



National OHS Bulletin

Issue 4 – June 2009

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Part A: Progress in implementation of the Union's National Stevedoring Code of Practice Project

1. Revised Marine Orders Part 32 (Cargo Handling)

The union lodged its final comments to AMSA on MO32 on 3 June 2009 following receipt of the final AMSA position on the person in charge, hatchman and lookout aspects of 20 May 2009.

The union response noted that there are issues that need to be addressed separately from the MO32 review process. One of the most important of those is the proposal for a mechanism to enable the parties to resolve differences that might arise from application of the performance based Marine Order.

We are now waiting advice from AMSA on the timetable for publication of new MO32 on the AMSA website and the date of implementation, which we expect to be in August 2009. We are also expecting AMSA advice on details of the awareness raising process (including documentation) that it has agreed would accompany the implementation of the new Marine Orders, and the roll out plan for that awareness raising.

2. The nationalised Waterfront Guidance material (containers and steel)

The Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) has advised that it expects the nationalised Waterfront Guidance material to be approved for publication and implementation at the August meeting of Safe Work Australia.

We also understand that the Guidance material will be formally launched by the Deputy Prime Minister and Minister and Minister for Workplace Relations Julia Gillard, possibly in September 2009.

3. Settlement of jurisdictional issues in stevedoring safety

Following industrial pressure from the WA Branch and representations to AMSA by National Office, AMSA has finally commenced serious negotiations with each of the State and NT OHS agencies on the new Memorandum of Understanding which establishes jurisdictional responsibility for stevedoring OHS.

AMSA has also agreed with the Union that the new MOUs be backed up by a service charter setting out the expectations the employers and unions can have of the relevant OHS agencies in stevedoring OHS.

The MUAs NSCOP Project

The roll out of the new MO32, rollout of the Nationalised Waterfront Guidance material and the new MOUs will constitute a package of stevedoring safety reforms that signals the implementation of Stage 1 of the union's National Stevedoring Code of Practice (NSCOP) project.

The roll out by AMSA and DEEWR of these reforms will be accompanied by distribution of union and employer guidance material and training programs (see details in next section).

4. Roll out of union guidance material and training

The Union has engaged a consultant to develop guidelines for all OHS/HSR representatives. These guidelines will include your rights and responsibilities in all States and Territories. This will also clearly lay out how the State and Territory regulations work in with the new Marine Orders Part 32 and the nationalised Waterfront Guidance material.

All OHS/HSR representatives will be provided with these guidelines to assist in the avoidance of workplace disputes over safety issues.

The employers will have a responsibility to educate their employee's about the new Marine Order when it is implemented. However, the union is formulating its own set of guidelines so that every member will be clear on what the new Marine Order means and how to work with it. A set of guidelines for vessels will also accompany this that will indicate the types of vessels or operations that will, from a union perspective, always require a hatchman and those that do not.

Part B: Developments in offshore oil and gas safety

5. What is happening in the NOPSA jurisdiction?

The Minister for Resources and Energy, Martin Ferguson, has advised the MUA and AWU that he intends combining the Government's response to the Recommendations of the Review of NOPSA with the Recommendations of the Offshore Oil and Gas Industry Regulatory Review (covering the *Karratha Spirit* and *Castoro Otto* incidents of December 2008).

We are advised that the Report of the Offshore Oil and Gas Industry Regulatory Review has now been presented to Government and will be released some time in early July 2009. Following its release, the Department of Resources and Energy will consult with the MUA on those Recommendations addressing vessel safety and maritime OHS, with a view to then preparing advice to the Minister that we understand will result in a Ministerial announcement on a response to the Recommendations in both

Reviews. Such a Government announcement is unlikely before August or September 2009.

Sydney Branch Assistant Secretary Paul Garrett advises that the draft ATSB report on the *Karratha Spirit* incident should be circulated in July, so the final report is probably 2-3 months away yet.

Paul Garrett has also advised that in relation to medical evacuation from FPSOs/FSO's by helicopter that was highlighted in the *Karratha Spirit* accident, he has received advice from Teekay confirming that there will be an Apache helicopter made available for medivacs in a life and death situation, subject to weather conditions and the helicopter pilot having final discretion on landing due to lighting issues.

7. Progress with NOPSA Accommodation Standards Working Group

The MUA in consultation with the AWU, ETU, AMOU and AMWU has developed a submission with the support of an independent consultant identifying what the unions believe to be the most appropriate technical standards that should apply to offshore accommodation. The submission has been sent to members on the NOPSA Working group which the MUA also sits on.

Technical standards identified in the submission cover noise levels, whole of body vibration, lighting, cabin accommodation such as the number of berths etc, indoor air quality, and ergonomics. The joint unions have proposed that these standards should act as minimums across the industry.

Under the current 'safety case' regime it is left up to the industry to adopt standards in the safety case before they become enforceable under the Act. Consistent with the MUA submission to the NOPSA Review the unions position is that standards submitted to the Working Group should ultimately be applied as a regulation made under the Act to ensure they are adopted across the industry and are enforceable.

8. Progress with Department of Resources and Energy Crane Competency Working Group

The Working Group has now developed and considered a set of Recommendations which are currently being prepared by the Department for final endorsement by the Working Group. Following that endorsement, the Working Group's Report/Recommendations will be presented to the Minister for Resources and Energy, Martin Ferguson, for decision and implementation.

9. Helicopter Crashes in the North Sea - implications for Australia

A number of helicopter incidents in the North Sea over the last twelve months have highlighted the MUA's concerns regarding the method of helicopter transportation of personnel to and from vessels and facilities in the Australian offshore oil and gas industry.

Early this year a helicopter crashed into the North Sea while carrying rig workers to shore. All sixteen people on board were killed. Less than 2 months prior, a Bond Super Puma crashed into the North Sea near a BP Platform. Fortunately on that occasion all 18 passengers were rescued. Both incidents involved Super Puma helicopters.

The Super Puma is the same type of helicopter used to carry workers to and from work on the North West Shelf and Timor Sea in the Australian oil and gas industry. Indeed several of these helicopters have come from the North Sea.

The MUA together with the AWU have in submissions to the NOPSA review in 2008 raised concerns on the lack of regularity clarity between CASA and NOPSA and the apparent high level of self regulation which has been allowed to develop in the industry.

The HART Aviation report to NOPSA found that there are a number of internationally accepted standards for helicopter operations that currently do not apply in Australia, and that industry self regulation, such as the safety case regime under NOPSA, has failed.

The MUA-together with the AWU has submitted to the Federal Government that all recommendations made by HART Aviation in it's report to NOPSA should be implemented and that regulations should be developed that reflect internationally accepted best practice in helicopter operations. Indeed this should occur before a serious tragedy occurs in the Australian industry.

10. 2009 Offshore HSR Forum

The 2009 offshore oil and gas HSR Forum will be held on the 3rd August 2009 at the Burswood Convention Center in Perth. The forum offers HSR's the opportunity to discuss issues and concerns at an industry level, exchange ideas and experiences and build networks with other HSR's from across the industry.

Attendance at previous Forums has been mainly made up of industry representatives with several facilities not represented by elected HSR's. Members are encouraged to ensure an elected HSR from all workplaces attend this years Forum.

11. MUA representations on shift changes on oil rigs – fatigue issues

The MUA is aware of the frustration of workers on rigs where there is no collective bargaining to have a say on changes to rosters etc. One example is that workers on the West Atlas, in the drill crews, opposed the introduction of 4 week swings. They believed there was no consultation which was also supported by their HSR's.

The MUA wrote a letter of complaint to NOPSA and TMS asking NOPSA to investigate the fatigue element of 4 week swings. The workers supported this

with their own letter, by 17 out of the 20 drilling crews, advising of their concerns on fatigue. NOPSA wrote back advising that their investigation found nothing wrong and gave the all clear to 4 week swings. The MUA will advise of developments.

Part C: Developments in the Seacare scheme

12. Increase in death benefits and dependent children payments under the Seafarers Act

On the 8 May 2009 the MUA was advised that the Prime Minister and Deputy Prime Minister had approved the following increases effective from 4 June 2009:

- The lump sum death benefits payment will increase from \$225,594.33 to \$412,000; and
- The weekly benefit payable to dependent children will increase from \$75.17 to \$113.30.

13. The Death of a seafarer on an Australian cruise ship

On 19 February 2009 an Australian engineer on the *Oceanic Discover* (a tourism/passenger vessel operated by Coral Princess Cruises out of Cairns) was seriously injured while the vessel was in Napier in Hawkes Bay, NZ. He subsequently died from those injuries some 3 weeks later. The matter is being investigated by Maritime New Zealand. No report on the investigation is yet available. It is also being investigated by the New Zealand Transport Accident Investigation Commission (NZTAIC) which lists the report into the accident as outstanding. The NZTAIC provided this background to their investigation:

- Passenger Vessel *Oceanic Discover*, crew on the ship were conducting a fire drill which involved closing the ship's watertight doors. The chief engineer was later found caught in one of the watertight doors, Port of Napier.

It is our assessment that the seafarer would be covered by Seacare scheme legislation – both the Seafarers Act for workers compensation purposes and the OHS(MI) Act, for OHS investigation. The MUA contacted AMSA and it advised that two AMSA OHS(MI) Act inspectors visited the ship on 20 February 2009 to conduct an investigation. A brief is currently being prepared for the Commonwealth Director of Public Prosecutions (CDPP) over a possible Duty of Care breach. However, this report will not be made public if the CDPP decides not to prosecute. Any recommendations on general safety is being left to the New Zealand safety agencies.

This issue was raised by the MUA at the Seacare Authority meeting on 28 May 2009.

14. Review of the Comcare Permanent Impairment Guide

Comcare announced on 1 April 2009 that it was conducting a review on the efficiency of the permanent impairment guide under the Safety, Rehabilitation and Compensation Act 1988 legislative framework to deliver fair and equitable compensation for permanent impairment. The Comcare Permanent Impairment Guide is traditionally used as the Permanent Impairment Guide for seafarers. Therefore, the MUA has a clear interest in any changes and lodged an individual submission. Input was also provided for a general submission by the ACTU.

The ACTU submission proposed that there be close liaison between the Stakeholder Reference Group for the Comcare Impairment Guide Review and the Seacare Authority. This is to ensure that, in order to ensure ongoing consistency between the Guides applying in both schemes, the Maritime industry and the MUA will have an opportunity to be part of the review process.

Part D: National OHS Policy Developments

15. Safe Work Australia established to replace the Australian Safety and Compensation Council (ASCC)

In April 2009 the Workplace Relations Ministers' Council agreed to establish the Safe Work Australia Council to manage the harmonisation of Australia's OHS laws, regulations and codes of practice under the framework of the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* signed by the PM and Premiers in 2008..

Mr Tom Phillips AM has been appointed as the Chair of the Safe Work Australia Council. His most recent position was Chief Executive Officer of Mitsubishi Motors Australia Ltd. He is as a presiding member of the SafeWork SA Advisory Committee and holds board positions with several not-for-profit organisations and private companies including WorkCover Corporation of South Australia, Australia Post, South Australian Training and Skills Commission and the Development Council for the Salvation Army (SA).

The Safe Work Australia Council is a tripartite body comprised of 15 members, including an independent Chair, nine members representing the Commonwealth and each State and Territory, two representing the interests of workers (Peter Tighe CEPU and Geoff Fary ACTU), two representing the interests of employers and the Chief Executive Officer. Full membership is set out in Table 1.

Table 1: The Safe Work Australia Council Members

Chair	Mr Tom Phillips AM	
NSW	Mr Jon Blackwell	WorkCover New South Wales
VIC	Mr Greg Tweedy	Victorian WorkCover Authority
QLD	Mr Barry Leahy	Department of Justice and Attorney-General
SA	Ms Michelle Patterson	SafeWork SA
WA	Ms Nina Lyhne	WorkSafe Western Australia
ACT	Mr Robert Gotts	Office of Industrial Relations
TAS	Mr Roy Ormerod	Workplace Standards Tasmania
NT	Ms Laurene Hull	NT WorkSafe
Commonwealth	Ms Michelle Baxter	Department of Education, Employment and Workplace Relations
Employee Representative	Mr Geoff Fary	Australian Council of Trade Unions (ACTU)
Employee Representative	Mr Peter Tighe	Australian Council of Trade Unions (ACTU)
Employer Representative	Ms Anne Bellamy	Australian Chamber of Commerce and Industry (ACCI)
Employer Representative	Mr Mark Goodsell	Australian Industry Group
Safe Work Australia	Mr Rex Hoy	DEEWR

16. Developments with harmonisation of OHS laws

Workplace Relations Ministers Council (WRMC) met on 18 May 2009 to consider a response to the 232 Recommendations in the OHS Harmonisation Report No 2 presented to the Government in February 2009. Ministers decided on the optimal structure and content of a model OHS Act to be adopted by the Commonwealth, State and Territory governments.

WRMC has now provided detailed instructions to the Safe Work Australia Council to enable commencement of drafting of the model OHS laws. An exposure draft of the Model Harmonised Law and draft Regulatory Impact Statement (RIS) is scheduled to be available for public comment by September 2009.

The WRMC decision fell short of Union/ACTU expectations, with the ACTU saying that the recommendations agreed to by the Ministers would significantly undermine protections for many workers.

Key MUA concerns revolve around: (i) The role and rights of HSRs; (ii) Right of entry; and (iii) Tripartism – any weakening of standards in these areas could ultimately have flow on implications to the Seacare scheme and to the NOPSA scheme.

Of the 232 Recommendations considered by Ministers, an important one for the union is Recommendation 76 – Industry specific schemes. Ministers at WRMC agreed to the Recommendation which states that:

1. In developing and reviewing the model OHS Act, there should be a presumption that separate and specific OHS laws for particular hazards or high risk industries that are within the responsibility of the Ministers, should only continue where they have been objectively justified;
2. Even where that justification is established, there should be an on-going, legislative and administrative interrelationship between the laws and, if there are different regulators, between those regulators;
3. As far as possible, the separate legislation should be consistent with the nationally harmonised OHS laws;
4. Where the continuation of the separate legislation is not justified, it should be replaced by the model Act within an agreed timeframe;
5. Where specific provisions are necessary, they should normally be provided by regulations under the model Act, with specific provision in the model Act relating to the matters previously regulated by the separate legislation kept to a minimum; and

In principle the Ministers decision means that Seacare and NOPSA should be secure for the time being, but that the OHS(MI) Act and the OHS provisions in the *Offshore Petroleum and Greenhouse Storage Act 2006* will probably need to be amended to harmonise them with the model OHS law.

National Secretary Paddy Crumlin is writing to Ministers Gillard and Ferguson re the Seacare and NOPSA schemes respectively to get confirmation that those schemes are secure.

17. The ACTU/State-NT Trades and Labour Council Campaign on harmonised laws

Following adoption of a new OHS Policy and Emergency Resolution on OHS at ACTU Congress on 3 June 2009, the ACTU OHS Committee has determined, in conjunction with State and Territory Trades and Labour Councils, a campaign to seek improvements to OHS standards in key policy areas as part of the OHS harmonisation process. Trade union concerns revolve around 6 areas of policy:

1. Consultation and HSRs
2. Union right to prosecute
3. Risk management
4. Onus of proof on the employer
5. Tripartism
6. Right of entry.

MUA Branch Secretaries are asked to identify an official in each Branch to liaise with local Trades and Labour Councils to ensure the union plays an active part in the campaign.