

MEMORANDUM OF UNDERSTANDING

[about shared responsibility for the undertaking of maritime inspections and consequential compliance actions as required by the Maritime Labour Convention 2006]

Between

AUSTRALIAN MARITIME SAFETY AUTHORITY

and

THE OFFICE OF THE FAIR WORK OMBUDSMAN

1. THE PARTIES

1.1 This Memorandum of Understanding (MOU) is made between the following parties:

- The **Australian Maritime Safety Authority** (“AMSA”); and
- The **Office of the Fair Work Ombudsman** (“FWO”)

collectively, **the Agencies**..

2. DESCRIPTION OF THE PARTIES

1.1 **AMSA** is a Commonwealth agency, created by the *Australian Maritime Safety Authority Act 1990*. AMSA has primary functions relating to maritime safety, protection of the marine environment and maritime and aviation search and rescue.

2.2 The **FWO** is an agency of the Australian Government established under the *Fair Work Act 2009* consisting of the statutorily appointed Fair Work Ombudsman, the Office's staff and Fair Work Inspectors. The FWO is responsible for providing education, assistance and advice about the Commonwealth workplace relations system. The FWO is also responsible for impartially enforcing compliance with the *Fair Work Act 2009* and fair work instruments.

3. PURPOSE AND EFFECT OF THE MOU

3.1 The purpose of this MOU is to set out the Agencies' understanding of the arrangements to successfully discharge their respective responsibilities flowing from the Australian Government's ratification and subsequent entry into force of the *Maritime Labour Convention 2006 (MLC)*.

3.2 AMSA and the FWO acknowledge that this MOU is not legally binding and is not intended to give rise to legally enforceable rights or obligations between the parties.

3.3 The MOU establishes a system of shared responsibility for the undertaking of maritime inspections and consequential compliance actions as required by the MLC.

4. THE MARITIME LABOUR CONVENTION 2006

4.1 The MLC is an international convention developed by the United Nation's International Labour Organization (ILO) in order to protect the rights of seafarers worldwide. It came into force internationally on 20 August 2013.

4.2 The MLC consolidates a number of existing maritime labour standards into a single instrument. The MLC incorporates the principles governing other international labour conventions relating to the rights, freedoms, safety and employment conditions of all seafarers at sea.

4.3 In Australia, the MLC has been implemented primarily through the *Navigation Act 2012*

and associated delegated legislation, such as *Marine Order 11 (Living and working conditions on vessels) 2015*.

- 4.4 AMSA is the competent authority for regulating compliance with the MLC. However, many of the minimum workplace relations requirements of the MLC are provided for under Australian law by the *Fair Work Act 2009* and related instruments where applicable. The FWO has a compliance role in respect of the jurisdiction of the *Fair Work Act 2009* where it overlaps with the MLC.

5. MARITIME INSPECTIONS TO BE CONDUCTED BY AMSA

- 5.1 Regulation 5.1.4 of the MLC provides that member states are to verify compliance with the MLC, as implemented by national laws and regulations, by ships that fly its flag through inspections to be conducted in intervals not exceeding three years.
- 5.2 Regulation 5.2.1 of the MLC provides that member states may inspect every foreign ship calling in the port of the member for compliance with the MLC.
- 5.3 The aforementioned inspections will be conducted by AMSA. The inspections may include aspects of the MLC that are regulated by the *Fair Work Act 2009* and related instruments, as detailed in section 8 below.
- 5.4 Where AMSA inspectors, in the course of conducting inspections establish prima facie evidence of breaches of the *Fair Work Act 2009*, the matter will be referred to the FWO for further investigation and compliance action where appropriate.
- 5.5 AMSA will maintain responsibility for all other aspects of MLC compliance.

6. FWO TO PROVIDE TRAINING AND ASSISTANCE TO AMSA INSPECTORS

- 6.1 To facilitate the referrals outlined above, the FWO will provide inspector training to AMSA inspectors in the identification of possible non-compliance with the *Fair Work Act 2009* and related instruments.
- 6.2 Further training for newly appointed AMSA inspectors will be provided on a needs basis at the Agencies' discretion. The location of the training will be agreed between the Agencies having regard to the location of appointed AMSA inspectors.
- 6.3 The FWO will provide ongoing assistance to AMSA through the provision of information and advice on an as-needs basis or as identified under the arrangements detailed in section 9.1 and/or 10.

7. FINANCE

- 7.1 The parties will bear their own costs incurred in complying with this MOU.

8. MATTERS TO BE REFERRED

8.1 In addition to matters that fall within paragraph 5.4 above, where AMSA is unable to resolve a suspected wages breach through their normal inspection processes, *Fair Work Act 2009* breaches will be referred to the FWO. Matters that will be referred to the FWO include:

- where time and wage records indicate a potential breach of the *Fair Work Act 2009* or related instrument; or
- where a complaint is made by an employee of a ship in relation to entitlements prescribed by the *Fair Work Act 2009*, or related instrument, or where evidence is furnished to AMSA by a third party of a breach of the *Fair Work Act 2009*, or related instrument.

8.2 The FWO will refer to AMSA matters that relate to general MLC compliance of which it becomes aware as a result of its compliance activities.

Foreign flagged ships

8.3 In respect of foreign flagged ships, only ships that are 'majority Australian crewed' (as defined by the *Fair Work Regulations 2009*), or those licensed under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* are subject to the jurisdiction of the *Fair Work Act 2009*. For those licensed ships, the *Fair Work Act 2009* only has application during the operation of the relevant licence. Accordingly, suspected cases of non-compliance with the *Fair Work Act 2009* in respect of time and wages matters on 'majority Australian crewed' or licensed foreign ships will be referred to the FWO.

8.4 Time and wages breaches on non-licensed foreign flagged ships that are not 'majority Australian crewed' cannot be referred to the FWO for compliance action. These matters will be addressed as part of general MLC compliance and these ships are within AMSA jurisdiction for this purpose.

Australian ships on the General Register

8.5 The industrial instruments within the FWO's jurisdiction that may apply to Australian General Register ships (and some licensed ships) can vary. Training will be provided by the FWO in the identification of suspected cases of non-compliance and any suspected non-compliance with these instruments is to be referred to the FWO, as per clause 9 of this MOU.

Australian ships on the Australian International Shipping Register

8.6 Ships registered on this register are ships predominately engaged in international trading. When engaged in international trading, the FWO's jurisdiction is excluded and the monitoring of compliance with wages and other conditions falls wholly within AMSA's jurisdiction. However, should the vessel cease to be engaged in international trading for any period of time, the *Fair Work Act 2009* may apply and any non-compliance should be referred to the FWO.

9. REFERRAL PROTOCOL

- 9.1 A representative from each Agency will be appointed as the Delegate for discussion of operational matters relating to MLC inspections. Each Agency will endeavour to ensure that this channel is used to facilitate all regular discussion between the Agencies and the sharing of information relating to operational matters arising from the MLC inspections.
- 9.2 If a matter is referred between the Agencies, the Agencies undertake to keep each other informed about the progress of any investigation, as appropriate in the circumstances.
- 9.3 The Agencies remain bound by applicable legislative and general disclosure obligations, including the *Privacy Act 1988*. The Agencies will take all reasonable measures to comply with their respective legislative and other disclosure obligations and to protect information supplied under this MOU from unauthorised use or disclosure to third parties.
- 9.4 Where appropriate, the Agencies will work co-operatively in the course of carrying out their respective functions.

10. COMMENCEMENT, VARIATION AND DURATION

- 10.1 This MOU will come into effect when both parties have signed the document. If the parties sign the document on different dates, the MOU will be effective on the later of the two dates. It will remain in place for three years thereafter, unless terminated in accordance with clauses 10.3 and 10.4.
- 10.2 The parties may vary this MOU at any time by written agreement between the Delegates.
- 10.3 The MOU may be terminated at any time by mutual consent, or by either party upon giving the other thirty days' notice in writing.
- 10.4 This MOU will remain in force unless otherwise terminated in accordance with clause 10.3.

11. REVIEW OF THIS MOU

- 11.1 The Agencies will keep the operation of this MOU under periodic review and will consult with each other through the Delegates with a view to improving its operation and resolving any matters which may arise.
- 11.2 On or shortly before the third anniversary of the date of this MOU, representatives of the Agencies will review the flow of information between the Agencies and consider, if appropriate, amendment to this MOU. Additional areas for cooperation between the Agencies will also be considered at this time.
- 11.3 Any amendment is to be agreed in writing between the Agencies and will come into effect on the date agreed for that purpose.

12. CONTACT OFFICERS

12.1 All formal communication relating to this MOU is to be addressed and sent to:

For AMSA: Seafarer Welfare Coordinator - mlc@amsa.gov.au or (02) 6279 5000

For FWO: Maritime@fwo.gov.au

13. DISPUTE RESOLUTION

13.1 The parties will meet and discuss any disputes that arise in relation to matters under this MOU and endeavour to resolve the dispute by direct negotiation in good faith and the spirit of cooperation.

13.2 Resolution of disputes should be managed by the functional area affected in the first instance.

13.3 Each party will ensure it has appropriate mechanisms in place for raising disputes to higher levels of management in the event that disputes are not resolved at functional levels.

13.4 If functional level discussions fail to resolve the dispute, the matter will be notified with the Executive Director, Compliance & Enforcement of FWO and the Chief Executive Officer of AMSA for further direction.

14. EXECUTION

14.1 This MOU becomes effective when signed by the FWO and the Chief Executive Officer of AMSA.

SIGNATURES

SIGNED for and on behalf of the Fair Work
Ombudsman

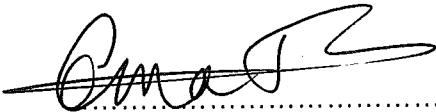


.....
Louise Peters, Executive Director (A/g) –
Strategic Engagement & Stakeholder
Relations

6.12.18.

.....
Date of signature

In the presence of:

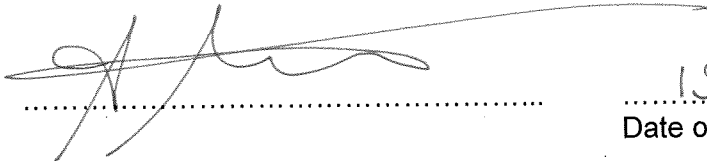


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Name:
Signature of Witness

6/12/18

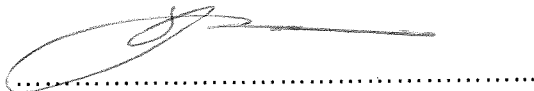
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Date of signature

SIGNED for and on behalf of the Australian
Maritime Safety Authority



.....
19/12/2018
Date of signature

In the presence of:



.....
Name: Sono Zasso
Signature of Witness

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19.12.18
Date of signature

