



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

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)

MAY 2012

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1. Purpose of this Memorandum of Understanding (MOU)

- 1.1 This MOU is intended to cover the strategic, administrative and operational 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* (Seafarers Act). The Authority is supported in the performance of its statutory responsibilities by Comcare. The Seacare Authority performs functions 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 Infrastructure and Transport portfolio. AMSA is designated as and performs the functions of the OHS Inspectorate under Part 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**.
- 2.4 Both the Seacare Authority and AMSA have responsibilities under the OHS(MI) Act to ensure that the obligations imposed under the Act are complied with and to advise operators, employees and contractors on occupational health and safety matters. The common functions under the OHS(MI) Act effectively establish the Seacare Authority and AMSA as co-regulators of the Act.
- 2.5 This MOU establishes the framework to provide the necessary assurance to both parties that the common functions are being performed to an appropriate standard to ensure that respective statutory responsibilities are being complied with.

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 2002–2012 endorsed by Workplace Relations Ministers' Council in May 2002 provides guidance for improvement of OHS in Australian industry.
- 3.3 The parties agree that in applying the National OHS Strategy 2002–2012 and in considering the applicability of national OHS standards to the maritime industry, the requirements of international treaty obligations for maritime OHS and shipping safety will be fully considered and aimed at avoiding adoption of Australian standards which are inconsistent with international treaty obligations and standards.

4. OHS strategies

- 4.1 The parties agree on the following strategies to improve OHS outcomes in the Australian maritime industry:
 - 4.1.1 promoting 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 ensuring strong accountability of stakeholders within a flexible, performance-based systems approach, utilising modern risk management and enforcement/compliance techniques.
- 4.2 The parties agree to collaborate on formulating approaches to improving OHS in the maritime industry.

5. Application of national standards and codes of practice

- 5.1 The Seacare Authority and AMSA will jointly consider the national standards and codes declared under item 2 of Schedule 3 of the *Safe Work Australia (Consequential and Transitional Provisions) Act 2008*, 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 the national standards and codes identified in 5.1 are to be adopted within the maritime industry.

6. Updating the legislation

- 6.1 The Seacare Authority is responsible for advising the Minister on the most effective means for giving effect to the objects of the OH&S(MI) Act and the making of regulations and codes of practice under the Act.
- 6.2 The parties agree to consult as necessary on amendments to the OH&S(MI) Act or OH&S(MI) regulations and codes of practice.
- 6.3 AMSA agrees to promptly inform the Seacare Authority of any perceived deficiencies in the OH&S(MI) Act or OH&S(MI) regulations.
- 6.4 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 Seacare Authority to address the deficiency or proposal.
- 6.5 The Seacare Authority agrees also to keep AMSA informed of all significant developments and steps in progressing legislative amendments or other relevant Government action.

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 broader statutory obligations, including those under the *Privacy Act 1988* and *Crimes Act 1914*, in the performance of this section of the agreement. Any limits applying to the use of information will be advised when the information/data is exchanged.
- 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.

9. Contact officers

- 9.1 The parties agree that in the performance of this MOU, the Director, Seacare Management Section, Comcare and the Senior Manager, Strategic Relations, 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:

David Sterrett
Chairperson, Seafarers Safety, Rehabilitation and Compensation Authority)

Date _____

SIGNED for and on behalf of
Australian Maritime Safety Authority by

Graham Peachey
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 national 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;
 - 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 OHS publications, materials, resources and educational campaigns.

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 consult to develop joint approaches to regulation and enforcement policies in relation to OHS.
- 3.2 The parties agree to consult to develop an annual joint OHS Plan to cover priorities and programs for OHS awareness and education, 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 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 and other relevant legislation.

4. Ships covered by the OHS(MI) Act

- 4.1 The parties agree that the Seacare Authority biannual 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 Biannually (August and February)
 - 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 analysis 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 or 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 Biannually (August and February)

- 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.