100 against inspectors' decisions;
  - 1.4.4 directions issued by the Minister to the Seacare Authority or the Inspectorate; and

1.4.5 such other matters as are prescribed.

## **2 AMSA's role and responsibilities**

2.1 AMSA has responsibility for performing the Inspectorate functions of the OH&S(MI) Act. In particular it has responsibility under section 82:

2.1.1 to ensure, in accordance with the OH&S(MI) Act and the regulations, that the obligations imposed by or under the OH&S(MI) Act or the regulations are being complied with;

2.1.2 to advise operators, employees, or contractors, whether of its own motion or on being asked, on occupational health and safety matters affecting such operators, employees or contractors; and

2.1.3 to provide the Seacare Authority with such information as is asked for by the Seacare Authority.

2.2 In exercising the role of Inspectorate, AMSA:

2.2.1 may appoint members of its staff with OHS training as inspectors (section 84, OH&S(MI) Act) and must issue identification cards to inspectors (section 85, OH&S(MI) Act);

2.2.2 may give directions specifying how inspections are to be conducted (section 86, OH&S(MI) Act);

2.2.3 may direct an inspector to conduct an investigation (section 87 of the OH&S(MI) Act):

- (i) to ascertain whether the requirements of, or any requirements properly made under, the OH&S(MI) Act or the regulations are being complied with; or
- (ii) concerning a contravention or possible contravention of the OH&S(MI) Act or the regulations; or
- (iii) concerning an accident or dangerous occurrence that has happened in the performing of work;

2.2.4 must ensure there are available at its offices an up to date copy of each document incorporated into a code of practice (section 109(7), OH&S(MI) Act);

2.2.5 may begin prosecutions under the OH&S(MI) Act or regulations and must respond within 3 months to requests to begin proceedings (section 116, OH&S(MI) Act).

2.3 Members of AMSA staff appointed as inspectors:

2.3.1 may commence investigations on request, confirm vary or cancel provisional improvement notices and make decisions or exercise powers under Part 4 of the OH&S(MI) Act;

- 2.3.2 may conduct investigations to: ascertain whether the requirements of the OH&S(MI) Act or regulations are being complied with; identify and rectify contraventions or possible contraventions of the OH&S(MI) Act and regulations; or concerning an accident or dangerous occurrence (section 87);
- 2.3.3 must notify or provide copies of advice to interested parties (sections 88, 94, 97, OH&S(MI) Act);
- 2.3.4 may exercise powers of entry, examination, taking of evidence and issuing of directions (sections 89-91, OH&S(MI) Act);
- 2.3.5 must ensure operators comply with notification (section 94, OH&S(MI) Act) and reporting requirements (sections 12 & 13 of the OH&S(MI) Amendment Regulations 1999);
- 2.3.6 may issue a direction not to disturb a workplace (section 92, OH&S(MI) Act), a prohibition notice (section 93, OH&S(MI) Act), or an improvement notice (section 98, OH&S(MI) Act);
- 2.3.7 must return as soon as practicable any plant, substance or thing subject to a successful appeal (section 103, OH&S(MI) Act); and
- 2.3.8 may begin a prosecution under the OH&S(MI) Act or regulations (section 116).

**Consultation and exchange of information between the parties**

**1. The Seacare Authority**

- 1.1 The Seacare Authority agrees to consult with and share information with AMSA on the following, to the extent appropriate:
  - 1.1.1 The development of advice to the Minister responsible for the Seacare Authority on issues associated with the OH&S(MI) Act and on OHS in the maritime industry;
  - 1.1.2 The preparation of the OHS elements of the Seacare Authority strategic and annual work plans when under review;
  - 1.1.3 The preparation of papers for the Seacare Authority meetings which impact on the operation of the OH&S(MI) Act and regulations, and in relation to OHS matters in the maritime industry;
  - 1.1.4 Actions or initiatives under consideration by the Seacare Authority in relation to the performance of its statutory functions under the OH&S(MI) Act;
  - 1.1.5 Preparation of performance reports to the Seacare Authority and to Parliament (through the Seacare Authority Annual Report) on OHS performance in the maritime industry;
  - 1.1.6 Proposed changes to the maritime industry OHS legislation and regulations;
  - 1.1.7 Development of Seacare Authority publications.

**2. AMSA**

- 2.1 AMSA agrees to consult and share information with the Seacare Authority on the following, to the extent appropriate:
  - 2.1.1 The development of advice to the Minister responsible for AMSA on issues associated with the Inspectorate function under the OH&S(MI) Act and on OHS in the maritime industry;
  - 2.1.2 The preparation of the OH&S(MI) Act elements of the AMSA corporate plan;
  - 2.1.3 The preparation of papers for AMSA board meetings which impact on the operation of the OH&S(MI) Act and regulations, and in relation to OHS matters in the maritime industry;
  - 2.1.4 Actions or initiatives under consideration by AMSA in relation to the performance of its statutory functions under the OH&S(MI) Act;
  - 2.1.5 The OH&S(MI) Act elements of the AMSA Annual Report to Parliament; and

2.1.6 AMSA's prevention and compliance strategies for OHS in the shipping industry that impact on its OH&S(MI) Act responsibilities.

### **3. Strategic consultation**

3.1 The parties agree to arrange an annual meeting prior to the commencement of the financial year to consult on priorities and programs for OHS awareness raising, OHS prevention and compliance.

3.2 The parties agree to consult on agenda papers relevant to OHS prior to each meeting of the Seacare Authority.

3.3 The parties agree to consult as necessary on:

3.3.1 technical aspects of specific OHS publications and of OHS educative and awareness raising materials such as hazard sheets, guidance notes, brochures, posters etc;

3.3.2 OHS statistics and OHS data sources, and analysis of that data;

3.3.3 proposed changes to regulations under the OH&S(MI) Act or *Navigation Act 1912*; and

3.3.4 the applicability of new NOHSC standards and codes to the maritime industry.

### **4. Ships covered by the OHS(MI) Act**

4.1 The parties agree that the Seacare Authority quarterly report on ships covered by the OH&S(MI) Act will constitute the ships list for performance reporting under the OH&S(MI) Act, and that Seacare Authority data on employees and hours worked will provide the denominator data for such reports.

### **5. Websites**

5.1 The parties agree to maintain linkages between the Seacare Authority and AMSA websites and ensure that the OHS elements of their respective websites are operating consistently with Government on-line services policy and relevant legislation eg the *Electronic Transactions Act 1999*.

### **6. Corporate identity on OHS matters**

6.1 The parties agree to provide a consistent corporate approach in terms of communication with the industry and key stakeholders on OHS matters and reporting to the Seacare Authority and AMSA Board during the life of this Memorandum.

### **7. Specific OHS information to be exchanged**

7.1 The Seacare Authority agrees to provide to AMSA:

7.1.1 Annually (no later than 31 July)

- 7.1.1.1 textual information on the OHS responsibilities of the Seacare Authority for inclusion in AMSA's Annual Report.
- 7.1.2 Quarterly (during July, October, January and April)
  - 7.1.2.1 statistical data on employee numbers and hours of work;
  - 7.1.2.2 list of ships covered by the OH&S(MI) Act.
- 7.1.3 As required
  - 7.1.3.1 directions issued by the Minister to the Seacare Authority that affect the Inspectorate;
  - 7.1.3.2 workers' compensation claims data; and
  - 7.1.3.3 analyses of OHS and workers' compensation data.
- 7.2 AMSA agrees to provide to the Seacare Authority:
  - 7.2.1 Annually (no later than 31 July)
    - 7.2.1.1 textual information on the OH&S(MI) Act responsibilities of AMSA for inclusion in the Seacare Authority's Annual Report;
    - 7.2.1.2 statistics, with appropriate details, of all instances of the taking of possession of plant, substances or things of the taking of samples of substances or things, under S91;
    - 7.2.1.3 directions given under S92;
    - 7.2.1.4 notices under S93 and 98;
    - 7.2.1.5 number of OHS inspections; and
    - 7.2.1.6 the number of inspectors trained in OHS during the preceding year.
  - 7.2.2 Quarterly (during July, October, January and April)
    - 7.2.2.1 number of incidents reported to AMSA;
    - 7.2.2.2 dangerous occurrences notified;
    - 7.2.2.3 number of investigations of incidents commenced;
    - 7.2.2.4 number of prohibition notices issued;
    - 7.2.2.5 number of improvement notices issued;
    - 7.2.2.6 number of prosecutions commenced; and

7.2.2.7 number of prosecutions concluded.