

# **Memorandum of Understanding**

**between the**

**Department of Justice  
and Attorney-General**

**and the**

**Department of Transport  
and Main Roads**

June 2010

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## Part 1 - Introduction

### Legislative scope

This Memorandum of Understanding applies to all ships to the extent the ship and activities carried out on the ship are regulated by the following relevant legislation:

- *Transport Operations (Maritime Safety) Act 1994*;
- *Workplace Health and Safety Act 1995*; and
- *Electrical Safety Act 2002*.

### Definitions

Terms used in this Memorandum of Understanding take their meaning from the relevant legislation.

## Part 2 – Responsible departments

At the commencement of this Memorandum of Understanding, the Queensland Departments that regulate safety on ships are:

- Department of Transport and Main Roads, through the agency of Maritime Safety Queensland; and
- Department of Justice and Attorney-General, through the agencies of Workplace Health and Safety Queensland and the Electrical Safety Office.

The Queensland Police Service (QPS) Water Police and Department of Primary Industries and Fisheries Boating & Fisheries Patrol Officers are appointed as Shipping Inspectors. A small number of Local or State Government Officers are appointed as Shipping Inspectors (with restricted powers). These officers and their organisations deliver compliance services on behalf of Maritime Safety Queensland and are not responsible to the Queensland Parliament for the above Acts. The Queensland Water Police are required to investigate certain matters under other Queensland Acts or may do so at the request of the Coroner or Maritime Safety Queensland.

This Memorandum of Understanding has been prepared at the agency level within the responsible departments. If a responsible department changes due to portfolio reassignment or redistribution, there should be negligible effect on the operation of the Memorandum of Understanding. That is, Machinery of Government changes do not void the Memorandum of Understanding or automatically necessitate renegotiation. Such changes will be incorporated at the time of the scheduled review.

### Maritime Safety Queensland, Department of Transport and Main Roads

Maritime Safety Queensland's mission is to manage the safe and environmentally sustainable movement of vessels using Queensland's waterways. Maritime Safety Queensland has three key outcome areas:

- safety of vessels and their operation;
- safety of vessel movements; and
- safety of the environment through the prevention of marine pollution.

#### Key outcome area – *Safety of vessels and their operation*

- Outcome – **safety of vessels**: refers to the appropriateness of the vessel accounting for the integrity of the vessel, its equipment and operating procedures.
- Outcome – **safety of operations**: refers to management and use of the vessel and includes ensuring qualified crew carry out defined roles and responsibilities.

#### Key outcome area – *Safety of vessel movements*

- Outcome – **safety of vessel movements**: refers to the interaction of vessels with other vessels, infrastructure, and the environment and waterway users whilst underway.
- Outcome – **safety of vessel mooring**: refers to anchoring and mooring of vessels so as not to cause a hazard to navigation.

### Workplace Health and Safety Queensland, Department of Justice and Attorney-General

Workplace Health and Safety Queensland's goal is to foster safe and healthy work environments for all workers in Queensland. The key outcome is a reduction in work-related death, injury and disease

in Queensland. Workplace Health and Safety Queensland works with all stakeholders to improve workplace health and safety performance by:

- continued implementation of the *Queensland Workplace Health and Safety Strategy*;
- working cooperatively with other States and the Australian government to improve national consistency in workplace health and safety and workers' compensation arrangements;
- delivering information and education activities to improve the ability of workplace participants to identify and manage risks pertaining to workplace health and safety;
- implementing targeted compliance programs at State and local levels and participating in national compliance activities; and
- continued implementation of enforcement activities with an emphasis on investigations and complaints.

### **Electrical Safety Office, Department of Justice and Attorney-General**

The Electrical Safety Office plays an important role in improving electrical safety in both workplaces and homes. As Queensland's electrical safety regulator, the Electrical Safety Office undertakes a range of activities to support electrical safety, with the key outcome being to reduce electricity-related deaths and injuries in Queensland. The Electrical Safety Office's goal is "electrically safe homes, workplaces and other environments" and is reflected in the *Electrical Safety Plan for Queensland 2009-2014*.

The functions of the Electrical Safety Office cover the provision of advice to the Attorney-General and Minister for Industrial Relations and statutory bodies, including the Electrical Safety Board and its three committees, the development of legislation and standards, and the management of the registration, licensing and approval regimes established under the *Electrical Safety Act 2002*. The Electrical Safety Office also prepares and implements education and awareness activities to better inform industry and the community and undertakes state-wide compliance and enforcement activities through a state-wide inspectorate. The five-year goal of the Electrical Safety Board is to eliminate all preventable electrical deaths in Queensland.

Over the past five years there has been a high level of cooperation, not only between Electrical Safety Office and the Electrical Safety Board, but also with employers, unions and other stakeholders. This collective effort towards improving electrical safety has been pivotal in making significant progress and it is this approach that is also reflected in the *Electrical Safety Plan for Queensland 2009-2014*. This plan is significant in establishing the future electrical safety strategic direction by setting out strategies and objectives aimed at improving electrical safety in Queensland workplaces and in Queensland homes over the next five years.

### **The State Coroner**

The State Coroner, the Deputy State Coroner and other magistrates acting as coroners, investigate reportable deaths that occur in Queensland. Coroners investigate the circumstances of a death with the aim of preventing similar deaths occurring in the future. These investigations do not focus on laying blame or assigning liability for the death. The *Coroners Act 2003* emphasises:

- the need for Coroners to seek to contribute proactively to a safer and more just community;
- the desirability of a more consistent, efficient and transparent coronial system; and
- the rights of the family member to be involved in decisions.

The signatories to this Memorandum of Understanding recognise the role of the Coroner's office and will work cooperatively with this office in the interest of improving safety on ships.

### **Part 3 – Co-operation between departments**

The departments agree to observe and comply with this Memorandum of Understanding, including the following protocols:

- Policy context (Protocol A).
- Notification management (Protocol B).
- Investigation management (Protocol C).
- Compliance and enforcement (Protocol D).

Protocol B *Notification management* and Protocol C *Investigation management* apply only to those incidents which are determined to be a marine incident and **at least one** of the following:

- a *dangerous electrical event*; or
- a *serious electrical incident*; or
- a *notifiable incident*; or
- a *reportable death*.

Each department will:

- nominate an Agency Liaison Officer as the first point of contact for all matters *other than* incident and health and safety related complaint notifications. Schedule 2 provides contact details for Agency Liaison Officers and incident and complaint notifications.
- ensure that agency officers affected by the Memorandum of Understanding are provided with appropriate training and resources to enable them to give effect to the Memorandum of Understanding.
- develop mechanisms to enable each agency to give effect to and monitor the implementation of the Memorandum of Understanding within their respective agencies.

The role of the Agency Liaison Officer is to:

- oversee the implementation of the Protocols;
- fulfil responsibilities of the Agency Liaison Officer outlined in the Protocols; and
- oversee governance arrangements for the Memorandum of Understanding.

In the event of circumstances arising that are not covered by this Memorandum of Understanding, the agencies agree to consult each other in a timely manner to reach agreement on jurisdiction and action.

### **Incident coordination**

The departments agree that where more than one agency has an interest in an incident or receives a complaint relating to potential jurisdictional overlap, each agency will advise the other agencies of what action it proposes undertaking.

In the event of a marine incident and either a dangerous electrical event, or a serious electrical incident, or a notifiable incident or a reportable death, the departments agree to appoint a lead agency, where relevant, and to liaise with each other with respect to any planned investigations regarding these incidents. As a group, the Agency Liaison Officers will work together to ensure that each agency is managing resultant actions in accordance with its role and responsibilities, while acknowledging that separate investigations are likely to occur. The Agency Liaison Officers will also ensure that the needs of any coronial inquiry are met, and any relevant recommendations of the Ombudsman are applied.

### **Information sharing/disclosure of information**

The agencies acknowledge that general information sharing, where it is considered practical and appropriate, will minimise duplication of government resources. This information sharing will also minimise the anxiety and grief to the injured person, family and work colleagues by not having to repeatedly relive the incident.

At times, each agency and the Queensland Police Department conduct enquiries and investigations into the same matter. These agencies may gather information independently of each other. However, the information gathered by one agency may be relevant to another's investigation. On occasions, there will be a need for an agency to seek information gathered by another investigating agency. The agencies agree that, subject to legislative provisions, such relevant information will be shared as requested.

In conjunction with the above, Agency Liaison Officers agree to meet quarterly to review relevant operational activities and processes in accordance with this Memorandum of Understanding.

## **Part 4 - Governance**

### **Term of Memorandum of Understanding**

This Memorandum of Understanding will commence on 1 July 2010 and will continue in force until terminated by either department.

This Memorandum of Understanding supersedes and replaces any previous Memorandum of Understanding between the Departments of Justice and Attorney-General and Transport and Main Roads regarding safety on ships.

### **Maintenance and review of Memorandum of Understanding**

This Memorandum of Understanding may be varied or withdrawn at any time by an agreement in writing executed by the departments.

The departments agree to maintain the currency of this Memorandum of Understanding as required.

Minor information updates which do not affect the operation or validity of the Memorandum of Understanding may be undertaken at any time with the updated information forwarded to the other agencies and appended to this Memorandum of Understanding. For example, updating the contact details listed in Schedule 2.

The departments agree to review the operation of the Memorandum of Understanding within three years of the Memorandum of Understanding commencing. Following the review, the departments will:

- where appropriate or necessary, develop mechanisms to discuss, share learnings and improve the Memorandum of Understanding and/or ways in which the agencies are operating under the Memorandum of Understanding; and
- provide a report to the Health and Safety Regulators' Council on the effectiveness of the agencies working together under the Memorandum of Understanding.

### **Availability of Memorandum of Understanding**

The departments agree to circulate the signed Memorandum of Understanding to all affected officers in their respective agencies.

The departments agree to publish the signed Memorandum of Understanding on their respective web sites.

### **Resolution of issues regarding the application of the Memorandum of Understanding**

If there is an issue between agencies in relation to the application of the Memorandum of Understanding, the agencies will:

- firstly, ensure Agency Liaison Officers use their best endeavours and act in good faith to resolve the issue in a timely manner;
- secondly, if the issue(s) cannot be resolved in the first instance, the agency that has an issue with a component of the Memorandum of Understanding refers the matter in writing to the relevant Director of the other agency(s) to which this Memorandum of Understanding applies; and
- finally, in the event that the issue(s) cannot be resolved to the satisfaction of each agency, each agency will refer the issue to its departmental chief executive for timely resolution.

### **What is not intended**

This Memorandum of Understanding is not intended to:

- be legally binding, so that an alleged or real breach of any provision of this agreement is not intended to give rise to a legally enforceable cause of action;
- entitle or require a person to disclose information that is the subject of legal professional privilege;
- affect the law or practice relating to legal professional privilege; or
- restrict the statutory duties, directions and powers available to Queensland government agencies that are responsible for the safety of ships.

**Signatories**

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**Signed for and on behalf of the Department of Transport and Main Roads by:  
David Stewart, Director-General**

Dated this ----- day of -----2010

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**For and on behalf of the Department of Justice and Attorney-General by:  
Barry Leahy, Associate Director-General**

Dated this ----- day of -----2010

# Protocols

## Protocol A - Policy context

### Advice and assistance

The agencies will provide advice and assistance to each other which will be coordinated by the designated Agency Liaison Officers. In particular:

- in the event of a marine incident and either a dangerous electrical event, or a serious electrical incident, or a notifiable incident or a reportable death, the departments agree to appoint a lead agency, where relevant, and to liaise with each other with respect to any planned investigations regarding these incidents. As a group, the Agency Liaison Officers will work together to ensure that each agency is managing resultant actions in accordance with its role and responsibilities, while acknowledging that separate investigations are likely to occur; and
- where advice to stakeholders is required, the responsible agencies agree to share technical capabilities and collectively develop such advice and guidance where appropriate.

### Policy development

The agencies acknowledge that issues concerning safety in the maritime industry require specific policy development for effective management, and therefore:

- agree to consult and collaborate, where appropriate, in relation to policy about safety on ships.
- agree to share regulatory performance measurement information, such as key performance indicator data regarding issues about safety on ships;
- agree to share relevant research about safety on ships;
- agree to share information resources or interventions supporting policy about safety on ships;
- agree that, so far as is practicable, standards, industry liaison bodies and consultative arrangements should be made as consistent and harmonious as is possible with respect to issues about safety on ships;
- undertake to evaluate proposed legislative and/or policy changes to determine whether they will affect the operation and/or implementation of the Memorandum of Understanding;
- undertake to inform each other of all policy and legislative changes which may impact on the operation or implementation of the Memorandum of Understanding;
- undertake, where practicable and appropriate, to ensure that their respective policies are consistent with and supportive of this Memorandum of Understanding; and
- agree that where proposed legislative and/or policy changes have the potential to affect the operation of Memorandum of Understanding in a negative way, the agencies will develop mechanisms to mitigate those negative effects.



## Protocol B - Incident notification management

Notifications are a key trigger for an agency to consider commencing an investigation. The departments agree to keep each other fully and freely informed of incidents, which may fall either wholly or partially within their respective jurisdictions, and to which this Memorandum of Understanding applies. The departments agree to abide by the following procedures to ensure effective incident notification management:

- the referring department will send incident notification to the receiving department in a timely manner;
- the referring department will confirm that the receiving department has received the incident notification;
- the referring department maintains communication with the notifier until the matter is either permanently transferred to the receiving department or the matter is finalised;
- the receiving department will advise the referring department as soon as practicable whether it intends conducting an investigation and if so, also advises the notifier of that decision as soon as practicable; and
- as a group, the Agency Liaison Officers will work together to ensure that each agency is managing resultant actions in accordance with its role and responsibilities, acknowledging that separate investigations are likely to occur.

**Maritime Safety Queensland** must be notified about any marine incident that has occurred in relation to safety on ships. A marine incident includes but is not limited to an incident that has involved:

- the loss of a person from a ship;
- the death of, or grievous bodily harm to, a person caused by a ship's operations;
- the loss or presumed loss or abandonment of a ship;
- a collision with a ship;
- the stranding of a ship;
- material damage to a ship;
- material damage caused by a ship's operations;
- danger to a person caused by a ship's operations;
- danger of serious damage to a ship; and
- danger of serious damage to a structure caused by a ship's operations.

**Workplace Health and Safety Queensland** must be notified about any notifiable incident. These include, but are not limited to:

- all diving and snorkelling incidents ;
- incidents involving a serious bodily injury, including death, of a person likely to have been caused by a workplace or work activity;
- exposure to substances at a workplace likely to cause death or serious bodily injury to a worker or member of the public;
- any workplace incident resulting in a dangerous event.

The **Electrical Safety Office** must be notified about any dangerous electrical event and serious electrical event. These include but are not limited to:

- incidents where a person is killed by electricity or a person receives a shock or injury from electricity, and is treated for the shock or injury by or under the supervision of a doctor;
- incidents where a person receives a shock or injury from electricity at high voltage, whether or not the person is treated for the shock or injury by or under the supervision of a doctor.

If Maritime Safety Queensland is notified about a marine incident, and the incident is suspected to be a dangerous electrical event, a serious electrical incident or a notifiable incident, the incident must be reported without any undue delay to the Department of Justice and Attorney-General on the telephone number listed in Schedule 2 for incident and complaint notification.

If Workplace Health and Safety Queensland or the Electrical Safety Office is notified about a dangerous electrical event, a serious electrical incident or a notifiable incident, and the incident is suspected to be a marine incident, the incident must be reported without any undue delay to Maritime Safety Queensland on the telephone number listed in Schedule 2 for incident and complaint notification.

## **Protocol C - Investigation management**

### **Maritime Safety Queensland investigations**

Investigations conducted by Maritime Safety Queensland are undertaken in order to determine:

- causes;
- compliance with the legislation;
- lessons to be learnt and to influence the legislation and policy ; and
- ways to assist in the development of infrastructure, education programs about potential risks and unsafe behaviour and on-water compliance programs.

### **Workplace Health and Safety & Electrical Safety investigations**

Investigations conducted by Workplace Health and Safety Queensland and the Electrical Safety Office, Department of Justice and Attorney-General are undertaken in order to determine:

- causes;
- compliance with the legislation;
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the legislation;
- lessons to be learnt and to influence the legislation and policy; and
- what response is appropriate to an alleged breach of the legislation.

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more severe incidents. It is neither possible nor necessary to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.

The Department of Justice and Attorney-General will generally carry out an investigation of a reportable death unless there are specific reasons for not doing so, in which case those reasons will be recorded, such as when the incident is outside the authority's jurisdiction.

Where an investigation reveals non-compliance, the Department of Justice and Attorney-General will consider whether or not a prosecution should be commenced, or another sanction applied, or other appropriate action taken.

### **Interdepartmental cooperation**

Each agency agrees that:

- the agency receiving the incident notification is to advise the other agencies in writing as soon as practicable if it intends investigating an incident that is subject to this Memorandum of Understanding;
- the agency receiving the incident notification is to immediately make attempts to secure the scene, subject to any intervention or direction by the Queensland Police Service and/or Emergency Services, and which are not likely to pose a serious threat of death or injury to the attending officers;
- the agencies will cooperate, where possible, to ensure timely and accurate outcomes to the investigations when more than one agency is involved;
- each agency may provide, upon request from another, technical assistance where specialist skills and knowledge may be required;
- where any agency issues a notice under an Act, or issues written directions and the notices or directions may be of interest to the other agency, a copy of that notice or written direction shall be forwarded to that agency; and
- the agencies agree to keep each other fully and freely informed on the progress of an investigation which may fall either wholly or partially within their respective jurisdictions, when requested.

Agency Liaison Officers are to:

- take responsibility for passing on all relevant information when requested, subject to legislative provisions, to the other agency(s) in relation to any investigation of interest;
- work together on those matters, subject to legislative provisions, to ensure an outcome consistent with legislation;

- inform the other agency or agency(s) in writing when a decision is made to relinquish involvement in an investigation where a matter is more appropriately dealt with by the other agency; and
- when an incident investigated by one agency results in the need for enforcement action, the agency will advise the other agency(s) of its intention to take action.

In the event of a serious incident and either a dangerous electrical event, or a serious electrical incident, or a notifiable incident or a reportable death, the departments agree to appoint a lead agency, where relevant, and to liaise with each other with respect to any planned investigations regarding these incidents. As a group, the Agency Liaison Officers will work together to ensure that each agency is managing resultant actions in accordance with its role and responsibilities.

Schedule 1 highlights the activities where lead agency has been agreed by the departments.

## Protocol D - Compliance and enforcement

The compliance and enforcement practices of the parties to this Memorandum of Understanding are to be consistent, to the extent practicable, as recommended in chapter 6 of the Ombudsman's 2007 publication *Tips and Traps for Regulators*.

The agencies acknowledge that proactive monitoring of obligation holders is an effective means of promoting compliance with all requirements. The agencies agree to engage in joint proactive monitoring activities, where practicable and appropriate, directed towards issues about safety on ships, to meet the purpose of the Memorandum of Understanding.

As safety regulators, each agency has a wide selection of compliance strategies ranging from information, advice, cooperation, inspection, auditing, investigation, verification and compulsion through to deterrence activities available for its use. The primary emphasis is on assisting industry to comply with obligations through the provision of programs that build industry capability to properly manage risks.

The most effective and appropriate enforcement measures should be used to achieve compliance. The principles governing such sanctioning aim to:

- promote continuous improvement within the Queensland maritime industry;
- influence change in the behaviour of the obligation 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 non-compliance, where appropriate;
- deter future non-compliance; and
- be responsive and consider what is appropriate for the particular obligation holder.

## **Schedule 1 Activities where lead jurisdiction is agreed**

### **Underwater diving and snorkelling**

Workplace Health and Safety Queensland, Department of Justice and Attorney-General, will assume full jurisdiction for incidents involving a business or undertaking carrying out underwater diving or snorkelling operations. The *Workplace Health and Safety Regulation 2008* and relevant codes of practice made under the *Workplace Health and Safety Act 1995* have specific provisions relating to underwater diving. Workplace Health and Safety Queensland has inspectors with appropriate knowledge and experience to investigate underwater diving and snorkelling incidents and enforce the requirements of legislation specifically related to underwater diving and snorkelling.

## Schedule 2 Contact details

	<b>Agency Liaison Officer</b>	<b>Coronial Liaison Officer</b>	<b>Incident/complaint notification</b>
<b>Maritime Safety Qld</b> <a href="http://www.msq.qld.gov.au">www.msq.qld.gov.au</a>	Director, Executive Services and Compliance Branch <b>Ph: (07) 3120-7474</b>	Director, Executive Services and Compliance Branch <b>Ph: (07) 3120-7474</b>	Manager Compliance, Executive Services and Compliance Branch <b>Ph: (07) 3120-7478</b> <b>Mob: 0417 648-526</b>
<b>Workplace Health and Safety Qld</b> <a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a>	Asst. Director Regional Services Branch <b>Ph: (07) 3225-2103</b>	Director Regional Services <b>Ph: (07) 3225-2103</b>	Assessment and Advisory Centre Direct contact number plus after hours number <b>Ph: 1300 947 753 (all hours)</b>
<b>Electrical Safety Office</b> <a href="http://www.eso.qld.gov.au">www.eso.qld.gov.au</a>	Manager Compliance Services <b>Ph: (07) 3224-8337</b>	Director Regional Services, Workplace Health and Safety Qld <b>Ph: (07) 3225-2103</b>	Assessment and Advisory Centre <b>Ph: 1300 947 753 (all hours)</b>