

MEMORANDUM OF UNDERSTANDING

Between

SAFework SA

AND

**AUSTRALIAN MARITIME
SAFETY AUTHORITY**

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Part A - Introduction

1. Purpose

- 1.1 This Memorandum of Understanding (MOU) between the SafeWork SA (SWSA) and the Australian Maritime Safety Authority (AMSA) (the parties) concerns safety in and around South Australian maritime workplaces.
- 1.2 It addresses the jurisdiction of SWSA under the *Work Health and Safety Act 2012 (SA) (WHS Act)*, and AMSA under the *Navigation Act 2012 (Cth)* (Navigation Act) and the *Occupational Health and Safety (Maritime Industry) Act 1993 (Cth)* (OHS(MI) Act).
- 1.3 This MOU sets out the guidelines under which SWSA and AMSA will respond to health and safety issues on vessels and wharves in South Australia. The MOU also separates work applications of the two parties, where this is possible. This MOU does not specifically address matters relating to Domestic Commercial Vessels regulated by the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (Cth)*, other than to the degree that those vessels fall within the ambit of the OHS(MI) Act.
- 1.4 The *WHS Act 2012* establishes SWSA as the regulatory authority in South Australia responsible for administering the *WHS Act and Regulations*, *Dangerous Substances Act 1979* and *Regulations 2002* and *Explosives Act 1936* and *Regulations 2011 Explosives (Security Sensitive Substances) Regulations 2006*, and *Explosives (Fireworks) Regulations 2001*.
- 1.5 SWSA's objective is to provide safe, fair and productive working lives and high standards of public safety.
- 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 2012 (Cth)*, 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 SWSA and AMSA hereby establish this MOU, including a jurisdictional matrix and related co-operative arrangements (See Schedule 2).
- 1.9 SWSA and AMSA acknowledge that nothing in this MOU can affect respective statutory duties, discretions and powers under relevant legislation.

Whilst the parties shall as far as possible follow the procedures set out in this MOU; and take whatever measures are necessary to ensure that the officers of the parties are aware of the terms of this MOU and comply with the terms of this MOU; the MOU does not have legally binding effect.

2. Definitions for the purpose of this MOU

“incident” means an incident that must be reported to a relevant regulatory authority under its respective legislation

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

“plant” includes:

- any machinery, equipment, appliance, container, implement and tool; and
- any component of any of those things; and
- anything fitted or connected to any of those things

“regulatory authority” means AMSA and/or SWSA

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

“vessel” as defined in the *Navigation Act 2012* means any kind of vessel used in navigation by water, however propelled or moved, and includes the following:

a barge, lighter or other floating craft; and an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water

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

Part B – Scope of Respective Legislation

3. AMSA Jurisdiction - General

3.1 AMSA administers legislation that applies to vessel operations including:

- *OHS(MI) Act* - performance-based legislation, applicable (in general terms) to Australian-registered vessels travelling internationally or between the States, or declared into such coverage.
- *Navigation Act* - generally applies to Australian vessels on international voyages or certified to travel on such voyages.
- *The Navigation Act* gives effect to many international conventions to which Australia is a signatory or which Australia has tacitly accepted. This includes resolutions by the International Maritime Organization (IMO) and the International Labour Organization (ILO) Convention.
- Delegated legislation made under the *Navigation Act* (Marine Orders) gives effect to much of the Act's intent.

3.2 The Marine Orders that deal with areas that may be relevant to this MOU are outlined below.

- ***Marine Order 11 (Living and working conditions on vessels) 2013:***
This Order provides for the following matters for seafarers on board vessels:
 - a) working conditions;
 - b) provisions;
 - c) medical care and supplies;
 - d) accommodation;
 - e) sanitary facilities;
 - f) hospitals; and
 - g) repatriation.
- ***Marine Order 17 (Liquefied gas carriers and chemical tankers) 2006:***
Gives effect to the international codes for chemical and liquefied gas tankers. AMSA has jurisdiction, and will respond to issues concerning the vessel to vessel 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 Order 21 (Safety of navigation and emergency procedures) 2012:***
Contains the requirements for safe access to vessels to which the *Navigation Act* applies.
- ***Marine Order 32 (Cargo handling equipment) 2011:***
Gives effect, in whole or in part, to the following instruments of the ILO¹:

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

- a) Convention No. 27, Marking of Weight (Packages Transported by Vessels), 1929;
- b) Convention No. 152, Occupational Safety and Health (Dock Work), 1979;
- c) Recommendation No. 160, Occupational Safety and Health (Dock Work), 1979; and
- d) ILO Code of Practice: Safety and Health in Dock Work.

It applies to vessels to which the *Navigation Act* applies and includes foreign flag vessels on international voyages while moored at South Australian wharves.

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

- ***Marine Order 41 (Carriage of dangerous goods) 2009:***
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 vessel.

AMSA has powers under this Marine Order to prohibit loading of dangerous goods and to inspect vessels 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 vessel.

- ***Marine Order 42 (Cargo stowage and securing) 2003 & Marine Order 44 (Safe containers) 2002:***
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 vessels, 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 *OHS(MI) Act* that are engaged in trade or commerce on either international or interstate voyages. A prescribed ship is, in general terms, namely:

- a ship registered in Australia;

- a ship engaged in coastal trading under a general licence within the meaning of the *Coastal Trading (Revitalised Australian Shipping) Act 2012*;
- a 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; or
- a ship declared by the Minister to be a prescribed ship

4. SWSA Jurisdiction - General

- 4.1 The legislation that SWSA administers that may apply to shipping operations includes::
- *Work Health and Safety Act 2012*
 - *Work Health and Safety Regulations 2012* ;
 - *Dangerous Substances Act 1979*;
 - *Dangerous Substances Regulations 2002*;
 - *Explosives Act 1936*; and
 - *Explosives Regulations 2011*
 - *Explosives (Security Sensitive Substances) Regulations 2006*
 - *Explosives (Fireworks) Regulations 2001*
- 4.2 SWSA through the administration of the *WHS Act* and associated Regulations has jurisdiction over and will respond to issues concerning:
- the health and safety of workers in South Australian workplaces; and
 - the health and safety of persons affected by work activity in a South Australian workplace;
 - the design, construction, manufacture, import, supply, installation, erection, alteration, maintenance, repair and use of plant in South Australian workplaces.
- 4.3 The *WHS Act* empowers SWSA Inspectors to monitor and enforce compliance with the Act at a workplace and to investigate workplace incidents.
- 4.4 SWSA through the administration of the *Dangerous Substances Act 1979* and associated Regulations has jurisdiction over and will respond to issues concerning:
- dangerous goods on South Australian wharves and up to the water's edge (ship's side);
 - transfers of dangerous goods between ship and shore; and
 - the transitory storage of dangerous goods while on shore.
- 4.5 SWSA also administers the Explosives legislation which has effect within South Australian waters.
- 4.6 Ships' personnel working on South Australian wharves (including those workers using mobile powered plant belonging to either the ship or South Australian owner) are within the jurisdiction of SWSA and SWSA will respond to such incidents.

- 4.7 For the purpose of this MOU South Australian workplaces include vessels which are not prescribed ships under the *OHS(MI) Act*. For example, fishing vessels, vessels operating solely within South Australia, State Government vessels and pleasure craft.

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 SWSA and AMSA are unclear, for example, some of the duties under the *OHS(MI) Act* are similar to the WHS Act. Another example is that jurisdictional issues may arise with respect to South Australian-based contractors, generally covered by the WHS Act, working on vessels 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 SWSA may be appropriate. For example, incidents involving equipment failure often raise operational and maintenance issues which may require a combined response.
- 5.3 Where the respective jurisdictions of AMSA and SWSA 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 incidents notified to it to the extent necessary to secure safety is not compromised, until jurisdiction is clarified; and
 - conduct investigations jointly if so required.
- 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 (as permitted by law) to each other when requested to do so. If the assistance is to be of a prolonged nature a separate agreement will be drawn up on a case-by-case basis.
- 5.6 The jurisdictional matrix 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 respective jurisdictions 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 SWSA officers involved in the investigation of incidents covered under this MOU will have access to this MOU. A copy of this MOU may also be made publicly available.
- 6.2 SWSA 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 Representatives of the parties will endeavour to meet once per annum to review relevant maritime safety issues, including the implementation of this MOU and any updates required to the MOU or its Schedules.
- 6.5 Each party undertakes to invite staff from the other party to participate in relevant training conducted by them.
- 6.6 This MOU takes effect from the date of signing by both SWSA 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. Information sharing, privacy and confidential information

- 7.1 The parties agree, where legally permitted, to share information relevant to each party undertaking its legal obligations. This includes the sharing of information and/or reports resulting from investigations of incidents covered in this MOU.
- 7.2 Each party will take all reasonable steps to ensure that it complies with all legal, policy and administrative requirements which apply to the disclosure and protection of information.
- 7.3 Unless required by law, a party receiving confidential or personal information under this MOU will not disclose that information to a third party without obtaining the prior written consent of the party that originally supplied the information.

8. Investigations and prosecutions

- 8.1 In the conduct of investigations, both parties agree to observe and comply with any protocol that has been established between the parties.
- 8.2 The parties agree to provide advice and assistance to each other when requested to do so. In particular, as far as the policies of SWSA 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 available expert witnesses in accordance with its internal policy.
- 8.3 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.
- 8.4 Nothing in this MOU:
- entitles or requires a person to disclose information that is the subject 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 SWSA in the exercise of those powers.

Part E – Dispute Resolution

9. Dispute Resolution

9.1 If there is a dispute between the parties arising out of or related to this MOU, the parties agree to follow any procedure that may be set out in the Schedules to resolve the dispute. They agree to:

- first, use their best endeavours and act in good faith to resolve the dispute; and
- 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:

SafeWork SA



Bryan Russell
Executive Director

28 / 10 / 14.

Australian Maritime Safety Authority



Mick Kinley
Acting Chief Executive Officer

19 / 11 / 14.

SCHEDULE 1- CONTACTS

SafeWork SA Contact Details

For accidents and incidents, including afterhours emergency response, please contact the SWSA on 1800 777 209.

SafeWork SA Head Office
World Park A Level 4, 33 Richmond Road Keswick SA 5034

Australian Maritime Safety Authority Contact Details

For after hours emergency response, please contact the Rescue Coordination Centre (RCC) on 1800 641 792 (maritime)

Australian Maritime Safety Authority Offices Head Office
82 Northbourne Avenue Braddon ACT 2612 GPO Box 2181 Canberra ACT 2601 Phone: (02) 6279 5000 Fax: (02) 6279 5950
Adelaide
Level 2 Customs House 220 Commercial Road Port Adelaide SA 5015 Australia PO Box 3245 Port Adelaide SA 5015 Australia Phone: (08) 8440 3800 Fax: (08) 8447 3855

Dispute Resolution Officers:

SafeWork SA

Manager Policy and Liaison.

World Park A
33 Richmond Road
Keswick SA 5034

Phone: (08) 8463 4974

Fax: (08) 8303 0411

Australia Maritime Safety Authority

General Manager, Ship Safety Division

c/o AMSA Head Office
82 Northbourne Avenue
Braddon ACT 2612

Phone: (02) 6279 5935

Fax: (02) 6279 5607

SCHEDULE 2 – JURISDICTIONAL MATRIX

Area of Application	SWSA	AMSA	Notify SWSA/ AMSA	Examples
1. Incidents involving vessel's personnel working on South Australian wharves	Full jurisdiction	Assist by providing information from or supplied by the vessel if requested by SWSA	SWSA and AMSA	Vessels 'crew members undertaking routine maintenance of vessels' hull (e.g. painting, vessel wash downs) Or Vessels' crew members and providedores undertaking the loading or unloading of vessels' stores and equipment from the wharf Also includes vessel agents, providedores and contractors
2. Incidents involving vessel's personnel onboard vessels subject to the <i>Navigation Act</i> but not the <i>OHS(MI) Act</i>	Not applicable unless <i>WHS Act</i> applies	Full jurisdiction	AMSA	Examples are foreign flagged vessels operating on international or interstate voyages
3. Incidents involving vessel's personnel onboard vessels subject to the <i>Navigation Act</i> and the <i>OHS(MI) Act</i>	Not applicable	Full jurisdiction	AMSA	Examples are Australian flagged vessels operating on international or interstate voyages
4. Incidents involving vessel's personnel onboard vessels subject to the <i>WHS Act</i> but not the <i>Navigation Act</i>	Full jurisdiction	Not applicable	SWSA	Examples are Australian flagged vessels operating only on intrastate voyages (e.g. within South Australia)
5. Incidents involving South Australian based contractors undertaking work onboard vessels and who are under the control of a South Australian based company (including but not restricted to stevedores/waterside workers, and vessel repairers under the control of a shipyard)	Full jurisdiction	Assist by providing information from or supplied by the vessel if requested by SWSA Under Marine Order 32, AMSA has the power to prevent cargo gear and equipment being used and can stop an unsafe loading/unloading	AMSA (under Marine Order 32) and SWSA (operational issues)	Examples could include - Vessels' Pilots

Area of Application	SWSA	AMSA	Notify SWSA/ AMSA	Examples
		operation		
6. Incidents involving South Australian based contractors undertaking work onboard vessels under the control of vessel's staff (including, but not restricted to engineering/electrical contractors)	Full jurisdiction if the <i>OHS(MI) Act</i> does not apply (Example: Fishing vessels, operating solely in South Australia)	Full jurisdiction if the <i>OHS(MI) Act</i> applies ² If not, assist by providing information from or supplied by the ship if requested by SWSA (Example: Australian vessels on international voyages)	AMSA and SWSA Jurisdiction is not usually obvious. Both AMSA and SWSA 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
7. Incidents involving the physical failure of a piece of equipment used in loading or unloading a vessel	Jurisdiction for items such as shore cranes and mechanical handling equipment	Jurisdiction under Marine Order 32 for vessel's and shore loading and unloading equipment	Usually both except where jurisdiction is clear	
8. Roll-On Roll-Off processes involving either vessel's crew or shore based employees up to the ramp of the vessel	Full jurisdiction	Assist by providing information from or supplied by the vessel if requested by SWSA	SWSA	Any incident involving all types of machinery being driven or moved on / off Ro-Ro(e.g. cars, earthmoving equipment, forklifts)
9. Roll-On Roll-Off processes involving vessel's crew once on board the vessel	AMSA may request advice (Example: forklift knowledge)	Full jurisdiction ³	AMSA	Incident during the lashing of vehicles or other cargo onboard a vessel or injury as the result of loading or unloading operations
10. Vessel'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 Order 32) belonging to either the vessel or South Australian employers	Full jurisdiction	Assist by providing information from or supplied by the vessel if requested by SWSA	SWSA	Persons undertaking the loading or unloading of cargo and equipment using a shore based mobile crane, bobcats, front end loader or other machinery
11. Vessel's personnel working on vessels using a mechanical stowing appliance belonging to the vessel	AMSA may request advice	Full jurisdiction ³	AMSA	

Area of Application	SWSA	AMSA	Notify SWSA/ AMSA	Examples
12. Shore personnel working on vessels using a mechanical stowing appliance belonging to the vessel	Joint jurisdiction	Joint jurisdiction ³	AMSA and SWSA	Shore personnel using a vessel mounted crane
13. Vessel's personnel working on ships using a mechanical stowing appliance belonging to the shore establishment	Joint jurisdiction AMSA to lead	Joint jurisdiction ³	AMSA and SWSA	Incident involving vessel's crew member using stevedore small fork, dozer or skid steers
14. Shore personnel working on vessels using a mechanical stowing appliance belonging to the shore establishment	Full jurisdiction	Not applicable	SWSA	Shore personnel using an excavator or similar plant that has been lifted by crane in to the hold.
15. Incidents involving vessel's cranes and vessels or shore cargo gear when attached to vessel's cranes	Joint jurisdiction - AMSA to lead	Joint jurisdiction ³	AMSA and SWSA	Vessel's 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 vessel	Full jurisdiction	Not applicable	SWSA	
17. Incidents involving vessel's cranes operated by vessel's personnel	Joint jurisdiction. AMSA to lead	Full jurisdiction ³	AMSA	Incidents including derrick cranes and other vessel based cranes
18. Incidents involving vessel's cranes operated by shore personnel	Joint jurisdiction	Joint jurisdiction ³	AMSA and SWSA	
19. Incidents involving shore cranes operated by shore personnel	Full jurisdiction	Not applicable	SWSA	

² The *OHS(MI) Act* generally applies to Australian operated vessels subject to the *Navigation Act*.

³ If the vessel is subject to the *Navigation Act*.