



**Australian Government**

**Seafarers Safety, Rehabilitation  
and Compensation Authority**

**Australian Maritime Safety Authority**

# Seacare Scheme Occupational Health and Safety Regulation Policy



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# 1. Overview

## Purpose

The *Seacare Scheme Occupational Health and Safety Regulation Policy* is a joint plan of action adopted by both the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) and the Australian Maritime Safety Authority (AMSA) to promote best practice occupational health and safety (OHS) in the maritime industry and to ensure compliance with the legislative duties and obligations prescribed by the *Occupational Health and Safety (Maritime Industry) Act 1993* (the OHS(MI) Act) and accompanying legislative instruments.

This Regulation Policy builds on the *National Occupational Health and Safety (OHS) Compliance and Enforcement Policy* (the National Policy). The National Policy is a principles-based document agreed to by all heads of Australian workplace authorities to work towards a consistent, national approach to the enforcement of OHS laws.

Attachment A to this Policy establishes the *OHS(MI) Act Compliance and Enforcement Protocol* (the Protocol). The purpose of the Protocol is to provide guidance on the application of the compliance and enforcement powers contained within the OHS(MI) Act by the Seacare Authority and AMSA.

## Who should read this policy?

Anyone who owes a duty under the OHS(MI) Act in relation to occupational health and safety including:

- employers and operators of prescribed ships or prescribed units in the Seacare jurisdiction
- manufacturers, importers and suppliers of plant that will be used by employees at work on a prescribed ship or prescribed unit in the Seacare jurisdiction
- inspectors appointed under the OHS(MI) Act
- health and safety representatives, health and safety committees and other employees on prescribed ships in the Seacare jurisdiction.

## Introduction

### Occupational health and safety in the Seacare jurisdiction

Occupational health and safety (OHS) refers to the laws, policies, procedures and activities that ensure the health, safety and welfare of people engaged in work or employment.

OHS in the Seacare jurisdiction is governed by the OHS(MI) Act and its accompanying regulations and legislative instruments. The objects of the OHS(MI) Act are:

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

Consistent with these objects, the OHS(MI) Act places a general duty relating to OHS on operators, employees, manufacturers, importers, and suppliers of plant and substances, and persons erecting, installing, repairing and maintaining plant in a workplace. Those persons who are in a position to influence health and safety in the workplace need to understand and comply with the duties set out in the OHS(MI) Act and associated Regulations.

Regardless of the level of compliance demonstrated by a duty holder, enforcement activity of the types outlined in this policy may be undertaken against employers and other duty holders who are found to be in breach of their legislative obligations and duties. The OHS(MI) Act provides for a range of criminal actions and penalties.

### Regulation of OHS in the Seacare scheme

The OHS(MI) Act confers a number of functions on both the Seacare Authority and AMSA, as the Seacare scheme Inspectorate, including the responsibility to:

- ensure that the obligations imposed by or under the OHS(MI) Act and the regulations are complied with
- advise operators, employees and contractors on OHS matters.

Accordingly, under the OHS(MI) Act, both the Seacare Authority and AMSA are responsible for regulating OHS in the Seacare scheme.

Section 9 of the OHS(MI) Act also confers the following functions on the Seacare Authority:

- to collect, interpret and report information relating to occupational health and safety
- to formulate policies and strategies relating to the occupational health and safety of employees
- to accredit occupational health and safety training courses for the purposes of section 47
- to liaise with other bodies concerned with occupational health and safety
- to advise the Minister on:
  - the most effective means of giving effect to the objects of this Act
  - the making of regulations under this Act
  - the approval of codes of practice under subsection 109(1).

Section 82 also provides that AMSA is responsible for providing the Authority with such information as is asked for by the Authority.

In exercising the role of Inspectorate, AMSA:

- may appoint members of its staff with OHS training as inspectors and must issue identification cards to inspectors
- may give directions specifying how inspections are to be conducted
- may direct an inspector to conduct an investigation:
  - (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
  - (ii) concerning a contravention or possible contravention of the OH&S(MI) Act or the regulations
  - (iii) concerning an accident or dangerous occurrence that has happened in the performing of work
- must ensure there are available at its offices an up to date copy of each document incorporated into a code of practice
- may begin prosecutions under the OH&S(MI) Act or regulations and must respond within 3 months to requests to begin proceedings.

Members of AMSA staff appointed as inspectors:

- 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
- 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
- must notify or provide copies of advice to interested parties
- may exercise powers of entry, examination, taking of evidence and issuing of directions
- must ensure operators comply with notification and reporting requirements
- may issue a direction not to disturb a workplace, a prohibition notice or an improvement notice
- must return as soon as practicable any plant, substance or thing subject to a successful appeal
- may begin a prosecution under the OH&S(MI) Act or regulations.

### Co-regulatory approach to regulation

Given that the OHS(MI) Act prescribes that the Seacare Authority and AMSA—two separate and distinct government entities—have a common legislative function to ensure that the obligations under the OHS(MI) Act are complied with, it is necessary for the Seacare Authority and AMSA to take a collaborative and cooperative approach to regulation of the Seacare scheme.

Accordingly, the Seacare Authority and AMSA have agreed to adopt a common regulatory philosophy which seeks to work in partnership with seafarers, their employers, ship operators and unions to:

- keep workers healthy and safe at work
- reduce the incidence and cost of workplace injury and disease
- apply appropriate regulatory sanctions for any demonstrable failure to meet statutory obligations.

## Aims and key principles of regulation

Pursuant to this Regulation Policy, the Seacare Authority and AMSA aim to ensure compliance with legislative obligations and encourage best practice through the provision of assistance and information that builds workplace capability to properly manage workplace risks.

The Seacare Authority and AMSA undertake compliance and enforcement activities in order to:

- prevent workplace injury
- ensure access to information about OHS laws and how to comply
- ensure compliance with OHS laws or to ensure that those who fail to comply are held to account
- ensure risks are eliminated or properly controlled
- take action to deal immediately with serious risks
- promote and achieve sustained compliance with the law
- deter non-compliance.

The key principles of regulation underpinning compliance and enforcement activities are established at Paragraph 3 of the attached Protocol.

## 2. Seacare Authority and AMSA's Compliance and Enforcement Strategy

The Seacare Authority and AMSA have adopted this strategy to use as an effective mix of positive motivators and deterrents to achieve compliance with the law and improved health and safety. This strategy seeks to encourage duty holders to comply while ensuring that there are fair and swift consequences for those who do not.

The compliance and enforcements strategies range from information, advice, persuasion, co-operation, inspection, verification and compulsion through to deterrence activities. The primary emphasis is on building industry capability to both comply with OHS obligations and properly manage workplace risks.

Consistent with the National Policy, the Seacare Authority and AMSA have a risk based and responsive approach to compliance and enforcement. The application of the compliance and enforcement powers contained within the OHS(MI) Act, and the principles guiding the application of these powers, are outlined within the attached Protocol.

### Risk based regulation

Compliance and enforcement actions are targeted to areas of greatest risk to health and safety and where they are likely to have the greatest impact on improving working environments.

### Responsive regulation

The Seacare Authority and AMSA's regulatory response must be effective in managing compliance at the workplace in the Seacare scheme. To achieve this compliance and enforcement measures must be effective and appropriate to the circumstances in the workplace of the duty holder.

Responsive sanctioning complements responsive compliance and enforcement. The principles governing such sanctioning aim to:

- change the behaviour of the duty holder
- eliminate any financial incentive of non-compliance
- be proportionate to the nature of the offence and the harm caused
- reduce the harm caused by regulatory non-compliance, where appropriate
- deter future non-compliance
- be responsive and consider what is appropriate for the particular duty holder.



## Approach to OHS regulation

By understanding employers and assessing risks, Seacare and AMSA are able to undertake a planned program of activities aimed at fostering open working relationships and encouraging cooperative compliance, leading to reductions in injury rates, costs and regulatory burdens.

The key steps are:

(i) Understanding the employers' businesses

To assist in effective targeting of assurance activities, Seacare and AMSA regularly review data trends and assess industry performance. AMSA, as the inspectorate, attends industry groups, stakeholder forums and conducts audits.

(ii) Assessing the risks

AMSA and the Seacare Authority review compliance risks using up-to-date information, including intelligence and research, knowledge of employers' systems and culture, emerging hazards, industry type and employers' workers' compensation claims history.

(iii) Planning strategies

AMSA and the Seacare Authority use a range of regulatory strategies to address the varying levels of identified risk. The strategies balance education, prevention and enforcement, and include:

- compliance assistance, which involves AMSA working cooperatively with employers and employees in the jurisdiction to:
  - provide information and better practice advice on compliance with laws
  - promote prevention as the primary means of reducing human and financial costs of work-related injury and disease
  - promote the development of better practice OHS and rehabilitation management systems
  - assist organisations in the adoption of a regular cycle of performance auditing to underpin continuous improvement such as ISM auditing
- development and administration of safety policies aimed at improving the regulatory model to ensure that it provides strong accountability, reflects risks and is outcome-based
- enforcing laws that protect the health and safety of employees and others through an active regulatory assurance program such as participation in industry groups, OHS auditing on ships and attending health and safety forums.

(iv) Implementing strategies

The Seacare Authority and AMSA aim to target their efforts to those that do not get the safety message and to areas that present as highest risk in either workplace health or safety.

Solutions may involve one or more of the following service delivery options:

- partnering with other jurisdictions
- partnering with industry bodies
- working collaboratively with employers or a range of employers on a particular issue
- working independently through regional service delivery.

(v) Review and improve

The Seacare Authority and AMSA are committed to improving the health and safety of seafarers. Part of this is being able to measure effectiveness to ensure continuous improvement and high service delivery standards. This will not only be measured through overall scheme performance, but also by listening to feedback from seafarers and the broader community.





