



CHIEF EXECUTIVE OFFICER

Mr Stephen Palethorpe
Secretary
The Senate Standing Committee on Education and Employment
Parliament House
CANBERRA ACT 2600
eec.sen@aph.gov.au

Dear Mr Palethorpe

Re: Inquiry into the work health and safety of workers in the offshore petroleum industry

I refer to your letter of 22 June 2018 in relation to the above inquiry, and the Committee's request for response by the Australian Maritime Safety Authority (AMSA) to the questions raised during the hearing in Fremantle on 13 June 2018.

I have reviewed the evidence provided to the Committee by the Australian Institute of Marine and Power Engineers (AIMPE) about potential jurisdictional uncertainty between AMSA and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) for matters relating to offshore occupational health and safety in the offshore petroleum industry.

I have also had the opportunity to review the response to the Committee provided by NOPSEMA's Chief Executive Officer, Mr Stuart Smith, in his letter of 27 June 2018 and I concur with Mr Smith's representation of the respective jurisdictions of AMSA and NOPSEMA.

I note the Committee discussed the Memorandum of Understanding (MoU) between AMSA and NOPSEMA at the Fremantle hearing, and Committee members expressed an interest in having the MoU tabled. Please find attached the 2009 MoU for the Committee's reference.

If you require any further information please do not hesitate to contact me.

Yours sincerely

MICK KINLEY

6 July 2018

82 Northbourne Avenue, Braddon ACT 2601
GPO Box 2181, Canberra ACT 2601
p +61 (0)2 6279 5039
f +61 (0)2 6279 5813
e ceo@amsa.gov.au



Mr Stephen Palethorpe
Secretary
Standing Committee on Education and Employment
Parliament House
CANBERRA ACT 2600

Via email: eec.sen@aph.gov.au

Dear Secretary

Re: Inquiry into the work health and safety of workers in the offshore petroleum industry

In refer to your correspondence of 22 June 2018 and provide the following response to issues raised in the evidence provided by the Australian Institute of Marine and Power Engineers (AIMPE) at the hearing held in Fremantle on 13 June 2018 and in the AIMPE submission to the inquiry. I provide as evidence references to the Australian Transport Safety Bureau Report '*Fatality on board Skandi Pacific, 14 July 2015*' and to provisions set out in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) and associated regulations.

Skandi Pacific Incident

The Skandi Pacific is a vessel that has been used by offshore oil and gas operators for supplying offshore facilities or for other support operations relating to offshore oil and gas projects. On 14 July 2015 the Skandi Pacific was involved in an incident that resulted in a fatality to one of the crew members on board the vessel.

NOPSEMA Jurisdiction

As considered by the AIMPE and confirmed by NOPSEMA, at no time prior to, during or following the incident was the safety of the workforce on board the Skandi Pacific subject to regulation by NOPSEMA.

The safety of workers at facilities and associated offshore places is subject to regulation by NOPSEMA under the OPGGS Act and associated safety regulations. Relevantly, vessels used for supplying facilities or for travelling to or from a facility, are specifically excluded from the list of facilities subject to NOPSEMA's jurisdiction. Similarly supply vessels are specifically excluded from being regulated under the OPGGS Act as associated offshore places.

It is noted that the proximity of a vessel to a facility (e.g. within or outside 500m from the facility) has no bearing on whether that vessel is subject to regulation under the OPGGS Act regime. At the time of the incident the Skandi Pacific was located 30 metres away from the Atwood Osprey facility, following the cessation of cargo transfers from the Skandi Pacific to the facility.

Further information on the definition of a facility and an associated offshore place under the OPGGS Act including any exclusions is provided at Attachment A.

Registration of vessels

The following is based on NOPSEMA's understanding of the relevant maritime laws that may apply to vessels being used to support offshore oil and gas operations.

NOPSEMA understands that Australia is a signatory to multiple international maritime conventions of the safety of seafarers and appropriate operation of vessels at sea. The conventions set boundaries on the application of mandatory requirements. The *Navigation Act 2012* is legislation which implements several maritime conventions and covers international ship and seafarer safety, protection of the marine environment where it relates to shipping, and the actions of seafarers in Australian waters.

NOPSEMA notes the Skandi Pacific is registered in the Bahamas and is therefore not an Australian registered vessel. It operates under permissioning documents approved by overseas authorities. Under section 14 of the *Navigation Act 2012*, the Skandi Pacific is a foreign vessel meaning a vessel that does not have Australian nationality, and as such there are limitations on the geographical application of Australian maritime laws to vessels of this kind. Under section 9 of the *Navigation Act 2012*, the geographical application of offences and civil penalty provisions relating to foreign vessels only apply to the foreign vessel entering or leaving an Australian port; or in the internal waters of Australia or in the territorial sea of Australia, other than in the course of innocent passage. None of these conditions existed at the time of the Skandi Pacific incident.

Under the *Seafarers Rehabilitation and Compensation Act 1992* and the *Occupational Health and Safety (Maritime Industry) Act 1993*, the Skandi Pacific is not a 'prescribed ship' required to comply with obligations under those Acts. The jurisdictional gap claimed by the AIMPE appears to be in relation to the geographical application of Australia's maritime laws and this issue is highlighted in the Australian Transport Safety Bureau (ATSB) Report¹.

Collegiate engagement with AMSA

NOPSEMA and AMSA have a memorandum of understanding (MoU) which was signed in 2009. It was established in the early years of national offshore petroleum safety regulation under the National Offshore Petroleum Safety Authority (NOPSA), NOPSEMA's predecessor. The MoU provides for the sharing of information across a number of regulatory matters and provides for jointly conducted audits and inspections where both parties have a direct responsibility at different times of the facility or vessel operation, noting the differing requirements in the suite of separate laws administered by each regulator.

NOPSEMA has established and maintains a strong and collegiate relationship with AMSA on a range of matters related to the functions and regulatory activities of each agency including the regulation of offshore safety. The relationship is firmly embedded in a number of ongoing bilateral activities, standing meetings and national plan arrangements. The extent of engagement maintained between NOPSEMA and AMSA, and the strength of the joint agency relationship is independent of the MoU.

Noting that in relation to the Skandi Pacific incident at no time was the vessel subject to regulation by NOPSEMA, it is NOPSEMA's view that the potential jurisdictional gap issues claimed by the AIMPE cannot

¹ Australian Transport Bureau Report, Fatality on Board *Skandi Pacific*, 14 July 2015, Pgs. 11-12.

be rectified through any MoU as these are policy and legislative matters for Government concerning the registration of vessels and Australia's maritime laws and borders.

Matters relevant to the Karratha Spirit

NOPSEMA understands that the Karratha Spirit was registered in Australia at the time of the incident. The Karratha Spirit was a vessel subject to regulation by maritime authorities and under specific circumstances was operated as an offshore facility and therefore subject to regulation by NOPSA, NOPSEMA's predecessor. The jurisdictional issues raised in regard to the Karratha Spirit do not relate to location or registration of the vessel, but the activity being undertaken by the vessel at the time of the incident. NOPSA accepted it was within the offshore jurisdiction and took responsibility for investigating the matter.

I trust the above response provides sufficient information in response to the evidence provided by the AIMPE. If you require any further information please do not hesitate to contact me.

Yours sincerely

Stuart Smith
Chief Executive Officer

27 June 2018

MEMORANDUM OF UNDERSTANDING

BETWEEN

AUSTRALIAN MARITIME SAFETY AUTHORITY

AND

**NATIONAL OFFSHORE PETROLEUM SAFETY
AUTHORITY**

CONCERNING

**COOPERATION ON SAFETY ARRANGEMENTS
FOR THE OFFSHORE PETROLEUM SECTOR**

February 2009

This Memorandum of Understanding (MOU) is between:

The Australian Maritime Safety Authority (AMSA) which is a statutory authority established under the *Australian Maritime Safety Authority Act 1990* with responsibilities for regulation of maritime safety, ship casualty coordination, search and rescue and the prevention and combat of pollution in the marine environment. AMSA is designated as, and performs the functions of, the Occupational Health and Safety Inspectorate for the maritime transport industry under section 4 of the *Occupational Health and Safety (Maritime Industry) Act 1993* (the OHS (MI) Act); and

The National Offshore Petroleum Safety Authority ("NOPSA") which is the statutory authority responsible for administering occupational health and safety under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, and any successor legislation, and the corresponding *State Petroleum (Submerged Lands) Acts*, and any successor legislation.

1. Objectives

- 1.1 The objectives of the parties are to ensure –
- (a) the improvement in safety outcomes in the offshore petroleum sector;
 - (b) the delivery of a consistent and comprehensive regulatory regime in offshore waters and that duplication of activities is avoided as far as reasonably possible in respect of facilities and ships over which the parties have regulatory obligations;
 - (c) that industry operations comply with relevant maritime and offshore legislation and regulations; and
 - (d) the effective co-operation of both parties in the administration of their respective commitments set in this MOU.

2. Purpose

- 2.1 This Memorandum of Understanding (MOU) sets out the mutual intentions of the parties to meet the objectives outlined in paragraph 1. The purpose is to guide cooperation and mutual assistance between AMSA and NOPSA in relation to carrying out their respective statutory functions for safety in the offshore petroleum industry, including how the parties will respond to the interaction between ships and offshore petroleum facilities.
- 2.2 AMSA and NOPSA acknowledge that this MOU is not legally binding and nothing in the MOU can legally restrict their respective statutory discretion and powers under relevant legislation.

3. Term of this MOU

- 3.1 This MOU is effective from 1 January 2009 and continues unless terminated earlier by the parties in accordance with this MOU.
- 3.2 This MOU will continue in force until a new MOU is signed or the parties agree that no further MOU will be entered into.

4. Mutual Intentions

- 4.1 The parties agree to establish and maintain contact to ensure the effective operation of this MOU.
- 4.2 Any changes to a party's nominated contact officer(s) or their contact details must be communicated to the other party as soon as possible.
- 4.3 All communication about the operation of this MOU is to be made to the nominated contact officer(s).
- 4.4 The parties agree to provide to each other from time to time, information of their roles and responsibilities in areas of potential overlap, and any relevant changes to legislation or regulations that may impact on the way in which the parties carry out their responsibilities offshore.
- 4.5 The parties agree to consider the interests of the other party in carrying out their responsibilities offshore and consult the other party in relation to any decision or action that may impact upon the responsibilities of the other party.

5. Responsibilities of AMSA

- 5.1 AMSA administers legislation that applies to ship operations, including:

- (a) The *Navigation Act 1912*, which generally applies to trading ships on international and interstate voyages, offshore industry mobile units and vessels which are declared under sections 8A or 8AA of the Act;
 - gives effect to many international conventions to which Australia is a signatory or which Australia has tacitly accepted.
 - authorises detailed legislation (Marine Orders) which gives effect to much of the Act's intent.
- (b) The *Occupational Health and Safety (Maritime Industry) Act 1993*, which is performance based legislation applicable in general terms to ships to which the *Navigation Act 1912* applies. AMSA will respond to health and safety issues in relation to personnel on ships under the Act, including:
 - ships registered, or deemed to be registered, in Australia;
 - foreign ships engaged in the coasting trade;
 - ships (other than the above) on which the majority of crew are Australian residents and which are operated by persons or firms having their principal place of business or are incorporated in Australia; and
 - ships declared under s8A or 8AA of the Navigation Act 1912.

- 5.2 In the context of this MOU the above legislation will generally apply to the transfer of goods and persons between a ship and an offshore facility, however there may be areas of joint interest where such transfers are managed from the offshore petroleum facility.

6. Responsibilities of NOPSA

- 6.1 NOPSA, through the administration of the, *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, has jurisdiction over offshore facilities (whether floating or fixed), and whether or not capable of independent navigation, while that vessel or structure is in operation or being prepared for operation or decommissioning as an offshore facility.
- 6.2 NOPSA will respond to Occupational Health and Safety issues affecting the health and safety of persons:
- (a) on board offshore facilities in Commonwealth and state *Petroleum (Submerged Lands) Act* waters;
 - (b) engaged in work in any associated offshore place near an offshore facility where activities relating to the construction, operation, maintenance or decommissioning of the facility take place;
 - (c) engaged in diving operations in connection with offshore petroleum operations; and
 - (d) on board vessels engaged in laying offshore petroleum pipelines, despite the fact that the vessel moves as the pipe laying process proceeds, construction barges or vessels and heavy lift vessels when involved in offshore petroleum related operations.

7. Audits, inspections and incident investigations

- 7.1 The parties may jointly conduct audits and inspections of facilities for which both parties have a direct regulatory responsibility at different times of the facility operation with the objective that, as far as reasonably practicable, duplication or overlap of audits and inspections is minimised.
- 7.2 AMSA and NOPSA share legislative responsibility for supporting and investigating occupational health and safety in the offshore sector. Given the nature of the legislation and types of vessels and facilities covered by the legislation, the parties acknowledge there will be occasions where jurisdiction between AMSA and NOPSA is not clear. Where jurisdiction is not clear-cut, the party first contacted or made aware of an incident will:
- (a) respond to the incidents notified to it;
 - (b) notify the other party as soon as reasonably practicable;
 - (c) conduct the investigations jointly if so agreed.
- 7.3 Where it is necessary for a party to conduct an urgent audit or investigation of an incident which may impact on the jurisdiction of the other party, the party proposing to conduct the audit or investigation will notify the other party as soon as reasonably practicable of their proposed action.
- 7.4 Each agency's contact officers and numbers for this purpose are listed in Schedule 1.
- 7.5 Where a party considers the other party may not be aware of an incident, it will notify the other party as soon as practicable.

- 7.6 Both parties agree to exchange information (within the bounds permitted by law), and where appropriate liaise and cooperate, on the investigation of incidents in which they are interested, including information on the outcome of investigations, lessons learned and any potential outcome for improvements to industry operational management systems.
- 7.7 In developing reports on parallel investigations, AMSA and NOPSA will consult on establishing the facts and findings of their investigations as to the causes and responsibilities for an incident, the appropriateness of any recommended safety actions and any safety actions already implemented.
- 7.8 Where AMSA and NOPSA disagree on preliminary findings or recommendations, they will consult and share information, including on techniques used to gather and interpret data, with a view to resolving any differences before finalising reports.
- 7.9 Subject to legislative requirements on disclosure of information, any reports resulting from investigations of incidents covered by this MOU will be made available to either party on request.
- 8. Prosecutions**
- 8.1 Prior to commencing a prosecution in which the other party may have an interest, each party will consult with the other via the nominated contact officer.
- 8.2 Prosecutions for offences involving only one agency will be the responsibility of that agency. Where investigation discloses evidence of offences involving the jurisdiction of both agencies, the parties will consult with a view to determining the most appropriate way to take the prosecution forward. Where both agencies agree, joint prosecutions may be undertaken.
- 9. Consultation and cooperation**
- 9.1 When assessing an operator's safety case, NOPSA may consult AMSA on the safety case in relation to the management of the interface between maritime safety and the safety of persons engaged in offshore petroleum operations.
- 9.2 In any cross-jurisdictional issue, inspectors considering the issue of either an improvement or prohibition notice will consult the other party as soon as reasonably practicable.
- 9.3 The parties agree to consult each other in the preparation of any guidelines, codes of practice, or guidance notes, protocols, programs or similar material relevant to safety and related matters safety matters of the maritime interface that are developed to assist operators to meet their legislative obligations.
- 9.4 Where appropriate and practicable, AMSA and NOPSA agree to develop complementary safety promotion and educational material, codes or guidelines or programs concerning OHS in the offshore industry.

- 9.5 AMSA and NOPSA will consult on research and data analysis affecting OHS in the offshore sector, with a view to identifying areas for research or reviews, including exchanging copies of reports of any such activities, and will identify areas for mutual cooperation.
- 9.6 The parties will advise each other of any changes to their policies, legislation or regulation that impact on the safe operation of offshore petroleum facilities.
- 9.7 The parties to this agreement will provide advice and assistance 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.
- 9.8 All inspectors involved in inspections under the *Occupational Health and Safety (Maritime Industry) Act 1993* or the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* will have access to this MOU.
- 9.9 The parties may, if so required, develop detailed instructions for inspectors/surveyors to assist implementation of this MOU. Each party will be provided with a copy of the other party's instructions.
- 9.10 In the event of circumstances not covered by this MOU, both parties agree to consult each other to reach mutual agreement on jurisdiction and action.
- 9.11 Subject to legislative requirements on disclosure of information the parties agree to consult and exchange information gathered or received by either party concerning offshore facilities and vessels interacting with offshore facilities that may affect safety of the vessel or the offshore facility.
- 9.12 Each party agrees that staff from the other party will be invited to participate in relevant training conducted by them.
- 10. Costs**
- 10.1 Each party is responsible for meeting its own costs in conforming with this MOU.
- 10.2 The parties agree to reimburse each other for the full costs of specialist services requested and provided by the other party under this MOU.
- 11. Review of the MOU**
- 11.1 The nominated contact officers will jointly review the operation of this MOU as necessary or otherwise as agreed in writing by the parties.
- 12. Amendments or Variations**
- 12.1 A party intending to amend or vary any of the terms or obligations of this MOU must provide 28 days written notice to the other party of the proposed amendment or variation including the reason for the proposed change.
- 12.2 An amendment or variation to the MOU takes effect on the date it is signed by the parties or on a date agreed by the parties in writing.

13. Disputes

13.1 Where an issue arises between the parties in relation to any matter in this MOU, the nominated contact officers will meet to attempt to resolve the issue within 28 days. Where the nominated contact officers are unable to resolve the issue, the Chief Executive Officer of NOPSA and the Chief Executive Officer of AMSA will undertake to resolve the issue.

14. Termination of the MOU

14.1 If a party wishes to terminate this MOU they must give 28 days notice in writing to the other party of their intention to terminate the MOU.

14.2 Both parties may agree in writing to terminate this MOU at a date agreed by the parties.

Signatories

Dated this // day of February 2009.

Signed for an on behalf of:

GRAHAM PEACHEY
Chief Executive Officer
Australian Maritime Safety Authority

JOHN CLEGG
Chief Executive Officer
National Offshore
Petroleum Safety Authority

SCHEDULE 1 - NOTIFICATION CONTACT DETAILS

AUSTRALIAN MARITIME SAFETY AUTHORITY

For incidents:

Telephone
Fax

For matters associated with this MOU:

Manager International and Government Relations
Telephone
Fax

NATIONAL OFFSHORE PETROLEUM SAFETY AUTHORITY

For matters associated with this MOU:

General Manager Regulatory
Telephone
Fax

Focal point NOPSA OHS Inspector – AMSA MOU

Tel:
Fax:

NOPSA Incident Notification