

MEMORANDUM OF UNDERSTANDING

BETWEEN

MARINE SAFETY VICTORIA

AND

**CHIEF INVESTIGATOR TRANSPORT AND MARINE SAFETY
INVESTIGATIONS**

PART 1 PURPOSE OF THIS MoU

- 1.1 This Memorandum of Understanding (MoU) records the roles, responsibilities and relationship between the Chief Investigator Transport and Marine Safety Investigations (hereafter referred to as "CI") and the Director of Marine Safety Victoria (hereafter referred to as "MSV") in relation to the reporting and investigation of marine incidents and the exchange of information between the Parties in relation to such matters.
- 1.2 The Parties agree that nothing within this MoU is intended to:
 - 1.2.1 create any binding rights, powers, duties, liabilities or obligations;
 - 1.2.2 waive, fetter, limit or affect the rights, powers, duties liabilities or obligations of the Parties; or
 - 1.2.3 affect the due and proper performance of the Parties' statutory functions or their ability to comply with all applicable statutory requirements.

PART 2 PRINCIPLES APPLICABLE TO THIS MoU

- 2.1 The Parties acknowledge that MSV and the CI;
 - 2.1.1 have separate and independent mandates and roles under the *Marine Act 1988* and the *Transport Act 1983*;
 - 2.1.2 have a statutory right to conduct investigations but do so for separate purposes; and
 - 2.1.3 have a common interest in the safe operation of vessels in Victorian waters.
- 2.2 Specifically, this MoU sets out procedures and working arrangements to assist the parties in relation to:-
 - a) notification between the parties of major marine incidents;
 - b) concurrent investigations of marine incidents by the parties;
 - c) the exchange of information between the parties.
- 2.3 While recognising each party's mandate and independent role, MSV and the CI are committed to a constructive and co-operative relationship in their common pursuit of enhancing marine operations in Victoria.

PART 3 GENERAL BACKGROUND

3.1 MSV has responsibilities under the following Legislation: -

Marine Act 1988;

Port Services Act 1995;

Pollution of Waters by Oil and Noxious Substances Act 1989;

and regulations made under those Acts.

3.2 The CI has responsibilities under the following Legislation:-

Transport Act 1983

and regulations made under this Act (if any).

NB: Both parties have obligations to observe the *Information Privacy Act 2000*. MSV privacy obligations are however limited under the *Marine Act 1988*.

PART 4 DEFINITIONS

4.1 When used in this Document:

Marine Safety Victoria means the Director of Marine Safety Victoria.

The Chief Investigator means the Chief Investigator, Transport and Marine Safety Investigations for the purposes of the *Transport Act 1983*.

Concurrent Investigation means any event resulting in both MSV and OCI independently making a determination to investigate a marine safety matter.

Marine Incident has the same meaning as section 82B of the *Transport Act 1983*.

Marine Operator means the person or corporation responsible for the vessel involved in the incident.

Lead Investigator means the Investigator appointed by the Chief Investigator to be responsible for the conduct of an investigation.

MSV Inspector means the person appointed by the Director of MSV for the purposes of conducting an investigation.

Vessel Incident Report (VIR) means the MSV incident report document to be completed by any person involved in a marine incident and sent to MSV as soon as practicable after the incident or in the case of a Pilot pursuant to the Pilot code of conduct.

Major Marine Incident means serious or fatal injury incidents but also includes groundings, collisions, touch bottom, fires, explosions and near miss incidents.

PART 5 NOTIFICATIONS

MSV TO NOTIFY OCI OF MAJOR MARINE INCIDENTS

- 5.1 MSV will verbally notify the CI immediately it becomes aware of a major marine incident, by phoning the CI Duty Officer on 03 9639 5359 and, upon receipt of a VIR relating to an incident will forward a copy of the VIR to the CI by either email or by fax to 03 9095 4444.

OCI TO NOTIFY MSV OF MARINE OCCURRENCES

- 5.2 In the event that OCI is notified of a major marine incident by other than MSV, the CI will immediately notify MSV or his delegate (being the duty officer), of the occurrence by phoning MSV on 9883 5330.

PART 6 INTERAGENCY COOPERATION IN RELATION TO THE CONDUCT OF INVESTIGATIONS

DECISION TO INVESTIGATE

- 6.1 Nothing in this MoU prevents either party from making a decision to conduct an investigation, or to deploy inspectors/investigators for the purposes of undertaking a preliminary investigation. However, the Parties agree that the conduct of Concurrent Investigations should be conducted in a manner to reduce the impost on Marine Operators and the public.
- 6.2 The Parties agree to provide timely advice of their intention to investigate, or commence a preliminary investigation. Such advice should, where possible, be communicated during the process of notifying the other Party of the related occurrence.

CONCURRENT INVESTIGATIONS

- 6.3 In the event of a concurrent investigation the Parties agree that they will co-operate and assist each other to the extent that is possible without compromising their own independent investigation. In order to conduct concurrent investigations the Parties agree that:

6.3.1 Coordination for MSV will be through MSV or his delegate and for the Chief Investigator either directly or through the Lead Investigator.

6.3.2 Where possible, the Parties will coordinate deployment of investigating officers to the incident site. Where that is not possible, the first Party on site will provide an initial briefing to the other upon their arrival. The briefing shall include, but is not limited to, the following:

- (a) safety issues at the site;
- (b) other agencies and key personnel on site;
- (c) details of any emergency response actions underway;
- (d) details of any other matters that might impact on investigatory activities on site.

6.3.3 To ensure that any chain of custody issues and evidence handling, security and storage procedures are carried out appropriately and to ensure the preservation, collection and maintenance of evidence the parties agree that if physical evidence is required to be removed, dismantled, changed or altered MSV will be the party responsible for doing so unless the other party is complying with section 83(3) (d) of the *Marine Act 1988*.

- 6.4 MSV will conduct recorded interviews in the first instance and will offer the CI the opportunity to be present when recordings and data are downloaded and/or tests are conducted;
- 6.5. The parties agree to ensure the integrity of the evidence is maintained and is available to each other.
- 6.6 In the event that both Parties wish to conduct interviews at the same time, the Parties agree that MSV will conduct the first interview but that, unless the person to be interviewed objects, a CI investigator may be present at the interview. The CI investigator will not speak, or in any other way intervene, throughout the interview. This interview may be immediately followed by a separate interview conducted by OCI, at which MSV shall not be represented.

PART 7 VARIATIONS OR DISSOLUTION OF THIS MoU

- 7.1 The Parties agree that this MoU may be varied by agreement in writing of both Parties. The Parties agree that if agreement to a required variation cannot be reached that either Party may dissolve this MoU in accordance with Clause 7.2 of this MoU.

