

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CHIEF COMMISSIONER

VICPOL

AND

THE CHIEF INVESTIGATOR

TRANSPORT AND MARINE SAFETY INVESTIGATIONS

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1 Parties

The parties to this Memorandum of Understanding (MOU) are:

- **Victoria Police**, of 637 Flinders Street, Melbourne, 3005 (VicPol).
- **The Chief Investigator, Transport and Marine Safety Investigations**, an independent statutory office under section 83 of the Transport Act 1983 (VIC), of 121 Exhibition Street, Melbourne (Chief Investigator).

2 Purpose

- 2.1 The purpose of this MOU is to outline the respective roles and responsibilities of, and the relationship between, the VicPol and the Chief Investigator in relation to Marine incidents and Marine safety matters in Victoria.
- 2.2 Specifically, this MOU sets out procedures and working arrangements to assist the parties in relation to:
- (a) coordination of Concurrent investigations of Marine occurrences by the parties; and
 - (b) the sharing of information between the parties.
- 2.3 Nothing within this MOU is intended to:
- (a) create any binding rights, powers, duties, liabilities or obligations;
 - (b) waive, fetter, limit or affect the rights, powers, duties, liabilities or obligations of the parties; or
 - (c) affect the due and proper performance of the parties' statutory functions or their ability to comply with all applicable statutory requirements.

3 Chief Investigator

- 3.1 The principal function of the Chief Investigator is to conduct investigations into public transport safety matters and Marine safety matters and report the results of those investigations to the Minister.
- 3.2 In relation to Marine safety matters, the Act provides for:
- (a) the conduct of investigations into Marine incidents involving a Vessel which has resulted in or has the potential to result in death or injury to persons or loss or damage to Vessel, property or equipment;
 - (b) the conduct of investigations into a Marine incident that provides grounds to reasonably believe that a pilot, pilot exempt master, harbour master, pilotage service provider, or person holding a certificate of competency has acted incompetently or breached the Marine Act or Marine Regulations.
- 3.3 The Chief Investigator is authorised to enter into this MOU pursuant to s85G of the Act.

4 Chief Commissioner

- 4.1 The Chief Commissioner is the head of VicPol and oversees the duties and functions carried out by VicPol.
- (a) The primary role of VicPol is to provide a safe, secure and orderly society by serving the community and the law.
 - (b) The principle functions of VicPol are to preserve peace, protect life and property, prevent offences, detect and apprehend offenders and help those in need of assistance.

5 Definitions

Concurrent investigation means a Marine incident which is the subject of parallel, but separate investigations, by both the VicPol and the Chief Investigator.

Marine Act means the Marine Act 1988.

Marine incident has the same meaning as the National Definition of a marine incident attached in appendix A.

Marine occurrence means either a Marine incident or Marine safety matter.

Marine Regulations means the Marine Regulations 1999.

Marine safety matter has the meaning set out at s82B of the Act.

Minister means the Minister for Roads and Ports.

Site means the site of the Marine incident.

The Parties means the Chief Investigator and the VicPol.

The Act means the Transport Act 1983.

Vessel means a vessel as defined under s3 of the Marine Act 1988.

6 Principles

- 6.1 The parties will have regard to the following principles in the application of this MOU:
- (a) the Parties are committed to providing a safe environment for marine users in the State of Victoria;
 - (b) the Parties each have the statutory discretion to conduct investigations; and
 - (c) the Parties will endeavour to conduct Concurrent investigations in a manner which minimises any imposition on marine operators and the public.
- 6.2 While recognising each party's mandate and independent role, the Parties are committed to a constructive and co-operative relationship in their common pursuit of enhancing the safety of marine operations in Victoria.
- 6.3 Nothing in this MOU prevents either party from making a decision to conduct an investigation, or undertaking an investigation.

7 Notification

- 7.1 Section 20 of the Marine Act requires the person in charge of a Vessel to report an incident to the VicPol.
- 7.2 As the State's search and rescue co-ordinator, the VicPol will generally receive early notification of Marine incidents and will respond, when necessary, to search and rescue requests on coastal and inland waters.
- 7.3 Upon request the VicPol will make available all relevant Marine incident information to the Chief Investigator.

8 Decision to Investigate

- 8.1 The Chief Investigator may attend the site or inspect the vessel before deciding whether an investigation is warranted as required by the Marine Act or the Act.
- 8.2 The Minister may direct the Chief Investigator to investigate a Marine safety matter under s85B of the Act.

9 Investigations

- 9.1 If the Parties both decide to investigate a Marine incident, the Parties shall:
- (a) work closely together to prevent unnecessary duplication of effort in the conduct of the investigation; and
 - (b) if required, seek expert and or technical advice from each other, as part of any investigation.
- 9.2 The VicPol will investigate Marine incidents with a view to meeting its coronial investigation obligations, to apply the law and where appropriate respond to complaints from interested parties and the public.
- 9.3 In the event of a Concurrent investigation, the Parties shall co-operate and assist each other to the extent that is permitted under the Marine Act and the Act and to the extent that such co-operation will not prejudice any investigation.

10 Securing the vessel and/or site of the incident

- 10.1 A person to whom the Chief Investigator has delegated powers under the Act may secure the Site.
- 10.2 To ensure co-operation and co-ordination in relation to evidence at the Site of a Marine incident, the Parties shall:
- (a) use their best endeavours to ensure the Site or Vessel is not disturbed and any evidence is not contaminated (unless necessary to do so to evacuate injured persons or to render the Site safe) until both parties have had the opportunity to examine the Site or Vessel; and
 - (b) advise the other party of anything that is identified as relevant to the other party's investigation; and

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- (c) afford each other the opportunity to be present when recordings and data are downloaded.

11 Information Exchange

- 11.1 Requests for information by the Parties shall be made in writing.
- 11.2 To the extent permitted by the Act, the Chief Investigator may disclose information and results of any investigations conducted if the Chief Investigator considers that the disclosure is necessary or desirable for the purposes of marine safety.
- 11.3 If VicPol requires a report from the Chief Investigator to be included in a coronial brief, a formal request must be made to the Chief Investigator.
- 11.4 The Parties will access, hold, use and disclose information received in accordance with the Information Privacy Act 2000.

12 Media Statements

- 12.1 The VicPol will be responsible for statements regarding the conduct of search and rescue activities and day to day enforcement activities.
- 12.2 The Parties will advise each other of all media contact that may affect their respective responsibilities.

13 Review

- 13.1 The Parties will formally review this MOU 12 months after the date of execution and subsequent to that, at regular intervals not exceeding three 3 years, as agreed between the parties.

14 Variation

- 14.1 This MOU may be varied, altered, amended or modified by written mutual determination between the Parties.
- 14.2 Authorisation for variation, alteration, amendment or modification of this MOU must be signed by the Parties, or an authorised person acting on behalf of the Parties.

15 Termination

- 15.1 Either party may terminate this MOU by giving 7 days notice in writing to the other party.

16 Confidentiality

- (a) For the purposes of clause 16, 'Confidential Information' means any information belonging to a party to this MOU which comes into the possession of the other party to this MOU, excluding information which;
 - (i) is in the public domain other than by disclosure in breach of this clause;
 - (ii) is or becomes available to the recipient party from a third party lawfully in possession of it and with the lawful power to disclose it to the recipient party;
 - (iii) is rightfully known by the recipient party prior to the date of disclosure to it under this MOU; or
 - (iv) is independently developed by an employee of the recipient party who has no knowledge of the information which has been shared under this MOU.
- (b) Each party may use Confidential Information disclosed by the other party only for the purposes of this MOU.
- (c) Each party must keep confidential Information disclosed by any other party confidential except where required by this MOU, indicated otherwise by the disclosing party or required by law.

Execution

Signed by

JIM HART

Commander, Specialist Support Department,
for and on behalf of VicPol

Date: / / 2008

Signed by

IAN MCCALLUM

Chief Investigator,
Transport and Marine Safety Investigations

Date: / / 2008

APPENDIX A

NATIONAL DEFINITION OF A MARINE INCIDENT

The following definition has been developed by the marine agencies of the Australian Commonwealth, States and Territories and New Zealand for use in the collection of marine incident data.

1. The death of, or injury to, any person on-board a vessel, or caused by a vessel.
2. The loss of a person from a vessel.
3. The abandonment, loss or presumed loss of a vessel.
4. The collision of a vessel with another vessel or with an object.
5. The grounding, sinking, flooding or capsizing of a vessel.
6. A fire on-board a vessel.
7. The loss of stability affecting the safety of a vessel.
8. Structural failure of a vessel.

This definition of a marine incident will be supported by a minimum data set contained in a “marine incident reporting form”. The form will make provision for the following:

- (a) Persons involved
- (b) Incident description
- (c) Vessels involved
- (d) Contributing factors
 - Environmental
 - Material
 - Human
 - Cause unknown