

# MEMORANDUM OF UNDERSTANDING

Between

INSERT NAME

AND

AUSTRALIAN MARITIME SAFETY  
AUTHORITY

## Part A - Introduction

### 1. Purpose

- 1.1 This Memorandum of Understanding (MOU) between the NAME (ACRONYM), and the Australian Maritime Safety Authority (“AMSA”) (the parties) concerns safety in and around STATE maritime workplaces.
- 1.2 It addresses the jurisdiction of NAME under the RELEVANT OHS LEGISLATION (STATE OHS Act), and AMSA under the *Navigation Act 1912* (Cth) (Navigation Act) and the *Occupational Health & Safety (Maritime Industry) Act 1993* (Cth) (OHS(MI) Act).
- 1.3 This MOU sets out the guidelines under which ACRONYM and AMSA will respond to health and safety issues on ships and wharves in STATE. The MOU also separates work applications of the parties, where this is possible. The MOU also seeks to clarify who has jurisdiction in different circumstances, and provides for mechanisms for determining responsibility where responsibility may be unclear.
- 1.4 NAME is a statutory corporation constituted under section No of the RELEVANT LEGISLATION and is the regulatory authority in STATE responsible for administering the RELEVANT OHS LEGISLATION and Regulations pursuant to that Act.
- 1.5 NAME AND CURRENT MISSION STATEMENT
- 1.6 AMSA is created by the *Australian Maritime Safety Authority Act 1990* (Cth). It is the Commonwealth regulatory authority responsible for inspectorate functions under the OHS(MI) Act. It also administers the Navigation Act, protection of the sea legislation, including the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and subordinate legislation made pursuant to those Acts.
- 1.7 AMSA’s mission is to enhance the safety of seafarers and shipping and protect the marine environment from pollution.
- 1.8 To assist in providing a safe working environment NAME and AMSA hereby establish this MOU, including a protocol on cross-jurisdictional issues and related co-operative arrangements.
- 1.9 NAME and AMSA acknowledge that nothing in this MOU can affect respective statutory duties, discretions and powers under relevant legislation.
- 1.10 Whilst the parties shall as far as possible:
  - a) follow the procedures set out in this MOU; and
  - b) take whatever measures are necessary to ensure that the officers of the parties are aware of the terms of this MOU and abide by it; and
  - c) they do not intend that it shall have legally binding effect.

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

“**notify**” means that parties will contact and inform each other in accordance with agreed procedure.

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

“**powered mobile plant**” means plant that is provided with some form of self-propulsion which is ordinarily under the direct control of an operator.

“**regulatory authority**” means the Australian Maritime Safety Authority and/or the NAME Authority of STATE.

“**respond**” means that the relevant party/parties will respond in accordance with documented organisational response procedures.

“**ship**” is defined by the *Navigation Act 1912* as any kind of vessel used in navigation by water, however propelled or moved, and includes:

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

“**workplace**” means any place where work is, or is to be, or is likely to be performed by a worker, employee, self-employed person, deemed worker, contractor, volunteer or employer and includes any aircraft, ship or vehicle.

“**workplace incident**” means:

- an incident resulting in a person suffering serious bodily injury that must be notified to the regulatory authority under legislation; or
- a work caused injury that must be notified to the regulatory authority under legislation; or
- a dangerous event that must be notified to the regulatory authority under legislation; or
- a fatality

## Part B – Scope of Respective Legislation

### 3. AMSA Jurisdiction - General

3.1 AMSA administers legislation that applies to ship operations including:

- OHS (MI) Act - performance-based legislation, applicable (in general terms) to Australian-registered ships to which the Navigation Act applies.
- Navigation Act - generally applies to trading vessels on international and interstate voyages, fishing vessels on international voyages, off-shore industry mobile units and to vessels which have been declared under s. 8 A or s.8 AA of the Act.
- The Navigation Act gives effect to many international conventions to which Australia is a signatory or which Australia has tacitly accepted. This includes the International Convention for the Safety of Life at Sea (SOLAS), resolutions by the International Maritime Organisation (IMO) and the International Labour Organisation (ILO) Convention No.152 *Occupational Health and Safety (Dock Work) 1979*; and
- Delegated legislation made under the Navigation Act (called “Marine Orders”) gives effect to much of the Act’s intent.

3.2 The Marine Orders that deal with areas relevant to this memorandum are outlined below.

- ***Marine Order Part 17:***  
Gives effect to the international codes for chemical and liquefied gas tankers. AMSA has jurisdiction, and will respond to issues concerning the ship to ship transfer of goods referred to in the codes at sea or in port over water. AMSA may stop or prohibit loading and/or unloading of such tankers when deemed by a surveyor to be unsafe. Penal provisions apply.
- ***Marine Orders Part 21:***  
Contains the requirements for safe access to ships to which the *Navigation Act* applies.
- ***Marine Orders Part 32:***  
Gives effect, in whole or in part, to the following instruments of the International Labour Organisation<sup>1</sup>:
  - (i) Convention No. 27, Marking of Weight (Packages Transported by Vessels), 1929;
  - (ii) Convention No. 152, Occupational Safety and Health (Dock Work), 1979;
  - (iii) Recommendation No.160, Occupational Safety and Health (Dock Work), 1979; and
  - (iv) ILO Code of Practice: Safety and Health in Dock Work.

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<sup>1</sup> Access to information on ILO can be gained at: <http://www.ilo.org>

It applies to ships to which the Navigation Act applies and includes foreign flag ships on international voyages while moored at NSW wharves.

Under this part a surveyor may prohibit use of defective equipment (whether ship or shore based) in use when loading or unloading a ship, or prohibit loading or unloading operations if considered unsafe. Penal provisions apply.

- ***Marine Orders Part 41:***

Gives effect to requirements under the International Convention for the Safety of Life at Sea (SOLAS) for the carriage of dangerous goods by sea, and to the International Maritime Dangerous Goods (IMDG) Code.

Dangerous goods for carriage by sea are to be packed, stowed and segregated in accordance with the requirements of the IMDG Code. AMSA is required to be notified of dangerous goods shipments and transshipments and any leakage or spillage of dangerous goods on a ship.

AMSA has powers under this Marine Order to prohibit loading of dangerous goods and to inspect ships and containers where there is an intention to load dangerous goods. AMSA has jurisdiction, and will respond to issues concerning the transport of dangerous goods while they are on board a ship.

- ***Marine Orders Part 42 & 44:***

Give effect to the International Convention for Safe Containers (Container Convention) and SOLAS requirements for cargo stowage and securing.

They require cargo to be loaded so as to avoid hazards to the vessel and crew, prohibit overloading of containers that are to be loaded onto ships, and require containers that are to be shipped to comply with the Container Convention.

3.3 AMSA (through the administration of the OHS (MI) Act), has jurisdiction over and will respond to health and safety issues in relation to personnel on prescribed ships under the OH&S (MI) Act. These are:

- ships registered in Australia;
- prescribed ships to which Part II of the *Navigation Act* applies;
- ships (other than the above) on which the majority of crew are residents of Australia and which are operated by persons or firms which have their principal place of business in Australia or are incorporated in Australia.

#### 4. **NAME Jurisdiction - General**

4.1 **NAME** administers legislation that may apply to shipping operations including:

- **RELEVANT LEGISLATION**

4.2 **NAME** through the administration of the **CURRENT DANGEROUS GOODS LEGISLATION** has jurisdiction over and will respond to issues concerning (except as provided in clause 4.3 below):

- dangerous goods on **STATE** wharves and up to the waters edge (ship's side);

- transfers of dangerous goods between ship and shore; and
- the transitory storage of dangerous goods while on shore.

- 4.3 In STATE Ports the relevant Port Authority is responsible in Port Operational Areas for administering Part No of the DANGEROUS GOODS LEGISLATION, preserved under clause No of Schedule No to the OHS Regulation.
- 4.4 NAME through the administration of the OHS LEGISLATION and supporting Regulations has jurisdiction over and will respond to workplace safety issues including:
- the health, safety and welfare of workers and other persons at STATE workplaces; and
  - the design, manufacture, and supply, of plant or substances for use at work at STATE workplaces.
- 4.5 NAME, through the administration of the EXPLOSIVES ACT and EXPLOSIVES REGULATION has jurisdiction over all issues concerning the handling of explosives and explosive precursors. Handling covers all aspects of explosives from manufacture, supply and transport through to end-use and is regulated via a comprehensive licensing system. Of particular relevance to this MOU are the NAME Licence to Import, Licence to Manufacture. Licence to Supply and Licence to Transport by Vessel.
- 4.6 The STATE OHS LEGISLATION and the EXPLOSIVES LEGISLATION empowers NAME Inspectors to monitor and enforce compliance with these Acts and to investigate incidents.
- 4.7 Ships' personnel working on STATE wharves (including those workers using mobile powered plant belonging to either the ship or STATE employers) are within the jurisdiction of NAME and NAME will respond to incidents concerning them.
- 4.8 For the purpose of this MOU STATE workplaces include ships which are not prescribed ships under the OHS(MI) Act, i.e. fishing vessels, ships under 24 metres (note: AMSA legislation may also apply to these ships), STATE State Government ships and pleasure crafts.

## **Part C – Cross Jurisdictional issues and Operational Arrangements**

### **5. Jurisdictional boundaries**

- 5.1 Given the shared legislative role in workplace safety, there may be instances where jurisdictional boundaries between NAME and AMSA are unclear, for example, some of the duties under the OH&S (MI) Act are similar to the STATE OHS Act. Another example is that jurisdictional issues may arise with respect to STATE-based contractors, generally covered by the STATE OHS Act, working on ships to which the OHS(MI)Act applies.
- 5.2 There are also a number of instances where jurisdiction may be unclear and a combined response from both AMSA and NAME may be appropriate. Incidents involving equipment failure often raise operational and maintenance issues which may require a combined response from AMSA and NAME.
- 5.3 Where the respective jurisdictions of AMSA and NAME are not clear, the party first contacted will:
- immediately notify the other party's emergency contact personnel (as listed in Schedule 1 "Contact Details");
  - respond to accidents/incidents notified to it to the extent necessary to ensure safety is not compromised, until jurisdiction is clarified; and
  - conduct investigations jointly if so agreed.
- 5.4 In any cross jurisdictional situation, inspectors considering the issue of either an improvement or prohibition notice will, where practicable, consult the other party to this MOU before taking such action. However, this MOU does not restrict the discretion of an inspector to issue such a notice.
- 5.5 Parties to this MOU will provide advice, assistance and exchange information (within the bounds permitted by law) to each other when requested to do so. If the assistance is to be of a prolonged nature a separate arrangement will be drawn up on a case-by-case basis.
- 5.6 The Protocol in Schedule 2 gives a non-exhaustive list of scenarios that illustrate the respective jurisdictions of each regulatory authority. It is provided to assist inspectors from both parties in understanding jurisdiction and the regulatory authority to notify in the event of an incident.

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

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

- 6.1 All AMSA and NAME officers involved in the investigation of incidents covered under this MOU will have access to this MOU.

- 6.2 NAME and AMSA agree to adopt and implement the “Operational Guidelines” contained in Schedule 3. The Guidelines may be amended or expanded by mutual agreement.
- 6.3 In the event of circumstances arising that are not covered by this MOU, both parties agree to consult each other to reach agreement on jurisdiction and action.
- 6.4 Subject to legislative restrictions regarding privacy or disclosure of information, reports resulting from investigations of incidents covered in this MOU will be made available to either party on request.
- 6.5 Each party undertakes to invite staff from the other party to participate in relevant training conducted by them.
- 6.6 It is agreed that this MOU will be reviewed at yearly intervals. Such review will take place as part of an annual collaborative forum between the senior managers of the parties. Contact details at Schedule 1, the scenarios in The Protocol in Schedule 2 and the Operational Guidelines in Schedule 3 will also be reviewed and amended at this time.
- 6.7 This MOU takes effect from the date of signing by both NAME and AMSA and will apply for a period of three years from this date. This MOU may be extended, varied or terminated at any time by exchange of letters between the parties.

## 7. Investigations and prosecutions

- 7.1 In the conduct of investigations, both parties agree to observe and comply with any Protocol that has been established between the parties.
- 7.2 The parties agree to provide advice and assistance to each other when requested to do so. In particular, so far as the policies of NAME and AMSA allow, in the event of:
- an inspection or investigation being conducted by either party, the other agrees to consider providing expert opinion as required; or
  - a prosecution being conducted by either party, the other agrees to consider providing expert witnesses in accordance with its internal policy.
- 7.3 The parties agree to notify each other of any proposed prosecution that occurs as a result of any workplace incident that is covered by this MOU and to consult with the other party and as far as possible take into account any views that the other party may have in relation to any such proposed course of action.
- 7.4 Nothing in this MOU:
- Entitles or requires a person to disclose information that is the subject of privacy or confidentiality legislative provisions, or of legal professional privilege; or
  - Affects the law or practice relating to legal professional privilege; or
  - Restricts the statutory duties, directions and powers available under legislation administered by either party, or the exercise of discretion by either AMSA or NAME in the exercise of those powers.

## Part E – Dispute Resolution

### 8. Dispute Resolution

- 8.1 If there is a dispute between the parties arising out of or related to this MOU or the Protocols the parties agree to follow any procedure that may be set out in any Protocol to resolve the dispute.
- 8.2 If there is no process contained in any Protocol to resolve a particular dispute the parties agree to:
- first, use their best endeavours and act in good faith to resolve the dispute;
  - second, if the parties cannot resolve the dispute within seven days of the commencement of negotiations, to refer the matter to officers who are nominated in Schedule 1 for resolution.

IN WITNESS TO THE ABOVE UNDERSTANDINGS, this Memorandum of Understanding is signed for and on behalf of:

| STATE AUTHORITY

\_\_\_\_\_

\_\_\_\_/\_\_\_\_/\_\_\_\_

| GENERAL MANAGER/CEO/DIRECTOR

Australian Maritime Safety Authority

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Graham Peachey  
Chief Executive Officer

**SCHEDULE 1**

**NAME Contact Details**

<b>Advisory Service –</b>
<b>After Hours Emergency Response –</b>

<b>OFFICE</b>	<b>CONTACT PHONE NO.</b>

**AMSA Contact Details for STATE**

	<b>WORK PHONE NO</b>	<b>HOME</b>	<b>MOBILE</b>	<b>FACSIMILE</b>

<b>AMSA Offices</b>		

**Dispute Resolution Officers:**

	<b>WORK PHONE NO</b>	<b>MOBILE</b>	<b>FACSIMILE</b>
<b><u>AMSA</u> Manager Ship Inspection (Alex Schultz- Altmann)</b>	<b>02 6279 5048</b>	<b>0407 204 137</b>	<b>02 6279 5058</b>
<b>General Manager Maritime Operations Division (Allan Schwartz)</b>	02 6279 5935	0418 236 223	02 6279 5071

## SCHEDULE 2 - PROTOCOL

Area of Application	<u>NAME</u>	AMSA	Notify <u>NAME</u> / AMSA	Examples
1. Incidents involving ship's personnel working on <u>STATE</u> wharves	Full jurisdiction	Assist by providing information from or supplied by the ship if requested by <u>NAME</u>	<u>NAME</u> and AMSA	Ships crew members undertaking routine maintenance of ships hull ie: painting, Vessel wash downs.  Or Ships crew members and Providedores undertaking the loading or unloading of ships stores and equipment from the wharf.  Also includes ships agents, providedores and contractors
2. Incidents involving ship's personnel onboard ships subject to the Navigation Act but not the OHSMI Act	Not applicable unless <u>STATE</u> OHS Act applies	Full jurisdiction	AMSA	Examples are foreign flagged ships operating on international or interstate voyages
3. Incidents involving ship's personnel onboard ships subject to the Navigation Act and the OHSMI Act	Not applicable	Full jurisdiction	AMSA	Examples are Australian flagged ships operating on international or interstate voyages
4. Incidents involving ship's personnel onboard ships subject to the NSW OHS Act but not the Navigation Act	Full jurisdiction	Not applicable	<u>NAME</u>	
5. Incidents involving <u>STATE</u> based contractors undertaking work onboard ships and who are under the control of a <u>STATE</u> based company. (Including but not restricted to stevedores/waterside workers, and ship repairers under the control of a ship yard)	Full jurisdiction	Assist by providing information from or supplied by the ship if requested by <u>NAME</u>  Under Marine Orders 32 AMSA has the power to prevent cargo gear and equipment being used and can stop an unsafe loading/unloading operation	Both. AMSA under MO32 and <u>NAME</u> for operational issues	Examples could include - Ships Pilots
6. Incidents involving <u>STATE</u> based contractors undertaking work onboard ships under the control of ship's staff (Including, but not restricted to engineering/electrical contractors)	Full jurisdiction if the OHS(MI) Act does not apply  (Example: Foreign ships and fishing vessels in intra-State or inter-State trade)	Full jurisdiction if the OHS(MI) Act applies <sup>2</sup>  If not, assist by providing information from or supplied by the ship if requested by <u>NAME</u>  (Example: Australian ships)	AMSA and <u>NAME</u> Jurisdiction is not usually obvious. Both AMSA and <u>NAME</u> will respond or arrange a mutually acceptable response.	Contractor undertaking maintenance of refrigerated containers at the request of the shipping line.  Or Contractors undertaking maintenance of vessel or equipment at the request of the shipping line

Area of Application	<u>NAME</u>	AMSA	Notify <u>NAME</u> / AMSA	Examples
7. Incidents involving the physical failure of a piece of equipment used in loading or unloading a ship	Jurisdiction for items such as shore cranes and mechanical handling equipment	Jurisdiction under MO 32 for ship's and shore loading and unloading equipment	Usually both except where jurisdiction is clear	
8. Roll-On Roll-Off processes involving either ship's crew or shore based employees up to the ramp of the ship.	Full jurisdiction	Assist by providing information from or supplied by the ship if requested by <u>NAME</u>	<u>NAME</u>	Any incident involving all types of machinery being driven or moved on / off Ro-Ro ie: cars, earthmoving equipment, forklifts
9. Roll-On Roll-Off processes involving ship's crew once on board the ship.	AMSA request assistance via advice eg forklift knowledge	Full jurisdiction <sup>3</sup>	AMSA	Incident during the lashing of vehicles or other cargo onboard a vessel or injury as the result of load unload operations
10. Ship's personnel or shore personnel working on wharves using a mechanical stowing appliance (a wheeled or tracked vehicle designed to move cargo as defined in Marine Orders Part 32) belonging to either the ship or <u>STATE</u> employers.	Full jurisdiction	Assist by providing information from or supplied by the ship if requested by <u>NAME</u>	<u>NAME</u>	Persons undertaking the loading or unloading of cargo and equipment using a shore based mobile crane, bobcats, front end loader or other machinery
11. Ship's personnel working on ships using a mechanical stowing appliance belonging to the ship.	AMSA may request advice	Full jurisdiction <sup>3</sup>	AMSA	
12. Shore personnel working on ships using a mechanical stowing appliance belonging to the ship.	Joint jurisdiction	Joint jurisdiction <sup>3</sup>	AMSA and <u>NAME</u>	Shore personnel using a ship mounted crane
13. Ship's personnel working on ships using a mechanical stowing appliance belonging to the shore establishment.	Joint jurisdiction AMSA to lead	Joint jurisdiction <sup>3</sup>	AMSA and <u>NAME</u>	Incident involving ships crew member using stevedore small fork, dozer or skid steers.
14. Shore personnel working on ships using a mechanical stowing appliance belonging to the shore establishment.	Full jurisdiction	Not applicable	<u>NAME</u>	Shore personnel using an excavator or similar plant that has been lifted by crane in to the hold.
15. Incidents involving ship's cranes and ships or shore cargo gear when attached to ship's cranes.	Joint jurisdiction AMSA to lead	Joint jurisdiction <sup>3</sup>	AMSA and <u>NAME</u>	Ships crane with attachment such as shore owned spreader bar or lifting gear
16. Incidents involving shore based plant (e.g. a gantry crane) operating over the ship.	Full jurisdiction	Not applicable	<u>NAME</u>	
17. Incidents involving ship's cranes operated by ship's personnel	Not applicable	Full jurisdiction <sup>3</sup>	AMSA	Incidents including derrick cranes and other ship based cranes
18. Incidents involving ship's cranes operated by shore personnel	Joint jurisdiction AMSA to lead	Joint jurisdiction <sup>3</sup>	AMSA and <u>NAME</u>	
19. Incidents involving shore cranes operated by shore personnel	Full jurisdiction	Not applicable	<u>NAME</u>	

<sup>2</sup>: The OH&S (MI) Act broadly speaking applies to Australian operated ships to which the Navigation Act applies.

<sup>3</sup>: If the vessel is subject to the Navigation Act.

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## SCHEDULE 3

### Operational Guidelines

**AMSA** is the Commonwealth regulatory authority responsible for inspectorate functions under the Occupational Health and Safety (Maritime Industry) Act 1993. AMSA is also responsible for administering Commonwealth legislation including;

- the *Navigation Act 1912*;
- Protection of the Sea legislation; and
- Regulations pursuant to those Acts.

**NAME** is the regulatory authority in **STATE** and is responsible for administering the following state legislation relevant to ports:

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#### Responsibilities

**AMSA** has jurisdiction and will respond to issues concerning:

- the transport of dangerous goods in accordance with Marine Orders Part 41;
- ship to ship transfers of dangerous goods at sea or in port over water; and
- occupational health and safety of personnel on:
  - ships registered in Australia;
  - ships not registered in Australia engaged in the coasting trade;
  - ships (other than the above) on which the majority of crew are residents of Australia and which are operated by persons or firms which have their principal place of business in Australia or are incorporated in Australia.

**NAME** has jurisdiction over and will respond to issues concerning:

- dangerous goods on **STATE** wharves and up to the waters edge (ship's side);
- transfers of dangerous goods between ship and shore;
- the transitory storage of dangerous goods while on shore;
- the health, safety and welfare of workers and others at **STATE** workplaces;
- the design, manufacture, and supply, of plant or substances for use at work at New **STATE** workplaces;
- ship's personnel working on **STATE** wharves (including those workers using plant belonging to either the ship or **STATE** employers); and
- the handling of explosives and explosive precursors.

#### Cross jurisdictional issues

There are a number of instances where jurisdictional responsibilities will overlap. The list at The Protocol is not exhaustive but it is indicative.

**NAME** will respond to accidents/incidents involving:

- ship's personnel working on **STATE** wharves; and
- ship's personnel working on wharves using plant belonging to either ship or **STATE** employers.

**AMSA** will respond to accidents/incidents involving:

- ship's personnel working on ships.

Persons employed by or contracted to employers operating in STATE working on board ships moored at STATE wharves or in STATE waters can be either within STATE or Commonwealth jurisdiction, depending on circumstances specific to the work that is being carried out.

- NAME inspectors will respond to incidents notified to it and notify AMSA, which will respond to any matters covered under Commonwealth legislation.
  - AMSA will provide technical advice and assistance to NAME inspectors responding to an incident involving shore-based workers on a ship.
  - When notified of an incident that may involve the other jurisdiction, each regulatory authority will notify the other, subject to privacy and confidentiality requirements.
  - Where a regulatory authority has responded to incident then changes its view that the incident does or does not fall within its jurisdiction, that regulatory authority will consult the other regulatory authority prior to taking any action based on its changed view on jurisdiction.
-