

DECLARATION OF INTENT BETWEEN THE AUSTRALIAN TRANSPORT SAFETY BUREAU AND SHIPPING AUSTRALIA LTD

1.0 PARTIES

1.1 Shipping Australia Ltd

- 1.1.1 The major focus of Shipping Australia Ltd, as a peak industry body, is both to promote and advance the interests of ship owners and shipping agents in all matters of shipping policy and safe/secure ship operations.
- 1.1.2 Shipping Australia's members cover many of the major Australian and international ship owners, operators and agency companies involved in bulk, tanker, general cargo shipping, container, passenger and tramp trades, covering liner conference and independent services.
- 1.1.3 Shipping Australia's objectives are to:
- (a) Support and promote the development of a regulatory environment which supports the reliable supply of efficient shipping services;
 - (b) Implement and support actions taken which are aimed at reducing the costs of shipping services;
 - (c) Improve the quality of service to Australia's exporters and importers;
 - (d) Expand the opportunities for shipping services focusing on world's best practice and safe operating procedures;
 - (e) Raise the image and public perception of the shipping industry;
 - (f) Expand the information and databases of value to its team members;
 - (g) Cooperate with all government and non-government organizations in the pursuit of these objectives.

1.2 The Australian Transport Safety Bureau

- 1.2.1 The ATSB is an operationally independent Bureau within the Commonwealth Department of Transport and Regional Services that is treated as a Group for administrative purposes. Under the *Transport Safety Investigation Act 2003* (TSI Act), the Executive Director and his or her delegates are responsible for the investigation of transport safety matters which cover safety matters within marine transport.
- 1.2.2 Section 7 of the TSI Act includes as objectives of the Act the conduct of independent investigations and the making of safety action statements and safety recommendations that draw on the results of those investigations in an effort to prevent the future occurrence of accidents and other incidents that might affect transport safety. It is not an objective of the TSI Act to apportion blame or determine the liability of any person or party.

2.0 PURPOSE

- 2.1 The purpose of this Declaration of Intent (DoI) is to document an understanding between the Australian Transport Safety Bureau (ATSB) and the Members of Shipping Australia Ltd on the way in which a transport safety investigation will be conducted under the TSI Act into a marine occurrence.
- 2.1.1 When used in this DoI, the terms, Immediately Reportable Matter (IRM), Transport Safety Matter, Responsible Person and Restricted Information have the same meaning as defined in the TSI Act.

3.0 MUTUAL RESPECT

- 3.1 The ATSB acknowledges the objectives of Shipping Australia Ltd listed above. It is respected that the overriding objective is to promote and advance the interests of ship owners and shipping agents.
- 3.1.1 The ATSB recognises that in the event of even serious accidents, ships remain dynamic systems with particular functions of maintaining habitability, providing safe shelter for the crew and other personnel, preventing or reducing pollution or other adverse environmental effects and remaining afloat.
- 3.1.2 Members of Shipping Australia Ltd acknowledge the important public interest role of the ATSB under Commonwealth legislation linked to Australia's international obligations and the need for the ATSB to utilise a finite budget to investigate transport safety matters to the extent likely to make the best contribution to safety.
- 3.1.3 It is acknowledged that the ATSB and members of Shipping Australia Ltd are committed to the safety of life at sea. Both parties understand that investigations into marine transport safety matters play an important part in improving safety and they will seek to work cooperatively.

4.0 NOTIFICATION OF OCCURRENCES

- 4.1. The requirements for reporting matters are set out in the TSI Act and *Transport Safety Investigation Regulations 2003* (TSI Regulations). It is accepted practice that responsible persons from the shipping industry listed in regulation 3.4 will report the list of IRMs in regulation 3.3 to the Australian Maritime Safety Authority (AMSA). AMSA will then pass the report on to the ATSB.
- 4.1.1 In line with the requirement under section 16 of the TSI Act that there will be minimal disruption to transport services, the ATSB undertakes to notify the Master of the ship as soon as is reasonably practicable as to whether the ATSB intends to conduct an investigation into the matter under the Act.

5.0 COMMENCEMENT OF AN INVESTIGATION

- 5.1. The ATSB respects that the Master, or anybody acting in a temporary position as Master, remains in command and is responsible for the safety of the ship, its crew and any other personnel on board.
- 5.1.1 When an IRM has occurred, and before the ATSB has had the opportunity to act, the members of Shipping Australia Ltd undertake to preserve to the maximum extent possible, consistent with the safe operation of the ship, all evidence in situ. The ATSB may require original charts, engine movement records or other contemporaneous material for testing.
- 5.1.2 The undertaking to preserve all evidence in situ does not extend to certificates, records and other material that are routinely collected by P&I, charters and others following an accident. However, copies of the originals may be required by the ATSB under section 32(1)(b) of the TSI Act.

5.2.1 Accident Sites

- 5.2.2 For every IRM that constitutes an accident under the section 3 definition in the TSI Act, the ATSB will routinely secure the site as an accident site under section 44 of the TSI Act. Where possible the accident site will be confined to the ship's structure, including the shell plating, the space within the shell plating and the ship's superstructure.
- 5.2.3 In exercising the powers under section 44, the ATSB recognises the nature of ship-board operations and the need for the Master to continue to work the ship and preserve life, property and the environment. While the ship is secured as an accident site, in accordance with section 44, the Investigator in Charge will not unreasonably withhold permission for the Master of the ship and crew members to access the accident site for the purpose of continuing the ship's business.
- 5.2.4 The ATSB also recognises that it may be necessary for salvage operators, repairers, technicians, ship's agents and others to have access to the ship. The Investigator in Charge will not unreasonably withhold permission for these persons to access the accident site under section 44, where it is necessary for them to carry out their work.

5.3.1 Protection Orders

- 5.3.2 To provide consistency and certainty and to remove any perception of a discriminatory approach, ATSB will routinely issue a protection order under s.43 of the TSI Act in relation to a ship being investigated, that is involved in an accident. Any such order will be phrased in such a way that any individual or organisation that properly should have access to the ship at any time will have such access.
- 5.3.3 Members of Shipping Australia Ltd recognise the need for accident sites and other material evidence to be maintained in its original form and will make every effort to ensure that such evidence is maintained and is not tampered with or otherwise altered.

5.4.1 Section 24

5.4.2 Section 24 makes it an offence to engage in conduct that is reckless as to whether it will adversely affect an investigation that is being conducted at the time or that could be conducted at a later time into an IRM. The offence applies if that conduct then does actually adversely affect the investigation.

5.4.3 When enforcing this provision the ATSB remains aware of the need to work the ship and preserve life, property and the environment. In accordance with section 24 the Investigator in Charge will not unreasonably withhold permission for persons associated with the ship to engage in necessary conduct which may adversely affect the investigation. In this respect members of Shipping Australia Ltd agree to consult with the ATSB in any circumstance where the requirements of the safe operation of the ship and the need to preserve evidence may be in conflict.

6.0 ATSB TRANSPORT SAFETY INVESTIGATION TEAM

6.1 The ATSB undertakes that the experience and professional qualifications of the investigator in charge of a ship-board investigation shall be consistent with the recommendation contained in paragraph 7 of the International Maritime Organization Assembly Resolution A.847(20).

6.1.1 The Investigator in Charge will have a background in marine transport, however, it is recognised that for the purposes of conducting an effective investigation it may be necessary to draw on people with other expertise such as human factor analysts. It is understood though, that these persons will meet the criteria set out in regulation 5.1 of the TSI Regulations for the delegation of powers under the TSI Act.

7.0 INFORMATION

7.1 During the course of an investigation the ATSB will likely require such things as original charts, engine movement records or other contemporaneous material for testing. Members of Shipping Australia Ltd undertake to cooperate in providing the ATSB with requested material.

7.1.1 Members of Shipping Australia Ltd understand that the ATSB may prefer to make the provision of material a legal requirement under section 32 of the TSI Act. This course of action may be preferable as documents produced under section 32 will be classified as restricted information and as a result cannot be disclosed by a staff member.

8.0 RELEASE OF INFORMATION

8.1 Reports

- 8.1.1 Under section 25, the Executive Director is required to publish a report as soon as practicable after an investigation has been completed. The Executive Director may also publish a report prior to the completion of an investigation if it is considered necessary or desirable for the purposes of transport safety.
- 8.1.2 The ATSB may make formal recommendations. The ATSB recommendations will result from the identification by the ATSB of safety deficiencies. Each written recommendation will be accompanied by a written statement outlining the associated safety deficiency and support information which led to the recommendation being made
- 8.1.3 The acceptance of ATSB recommendations will be an issue for AMSA and members of Shipping Australia Ltd. However, members of Shipping Australia Ltd acknowledge that the ATSB is a credible investigation agency and its recommendations will be given full consideration. The ATSB in making recommendations for action will identify as far as practicable only the desired outcome required. However, where the ATSB believes it is appropriate it will propose specific solutions to achieve the desired outcome.

8.2 Draft Reports

- 8.2.1 In accordance with ATSB policy, Directly Involved Parties are those individuals or organisations that were directly involved in a transport safety occurrence or may have influenced the circumstances that led to an occurrence. Directly Involved Parties may include, for example, the Master of the ship, a pilot who had duties on board the ship, the owner or operator of the ship or the maintenance provider. The ATSB's Directly Involved Party process helps to ensure the accuracy of a report and to provide a measure of natural justice.
- 8.2.2 The ATSB will provide Directly Involved Parties with a copy of the draft report under section 26 to make comment on if they wish. A member of Shipping Australia Ltd who is identified as a Directly Involved Party will always be provided with a copy of a draft report. Members of Shipping Australia Ltd understand that if they are provided with a draft of the report under section 26 they are subject to the confidentiality requirements of that section.

8.3 Restricted Information

- 8.3.1 Sensitive safety information classified as restricted information is subject to the confidentiality provisions of Division 2 of Part 6 of the TSI Act.
- 8.3.2 The ATSB will advise other authorities or interested parties that wish to obtain restricted information held by the ATSB that they are to seek that information directly from the persons from whom the ATSB obtained the information. It will only be where there is no alternative means of obtaining the information and its release is necessary for the purposes of transport safety, that it may be disclosed under section 61.

9.0 FORMAL CONTACT POINTS

- 9.1 In relation to this DoI, the ATSB will direct all notices or other correspondence to Chief Executive Officer, Shipping Australia Limited, PO Box Q388, Sydney 1230. Shipping Australia Ltd will direct its notices and correspondence to the Deputy Director, Surface Safety Investigations (ATSB), P.O Box 987, Civic Square, ACT 2608.

10.0 REVIEW

- 10.1 In the event that any disagreements or disputes arise in respect to any of the provisions of this DoI the parties agree to consult each other to form a resolution.
 - 10.1.1 A resolution may be made to make an amendment or amendum to the DoI. The party proposing the resolution will draft the amendment or amendum to be agreed by the other party.

11.0 TERMINATION

11.1 This agreement, as amended, remains in force until revoked by mutual agreement between both parties.

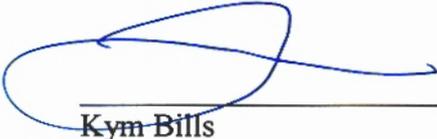
Dated this

27th

day of

November

2003



Kym Bills
Executive Director
Australian Transport Safety Bureau



Llew Russell
Chief Executive Officer
Shipping Australia Ltd