

MEMORANDUM OF UNDERSTANDING

between

WorkSafe New Zealand

and

Maritime New Zealand

10 September 2018

Contents

INTRODUCTION	3
SCOPE	3
COMMENCEMENT	3
INTERPRETATION	3
PURPOSE	4
THE REGULATORY ROLE OF THE PARTIES	4
Maritime New Zealand	4
WorkSafe New Zealand	5
PRINCIPLES	6
DESIRED OUTCOMES AND COMMITMENTS	6
Outcome 1: Defined jurisdictional boundaries	6
Outcome 2: Strategic alignment	6
Outcome 3: Collaborative policy development	6
Outcome 4: Legal alignment	7
Outcome 5: Compatible systems and processes	7
Outcome 6: Co-ordinated communications and media	7
Outcome 7: Information, data and intelligence sharing	7
Outcome 8: Shared technical expertise	8
Outcome 9: Joint enforcement activity	8
Outcome 10: Joint training	8
Outcome 11: Assistance in events	8
DISPUTE RESOLUTION	9
SCHEDULES	9
RESOURCING	9
STATUS OF MOU AND SCHEDULES	9

THIS MEMORANDUM OF UNDERSTANDING is made on 10 September 2018

BETWEEN WorkSafe New Zealand

AND Maritime New Zealand

INTRODUCTION

1. Maritime New Zealand (Maritime NZ) is established by the Maritime Transport Act 1994. Its role is to ensure that maritime activities are carried out safely with minimal impact on the environment and New Zealand's security.
2. WorkSafe New Zealand (WorkSafe) is established by the WorkSafe New Zealand Act 2013.
3. WorkSafe is the primary work health and safety regulator whose main objective is to promote and contribute to a balanced framework for securing the positive work health and safety outcomes. The principal regulatory vehicle for this is the Health and Safety at Work Act 2015 (HSWA).
4. Maritime NZ is a designated agency under section 191 of HSWA.

SCOPE

5. This Memorandum of Understanding (MOU) relates to Maritime NZ's activities as a designated agency and to WorkSafe's activities as the regulator for work health and safety and to any other situations where the Parties have other mutual interests, or a Party wishes to seek assistance, co-operation or resource from the other.

COMMENCEMENT

6. This MOU and its Schedules revokes and replaces all previous MOUs between WorkSafe (or predecessor agencies) and Maritime NZ.
7. The MOU is effective from 10 September 2018 and will continue to be in effect until it is superseded or terminated.

INTERPRETATION

8. For the purposes of this MOU, the following terms are defined:
 - **Area of common interest** means those matters where each Party contributes to a shared outcome or has a shared role or interest. This includes meeting the requirements of international agreements, meeting government's policy objectives, and promoting greater collaboration, co-operation and co-ordination across the wider Government sector.
 - **Event** means an incident, accident, or set of circumstances which requires a significant regulatory response from one or both Parties and which may constitute a breach of either or both of the Health and Safety at Work Act 2015 and the Maritime Transport Act 1994.
 - **Government** means the New Zealand Government.
 - **HSNO Act** means the Hazardous Substances and New Organisms Act 1996, and includes any subsequent amendments to, and any regulations made under, that Act.
 - **HSWA** means the Health and Safety at Work Act 2015, and includes any subsequent amendments to, and any regulations made under, that Act.
 - **Maritime NZ** means Maritime New Zealand.
 - **MT Act** means the Maritime Transport Act 1994 and includes any subsequent amendments to, and any regulations made, under that Act.
 - **MOU** means this Memorandum of Understanding, comprising the master agreement and any schedules (operational agreements) developed under the master agreement.
 - **Parties** means Maritime New Zealand and WorkSafe New Zealand collectively.
 - **Party** means either Maritime New Zealand or WorkSafe New Zealand individually.
 - **Schedule(s)** means any agreement subsequently attached to or referencing this Memorandum of Understanding.

- **Ship**¹ means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes:
 - a barge, lighter, or other like vessel
 - a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates, and
 - a submarine or other submersible.
- **Third Party** means any person or organisation not party to this Memorandum of Understanding.
- **WorkSafe** means WorkSafe New Zealand.

PURPOSE

9. This MOU seeks to clarify the regulatory roles of each Party, and to set out ways that each Party can work together toward achieving the Government's objectives, to the extent permitted by law having regard to the fact that the Parties are both Crown entities. In particular, these objectives relate to:
- work health and safety
 - effective collaboration between regulatory functions under the Government Regulatory Practice Initiative
 - achievement of Maritime NZ and WorkSafe's statutory objectives, and
 - achieving the Government's transport safety objectives.
10. This MOU establishes a foundation of shared assumptions, as well as a framework for the current and future relationship of the Parties. It does this by setting out the interagency alignment required for a whole-of-government approach to regulation in each agency's respective sectors. This includes setting out the assistance or support each Party may provide to the other in certain circumstances.
11. Operational details of assistance, co-operation or support that may be provided in accordance with this MOU will be detailed in the schedules attached to this MOU.
12. Nothing in this MOU prevents either Party from providing assistance, co-operation and support to each other outside of the terms of this MOU or its schedules, where there is agreement to do so between the Parties.

THE REGULATORY ROLE OF THE PARTIES

Maritime New Zealand

13. The principal objective of Maritime NZ under the MT Act is to carry out its functions in a way that contributes to the aim of achieving an integrated, safe, responsive, and sustainable transport system.
14. Maritime NZ's functions under the MT Act include promoting maritime safety and security, the protection of the marine environment in New Zealand, and ensuring that New Zealand is prepared for, and has the ability to respond to, marine oil spills.
15. Under the MT Act, the Director of Maritime NZ controls entry into the maritime transport system, enforces the provisions of the MT Act (and other acts) in the public interest, monitors adherence to regulatory requirements, reviews the maritime transport system and promotes compliance with safety and pollution standards.
16. Maritime NZ is a Crown agent under the Crown Entities Act 2004. It has functions and powers under the MT Act and other acts. Under the MT Act, Maritime NZ's functions include:
- a. promoting maritime safety and security, and protection of the marine environment
 - b. providing appropriate distress and safety radio communication systems and navigational aids for shipping
 - c. marine oil pollution spill preparedness and response
 - d. licensing of ships, their operation and their crews
 - e. providing information, advice and education with respect to maritime transport and marine protection

¹ Section 2(1) of the Ship Registration Act 1992.

- f. investigating and reviewing maritime transport accidents and incidents, and maritime security breaches and incidents
 - g. maintaining the New Zealand Register of Ships
 - h. administering the international obligations of the Crown under the treaties, memoranda and other international maritime and marine environment protection agreements, as agreed with the Minister of Transport.
17. Maritime NZ also has the following functions under other legislation:
- a. HSWA – Maritime NZ is the designated regulator for work on board ships and ships as places of work.
 - b. Ship Registration Act 1992 – Maritime NZ administers this Act which regulates all vessels over 24 metres in length, others that depart for the high seas by mandate and smaller vessels voluntarily. The Registrar of Ships is a statutory officer based in MNZ.
 - c. Maritime Security Act 2004 – administered by Maritime NZ, this act sets out how New Zealand will meet its obligations to prevent international terrorism on board ships and in ports, as set out in the United Nations International Ship and Port Facility Security Code.
 - d. Civil Aviation Act 1990 – Maritime NZ is responsible for operating and maintaining the Rescue Co-ordination Centre New Zealand and co-ordinating Category II search and rescue operations.
18. This wide range of responsibilities means that at any one time Maritime NZ may have powers, functions and duties under both the HSWA and other acts.

WorkSafe New Zealand

19. WorkSafe's functions under the WorkSafe Act 2013 are to:
- a. advise on the operation of the health and safety at work system, including co-ordination across the different components of the system
 - b. make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes
 - c. monitor and enforce compliance with relevant health and safety legislation
 - d. publish information about—
 - i. its approach to enforcing compliance with relevant health and safety legislation (including where a provision of relevant health and safety legislation overlaps with a provision in another act), and
 - ii. its performance standards for completing investigations in relation to enforcing compliance with relevant health and safety legislation
 - e. make recommendations about the level of any funding (including fees or levies) that WorkSafe requires to effectively carry out its functions
 - f. develop codes of practice
 - g. develop safe work instruments
 - h. provide guidance, advice, and information on work health and safety to—
 - i. persons who have duties under the relevant health and safety legislation; and to
 - ii. the public
 - i. promote and support research, education, and training in work health and safety
 - j. collect, analyse, and publish statistics and other information relating to work health and safety
 - k. engage in, promote, and co-ordinate the sharing of information with other agencies and interested persons that contribute to work health and safety
 - l. foster a co-operative and consultative relationship between persons who have duties under the relevant health and safety legislation and the persons to whom they owe duties and their representatives in relation to work health and safety

- m. foster a co-operative and consultative relationship with the Environmental Protection Authority when carrying out its functions, duties, and powers in respect of hazardous substances
- n. promote and co-ordinate the implementation of work health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient, and effective way
- o. perform or exercise any other functions or powers conferred on WorkSafe by or under any other act, including those conferred under the HSNO Act, and
- p. perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004.

PRINCIPLES

20. The Parties undertake to collaborate, co-operate and co-ordinate their activities in accordance with the following principles:
- a. **Open communication** – communicate openly, collegially, and promptly to achieve the best overall regulatory outcomes.
 - b. **No surprises** – inform the other Party of any emergent issue or situation in an area of common interest as soon as is practicable.
 - c. **Collaboration** – work to seek mutually beneficial outcomes where feasible and to increase understanding of what those outcomes might be.
 - d. **Integrity** – actively co-operate in a manner that recognises the other Party's functions, duties and powers, and fosters mutual respect and trust.
 - e. **Efficiency** – enhance their business and regulatory performance and ensure that each other's regulatory responsibilities are met effectively with the maximum possible efficiency.

DESIRED OUTCOMES AND COMMITMENTS

21. The desired outcome of this MOU is co-ordination, co-operation and collaboration between the Parties to enable them to effectively and efficiently carry out their respective functions, including working towards the Government's objectives to improve work health and safety outcomes.
22. Each Party agrees to work effectively toward the desired outcomes of this MOU.
23. Any co-ordination, co-operation and collaboration of activities may be undertaken solely between the Parties, or, on agreement, may involve a third Party (such as another regulator).
24. Parties may develop operational agreements as schedules to this MOU to provide further detail on the collaboration, co-operation and co-ordination they commit to under this MOU.

Outcome 1: Defined jurisdictional boundaries

The Parties have a clear understanding of the jurisdictional boundaries between them.

25. The Parties will clarify with and for each other their own jurisdictional parameters of operation, including specific regulatory roles and responsibilities.
26. The Parties will work together to identify and manage any gaps or overlaps in responsibilities, legislation and/or regulatory guidelines.

Outcome 2: Strategic alignment

Strategic policies are aligned and complement each other with respect to health and safety.

27. Prior to the commencement of any financial year, the Parties will endeavour to meet to discuss forward work priorities and opportunities for collaboration and co-operation.
28. These meetings can be solely between the Parties or by prior agreement include third-parties where it is considered advantageous with respect to the aims of this MOU.

Outcome 3: Collaborative policy development

The Parties inform and consult when developing policy.

29. In leading the development of policy or when participating in policy processes run by other agencies each Party will, where possible, consult with the other on areas of common interest, including any matter relevant to Maritime NZ's designation under the HSWA.
30. To the extent possible, the Parties will provide information relevant to the development of policy advice, allowing time for participation.

Outcome 4: Legal alignment

Investigation and enforcement priorities are aligned to ensure consistent outcomes.

31. The Parties may discuss matters that effect the interpretation of law relevant to the other Party or may otherwise adversely impact upon the other Party.
32. Subject to legal privilege, and where practical, there will be inter-agency collaboration by sharing information about any changes to the law and case law in areas of common interest.

Outcome 5: Compatible systems and processes

Intelligence and case management systems support information sharing.

33. As far as is practicable, the Parties will establish compatible processes and systems for recording, reporting and monitoring work health and safety activity.
34. Subject to any legal constraints, this may include aligning operational intelligence and case management systems.

Outcome 6: Co-ordinated communications and media

Public messaging is co-ordinated and consistent.

35. The Parties will use their best endeavours to:
- a. inform each other at the initial stage of development of any communications campaign relevant to the other Party or to the content of this MOU
 - b. take all reasonable steps to ensure adequate time is given for the other Party to provide comment where appropriate, and
 - c. explore opportunities to conduct joint communications campaigns.
36. Where possible, the Parties will consult with each other when providing information or comment to the media on areas of common interest.

Outcome 7: Information, data and intelligence sharing

Information data and intelligence sharing supports effective regulatory operations.

37. The Parties may develop principles, strategies and processes to share relevant information, data and intelligence to enhance interagency collaboration, co-operation and co-ordination.
38. Where practicable, these principles, strategies and processes will use available technology and may evolve to reflect changes in technology.
39. Relevant information, data or intelligence to be shared may include, and is not limited to:
- a. information, such as statutory notifications, which it is mandatory² to share
 - b. information about work health and safety matters, including risks from new technologies, substances or work processes, and the means of mitigating those risks
 - c. operational information which might assist the regulatory function of the other Party, including work health and safety notifications
 - d. intelligence reports, data or assessments which might assist the regulatory function of the other party
 - e. evidence gathered in the course of an assessment or investigation which might assist the other Party with enforcement action; and

² Section 198 of HSWA – Requirement of other regulator to notify WorkSafe of a notifiable event.

f. any significant enforcement action taken by one of the Parties.

40. A Party will share information, data or intelligence only when that Party considers it may assist the other Party in the performance or exercise of its functions, duties or powers under or in relation to any enactment, and when doing so is consistent with the law, including the Official Information Act 1982, the Privacy Act 1993 and the Criminal Disclosure Act 2008.

41. The Parties may set out in a Schedule how and when they will inform and consult each other.

Outcome 8: Shared technical expertise

In areas of common interest, expertise is shared between the Parties.

42. The Parties will, where possible and appropriate, share technical expertise in relation to assessment, investigation and enforcement activities.

43. The Parties will, with mutual consent, consult and draw on the expertise of the other Party where appropriate. This may be in relation to the development of industry guidance information, codes of practice, and other regulatory instruments, and when carrying out assessments, inspections and enforcement activities.

Outcome 9: Joint enforcement activity

In areas of common interest the Parties engage in collaborative or joint inspections or assessments.

44. The Parties may, by mutual agreement, undertake joint assessments and/or investigations under the HSWA or the MT Act.

45. The detail of how a mutual agreement may be arrived at, or any other details for the joint inspections or assessments, including how costs are apportioned, may be set out in a schedule to this MOU.

Outcome 10: Joint training

In areas of common interest, opportunities for sharing of training and/or training materials will be explored.

46. The Parties will collaborate in identifying training of common interest to each other and, where practicable, will co-ordinate training programs for health and safety inspectors and other staff.

47. Details of any joint training, including how costs are apportioned, may be set out in a schedule to this MOU.

Outcome 11: Assistance in events

Willing and able to support each other in response to an event.

48. Should an event occur, the Party taking the operational lead may request:

- a. technical and operational assistance, and/or
- b. administrative and staff support, from the other Party.

49. Any assistance provided under Clause 50 of this MOU will have regard to the scale, duration or complexity of the event and the potential for the Party with jurisdiction to be unable to effectively carry out its functions, duties or powers.

50. The terms and conditions of any technical or operational assistance, and/or any administrative or staff support, and how that assistance or support is to be funded, may be set out in a schedule to this MOU:

- a. In each event, support will be provided commensurate with:
 - i. the practicability for the Party providing assistance, or support, at that time, and
 - ii. the perceived health and safety risks associated with the incident, or emergency event.
- b. The details of how the Parties will collaborate and co-operate in the event of a Major Maritime Incident are set out in Schedule 1 of this MOU.

DISPUTE RESOLUTION

- 51.If minor disputes arise about the interpretation or performance of this MOU, local representatives or managers of the Parties will attempt to resolve the dispute at the earliest opportunity.
- 52.If disputes cannot be resolved locally or they are significant, they will be referred to the General Manager, Maritime Standards at Maritime NZ and the General Manager, Better Regulation at WorkSafe.
- 53.If disputes cannot be resolved between the General Managers within 28 days of referral, the matter will be referred, in writing, to the Director of Maritime NZ and the Chief Executive of WorkSafe for final resolution.
- 54.Any disputes arising under this MOU will be resolved through discussion and co-operation and will not be referred to any external organisation in any circumstance.

SCHEDULES

- 55.As appropriate, the Parties will develop schedules to this MOU which will be operational agreements detailing the terms and conditions for specific procedures and activities between the Parties, including how costs will be apportioned.
- 56.Every schedule will set out:
 - a. the person (by position title) in each agency responsible for the schedule, and contact details for those persons; and
 - b. how any joint activities will be resourced.
- 57.Schedules may be adopted, amended, replaced or terminated by a General Manager or above from either Party.
- 58.A list of the schedules and their current status and contact details is attached to this MOU as Annex A. The list will be updated by the Parties as schedules are adopted, amended, replaced or terminated.

RESOURCING

- 59.The provision of any support, co-operation or assistance under this MOU and its schedules is subject to the availability of the Parties' resources. Such support may be limited, adjusted or terminated as deemed necessary by either Party to meet its other operational commitments.
- 60.The Parties may identify areas where both will benefit from shared resourcing.

STATUS OF MOU AND SCHEDULES

- 61.Unless expressly stated otherwise, the following applies to this MOU and its schedules:
 - a. The MOU and schedules will continue to be in effect until either terminated or superseded.
 - b. A review of the MOU or of any schedule can be requested at any time, by either Party.
 - c. Notwithstanding the above, the date for the review of the MOU or any schedule is three years from the date of the last signature on the MOU or schedule.
 - d. Amendments to this MOU, or any schedule, will be made in writing by the mutual agreement of the Parties.
 - e. The MOU, or any schedule, can be terminated at any time and by either Party through written notification. Termination will be effective immediately.
 - f. Termination of the MOU will terminate all schedules, but termination of a schedule will only affect that schedule.
 - g. Any schedules current at the time this MOU is signed will remain current until terminated or superseded.
 - h. There is no intention to create any legal rights, duties or obligations, and this MOU is not binding on the Parties.

THIS MEMORANDUM OF UNDERSTANDING is made on 10 September 2018

BETWEEN WorkSafe New Zealand

AND Maritime New Zealand

SIGNED BY



Nicole Rosie
Chief Executive
WorkSafe New Zealand



Keith Manch
Director
Maritime New Zealand

Proactive release