

OH&S, ISM & HSR in LNG Projects

What's it all about?



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Outline

- ⦿ **Dredging Projects**
- ⦿ **Foreign-flagged**
- ⦿ **Conflict of Laws**
- ⦿ **Confined Spaces**
- ⦿ **HSR**



The wonders of dredging...



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The wonders of dredging...

- ⦿ Worn pipes
- ⦿ Doubler plates
- ⦿ Enclosed space?
- ⦿ Safe access?
- ⦿ Rescue plan?



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The wonders of dredging...

- ⦿ Dutch Flagged
- ⦿ Operated by Australian subsidiary company
- ⦿ Both Australian crew and Dutch 'Shadow' Crew
- ⦿ Dutch Master
- ⦿ Welding Contractors – Darwin locals
- ⦿ Spoil Ground outside Northern Territory Waters



The ISM Code

Ensuring safety at sea



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ISM

- ⚙ **International Ship Management Code**
- ⚙ **Chapter IX SOLAS**
- ⚙ **applied by Dutch Law**
- ⚙ **Safety Management System (SMS)**
 - ⚙ **Confined Space Entry Procedures**
 - ⚙ **Hot Work Procedures**
 - ⚙ **Emergency Procedures & Rescue Plans**



ISM

- ⊗ In dredging, inspecting and entering pipes is 'normal'
- ⊗ Indonesia, Suez Canal, Russia, Australia...
 - ⊗ Atmosphere hazards
 - ⊗ Access hatches
 - ⊗ Engulfment
 - ⊗ Rescue
 - ⊗ Hot Work
 - ⊗ Permits



Internal Economy Rule

- ⦿ the law of the vessel's flag state applies
- ⦿ unless displaced by 'clear words'?
- ⦿ **Re Maritime Union of Australia [2003] 214 CLR 397**

The question thus becomes whether the interests of the coastal State are engaged such as to attract the operation of its legislation upon a particular subject to the visiting ship.



Australian Legislation

Displacing the internal economy rule



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Legislation

- ⦿ *Navigation Act 2012*
- ⦿ *Occupational Health and Safety (Maritime Industry) Act 1993 (OHS(MI) Act)*
- ⦿ *AS 2865 – 1995 - Safe working in a confined space*
- ⦿ *Work Health And Safety (National Uniform Legislation) Act 2011 (NT WHS Act)*
- ⦿ *NT Worksafe Confined Space Code of Practice*



Navigation Act 2012

- ⦿ Applies ISM Code to Australian Flag Ships
- ⦿ Marine Order 58
- ⦿ Port State Control
- ⦿ ISM deficiencies account for 13% of detentions
- ⦿ Emergency Procedures
- ⦿ Confined space rescue



OHS(MI) Act 2003

- ⦿ OHS Inspectorate – AMSA
- ⦿ MoU with States and Territory
- ⦿ Regulator – Seafarers Safety, Rehabilitation and Compensation Authority (Seacare)
- ⦿ Prohibition Notices
- ⦿ Health and Safety Representatives
- ⦿ Regulations - Confined Space



OHS(MI) Act - Prescribed Ship

- ⦿ A prescribed ship is:
 - ⦿ a ship registered in Australia
 - ⦿ a ship engaged in coastal trading under a general licence within the meaning of the Coastal Trading (Revitalised Australian Shipping) Act 2012 (Cth)
 - ⦿ a ship (other than the above) on which the majority of crew are residents of Australia and which are operated by persons or firms which have their principal place of business in Australia or are incorporated in Australia; or
 - ⦿ a ship declared by the Minister to be a prescribed ship.



NT Worksafe

- ⦿ *Work Health And Safety (National Uniform Legislation) Act 2011*
- ⦿ Subordinate Regulations
- ⦿ NT Worksafe Confined Space Code of Practice



NT Worksafe - definitions

- ⦿ A **workplace** is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.
- ⦿ **place** includes:
 - ⦿ (a) a vehicle, vessel, aircraft or other mobile structure; and
 - ⦿ (b) any waters and any installation on land, on the bed of any waters or floating on any waters.



Conflict of Laws?

- ⦿ Dutch Law – ISM Code
- ⦿ Navigation Act – Port State Control
- ⦿ OHS(MI) Act
- ⦿ NT WHS Act
- ⦿ So what?



Confined Space

Confined, enclosed or just cramped and uncomfortable?



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OHS(MI) Act - Confined Space

- ⦿ Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003
- ⦿ Part 4 – confined spaces
- ⦿ Incorporates AS 2865 – 1995 - Safe working in a confined space
- ⦿ Mandatory Confined Space Training – Seacare Guide



OHS(MI) Act - Confined Space

6.2 Confined space – an enclosed or partially enclosed space which:

- ⦿ **is at atmospheric pressure during occupancy;**
- ⦿ **is not intended or designed primarily as a place of work;**
- ⦿ **may have restricted means for entry and exit; and**
- ⦿ **may - (i) have an atmosphere which contains potentially harmful levels of contaminant; (ii) not have a safe oxygen level; or (iii) cause engulfment.**



OHS(MI) Act - Confined Space

- ☼ Confined spaces include but are not limited to –
 - (A) storage tanks, tank cars, process vessels, boilers, pressure vessels, silos and other tank-like compartments;
 - (B) open-topped spaces such as pits or degreasers;
 - (C) pipes, sewers, shafts, ducts and similar structures; and
 - (D) any shipboard spaces entered through a small hatchway or access point, cargo tanks, cellular double bottom tanks, duct keels, ballast and oil tanks, and void spaces, but not including dry cargo holds.



NT Worksafe – Confined Space

- ⦿ Is the space likely to pose a risk to health and safety from one or more of the following:
 - ⦿ an atmosphere that does not have a safe oxygen level
 - ⦿ Contaminants that may cause injury from fire or explosion
 - ⦿ harmful concentrations of any airborne contaminants
 - engulfment, for example: any liquid including oil or water in which a person can drown.
- ⦿ If no, then not an enclosed space...



NT Worksafe – Confined Space

Confined spaces are commonly found in vats, tanks, pits, pipes, ducts, flues, chimneys, silos, containers, pressure vessels, underground sewers, wet or dry wells, shafts, trenches, tunnels or other similar enclosed or partially enclosed structures, when these examples meet the definition of a confined space in the WHS Regulations.



Conflicts – Confined Space Vox Maxima

- ⊙ **What procedures are used on board?**
 - ⊙ LNG Project OHS Procedures (based on NT Worksafe advice)
 - ⊙ Ship's ISM Procedures (Dutch Law)
- ⊙ **What isn't on board?**
 - ⊙ AS 2865 – 1995 - Safe working in a confined space
 - ⊙ OHS(MI) Act or Regulations
 - ⊙ NT Worksafe Confined Space Code of Practice



Conflicts – Confined Space Vox Maxima

- ⦿ Does it matter?
- ⦿ Is the pipe a confined space?
- ⦿ Which Confined Space Code applies?
- ⦿ Who is trained and competent?
- ⦿ Is a Master Unlimited CoC evidence of confined space competency on board a ship?



Health and Safety Representatives

More acronyms - PINs and DWGs



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Health and Safety Representatives

- ⦿ Who are they?
- ⦿ How are they appointed?
- ⦿ Mandatory training?
- ⦿ What are their powers?
- ⦿ Are there any differences between the OHS(MI) and the NT WHS Act?



OHS(MI) Act – Who is a HSR?

- ⦿ **By Selection** - One HSR may be selected for each DWG by the members of the DWG (subsection 41(1)).
- ⦿ **Election (section 42)** - Where there is only one involved union for a DWG, that union may conduct the election. Where there is more than one involved union, the unions must agree on which union will conduct the election.
- ⦿ **Eligibility** - An employee in a DWG can be a candidate in the election, as long as they are not disqualified from being so (subsection 43(a)). If a union is conducting the election, the employee is nominated by that union (subsection 43(b)).



OHS(MI) Act – Who is a HSR?

- ⦿ A HSR holds office for the period beginning from the day of selection / election to the day that person stops serving on a prescribed ship or unit that is part of a DWG
- ⦿ Or if agreed, for a succession of such periods (subsection 46(1) and sections 35 to 36).
- ⦿ If a union is conducting the election, the employee is nominated by that union (subsection 43(b)).



OHS(MI) Act – Who is a HSR?

- ⦿ A HSR **must** undertake a course of training related to OHS that is accredited by the Seacare Authority (S 47(1)).
- ⦿ Seacare Authority accredited course providers
- ⦿ www.seacare.gov.au/OHS/HSR_training courses.



OHS(MI) Act – DWGs

- ⦿ **S40(2) Consultations on DWGs must have regard to:**
 - ⦿ the number of employees;
 - ⦿ the nature of each type of work performed by the employees;
 - ⦿ the number and grouping of the employees who perform the same or similar work;
 - ⦿ the workplaces, and the areas within workplaces, where each type of work is performed;
 - ⦿ the nature of any risks to health and safety at the workplaces;
 - ⦿ any extended hours or watch keeping arrangements on the prescribed ship or prescribed unit.



OHS(MI) Act – DWGs

- ⦿ By union? – MUA/AMOU/AIMPE
- ⦿ By department – Deck, Engine Room, Catering
- ⦿ Officers vs Ratings?
- ⦿ What about Watchkeepers?
- ⦿ What about the ex-pats?



OHS(MI) Act – HSR Powers

- ⦿ inspecting a workplace
- ⦿ accompanying an investigator during an investigation
- ⦿ representing the members of their DWG in health and safety consultations with the operator
- ⦿ investigating health and safety complaints
- ⦿ initiating emergency stop-work procedures, and
- ⦿ issuing a provisional improvement notice (PIN)

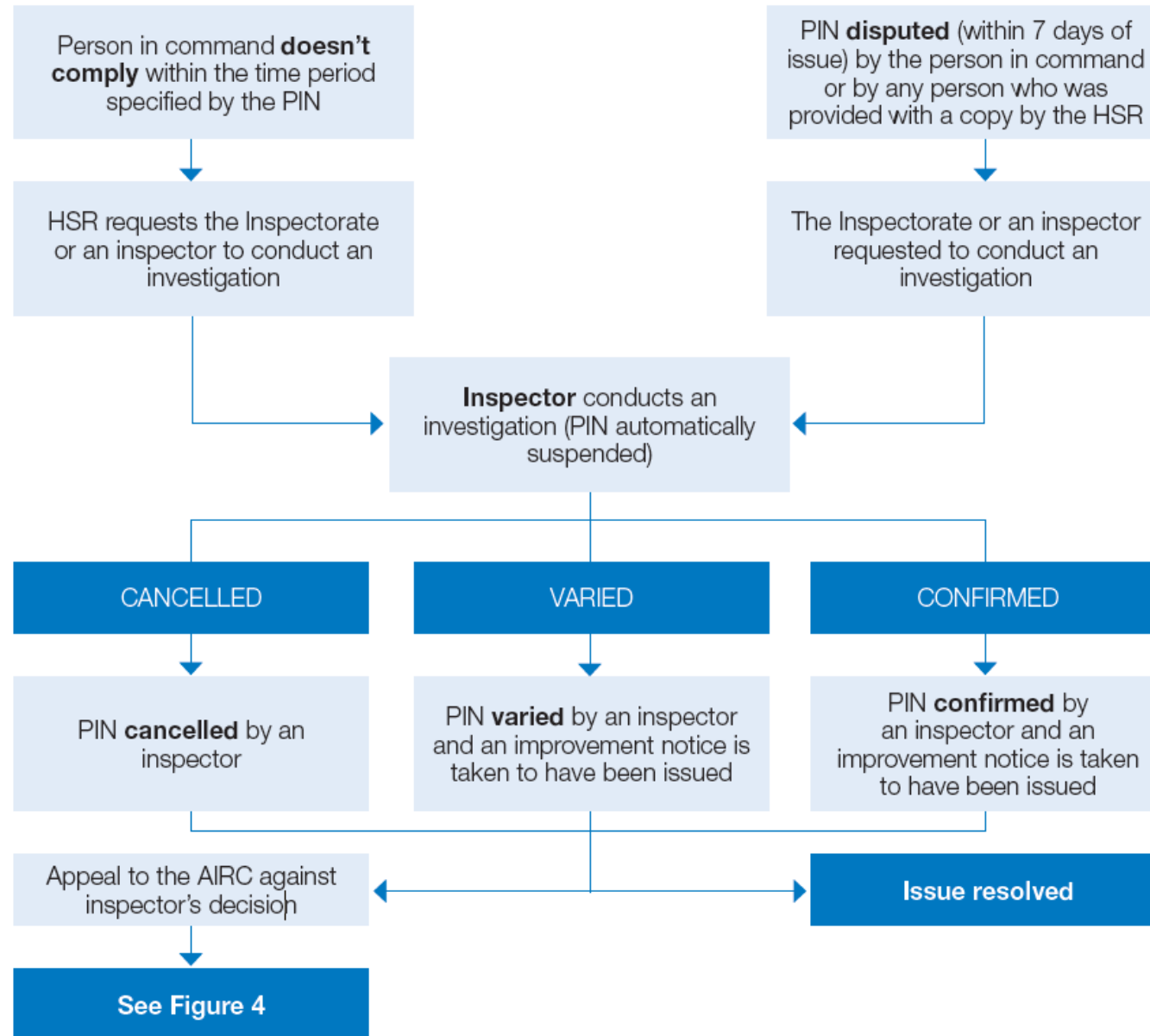


OHS(MI) Act – PINs

- ⦿ Only after consultation with Master
- ⦿ Contravention of the Act – past or current
- ⦿ Given to Master and displayed
- ⦿ Specifies action required



Figure 2: PIN disputed or not complied with



http://www.seacare.gov.au/_data/assets/pdf_file/0004/36337/Seacare_HSR_Handbook_A4_Sep2008.pdf



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NT WHS Act - HSRs

- ⦿ Very similar to OHS(MI)
- ⦿ DWG – slightly different criteria – including language
- ⦿ Election/selection – no mention of unions
- ⦿ HSR Training NOT mandatory but encouraged
- ⦿ http://www.worksafe.nt.gov.au/Publications/Guides/worker_representation_participation_guide.pdf



OHS(MI) vs NT WHS Act - HSRs

- ⦿ Role of the unions
- ⦿ PCBU vs Master (person in command)
- ⦿ HSR goes on leave
- ⦿ Designated Work Groups on ships
- ⦿ So what?



OHS on the Vox Maxima

What happens in the real world...



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OHS(MI) Act vs NT WHS Act

Vox Maxima

- ⦿ HSRs – only one for the whole ship
- ⦿ MUA member
- ⦿ Appointed in closed meeting
- ⦿ Trained as HSR under NT WHS Act
- ⦿ No-one trained under OHS(MI) Act
- ⦿ Ex-pat crew disengaged – language and culture issues



OHS(MI) Act vs NT WHS Act

Vox Maxima

- ⦿ 4 systems on board
 - ⦿ The NT WHS Act way (MUA)
 - ⦿ The OHS(MI) Act way (Australian Deck Officers)
 - ⦿ The Shipboard ISM procedures (ex-pat Master and officers)
 - ⦿ All of the above? (welding contractors)
- ⦿ So what?



Incident

- ⦿ **Welding doubler plates**
- ⦿ **Contractor – not ship's crew**
- ⦿ **Change in access arrangements at HSRs insistence**
- ⦿ **Dislocated shoulder**
- ⦿ **At the dump ground**
- ⦿ **Emergency evacuation**



Response

- ⦿ Incident reported to NT Worksafe
- ⦿ NT Worksafe investigation
- ⦿ PINs issued under NT WHS Act
- ⦿ No consultation with Master
- ⦿ Statement



Lessons

- ⦿ land vs marine OHS
- ⦿ OHS Advisors have been trained in certain ways
- ⦿ Know how your HSRs are selected
- ⦿ Have a DWG policy
- ⦿ Provide the correct training
- ⦿ Get the ex-pats involved



Questions?



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Thank you



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