

OCCUPATIONAL HEALTH AND SAFETY ON WHARVES

INFORMATION FOR SHIPPING COMPANIES AND THEIR AGENTS

This Fact Sheet has been issued to alert and advise shipping companies and their agents on measures they may wish to take to mitigate possible exposure to claims arising from Occupational Health & Safety incidents on Victorian wharves and terminals. Similar exposure may be faced in other States depending on the application of OH&S Acts by the relevant State's authorities.

Shipping companies and their agents are supportive of the objectives of the Victorian Occupational Health and Safety Act 1985 (Act), as they are with other State's OH&S Acts.

Some authorities in Victoria have interpreted the Act to place certain responsibilities on Agents and shipping companies. Under this interpretation Agents under Victorian law may be considered ultimately liable for incidents on Victorian wharves. They have declared that *"a shipping agent has duty of care to all contractors such as stevedores and trucking companies, and the employees of these companies, to visitors to the ship, or any other persons in the vicinity of the operating berth such as Customs & AQIS officers and providores"*. Penalty provisions under the Act are - Companies \$ 250,000 (max) Individuals \$ 50,000 (max). These authorities are of the opinion that Agents should have protocols in place to support the intention of the Act because the Agent may be considered by the Authorities as the 'employer'.

For ease of reference an extract from the Act is appended below:

21. Duties of employers

- (1) *An employer shall provide and maintain so far as is practicable for employees a working environment that is safe and without risks to health.*
- (2) *Without in any way limiting the generality of sub-section (1), an employer contravenes that sub-section if the employer fails—*
 - (a) *to provide and maintain plant and systems of work that are so far as is practicable safe and without risks to health;*
 - (b) *to make arrangements for ensuring so far as is practicable safety and absence of risks to health in connexion with the use, handling, storage and transport of plant and substances;*
 - (c) *to maintain so far as is practicable any workplace under the control and management of the employer in a condition that is safe and without risks to health;*
 - (d) *to provide adequate facilities for the welfare of employees at any workplace under the control and management of the employer; or*
 - (e) *to provide such information, instruction, training and supervision to employees as are necessary to enable the employees to perform their work in a manner that is safe and without risks to health.*
- (3) *For the purposes of sub-sections (1) and (2)—*
 - (a) *"employee" includes an independent contractor engaged by an employer and any employees of the independent contractor; and*

(b) the duties of an employer under those sub-sections extend to such an independent contractor and the independent contractor's employees, in relation to matters over which the employer—

(i) has control; or

(ii) would have had control but for any agreement between the employer and the independent contractor to the contrary.

(4) An employer shall so far as is practicable—

(a) monitor the health of the employees of the employer;

(b) keep information and records relating to the health and safety of the employees of the employer;

(c) employ or engage persons who being suitably qualified in relation to occupational health and safety are able to provide advice to the employer in relation to the health and safety of the employees of the employer;

The authorities have failed to acknowledge that under the true role of the 'agent' they have no 'controlling' interest in the 'site'.

With the licensing of stevedores by the Port of Melbourne Corporation, making them the responsible party for stevedoring contracts, it is unlikely that Agents will be involved in any action following an accident relating to the handling of cargo. However, this is **not** the case insofar as the appointment of other service providers such as laundry, ship stores, repairs to the ship, etc. In such instances, authorities have indicated that Agents will **not** be absolved from prosecution in the event of services contracted out **unless** they are able to produce evidence, that they had satisfied themselves that the appointed service provider was fully acquainted with all safety demands and regulations, and held accreditation for safe practices in the workplace.

In an endeavour to relieve the onus on the Agent and to place it where it should rightfully belong, it is suggested that the following actions be taken.

1. To obtain acknowledgement to the contents of letter in Annex A on an annual basis from regular visitors to the wharf.
2. To obtain acknowledgement to the contents of letter in Annex B from irregular visitors to the wharf as and when they are required to visit the wharf.
3. To have acknowledgement to the contents of Annex C from the 'site controllers or managers', for each vessel OR to have provisions in long term contracts with stevedores etc for the adherence to the Act.
4. Response to the application of OH&S Acts in other States will require the above letters to be adjusted depending on how the applicable Act is interpreted and applied by the relevant State authority.

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Published by the Shipping Australia Limited
Level 6, 131 York Street SYDNEY NSW 2000
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Agents Letterhead

Appendix A

[Date]

The Manager

ABCD Pty Ltd

PO Box 0000

SUBURB STATE 9999

Dear Sir/Madam

Entry Conditions to [Victorian] Wharves & Terminals

[Agents Company name] is committed to workplace safety on the Victorian wharves and Terminals. From time to time, on behalf of our principals, we as agents arrange for representatives of [name of third party service provider] to attend either vessels or equipment at these facilities. These arrangements are made on behalf, and for the account of our principal and as such you are not subcontractors of the [Agent's company name] and we take no responsibility for your actions as the Principal Contractor nor those of your subcontractors.

The Victorian Occupational Health and Safety Act 1985 (Act) requires and you as an employer to provide and maintain, so far as is practicable for employees, a working environment that is safe and without risks to health. As a part of our commitment to occupational health, safety & environment statutory obligations [Agent's company name], requires all service providers (including their employees, agents and subcontractors) to abide by their obligations under the Act.

Prior to making arrangements for you to visit the vessel/terminal/wharf facility we wish you to confirm the following:

- You and your employees will adhere to the obligations under the Act and the occupational health, safety & environment requirements of the Terminal/wharf facility that you are required to visit (including access requirements e.g. identification and attendance of induction programs as appropriate); and
- You have in place valid and appropriate Public Liability, Workers Compensation and Professional Indemnity insurance cover (throughout the duration of this agreement); and
- Wearing of personal protective equipment as required by the terminal/wharf facility occupational health, safety (OH&S) regulations; and
- All employees engaged requiring special licensing, hold such valid and current licences as required during the entire time the work is to be performed and are appropriately trained to undertake the task(s) to be performed; and
- Your company has an OH&S policy.

Yours faithfully

[Agent's usual sign-off]

For and on behalf of a Named Principal

By signing this document I acknowledge that I am a duly authorised officer of the company whose level of authority enables me to accept the obligations and liabilities as detailed within the document on behalf of the company.

.....
Name of Signatory

.....
Title

.....
Signature

Company name and Address

Date

Validity of this document

Agents Letterhead

Appendix B

[Date]
The Manager
ABCD Pty Ltd
PO Box 0000
SUBURB STATE 9999

Dear Sir/Madam

Entry Conditions to [Name of wharf or terminal] – [Vessel name & Voyage Number] – [ETA]

[Agents Company name] is committed to workplace safety on the Victorian wharves and Terminals. On behalf of our principals, we as agents require representatives of [name of third party service provider] to attend [either vessels or equipment at these facilities]. These arrangements are made on behalf, and for the account of our principal and as such you are not subcontractors of the [Agent's company name] and we take no responsibility for your actions as the Principal Contractor nor those of your subcontractors.

The Victorian Occupational Health and Safety Act 1985 (Act) requires and you as an employer to provide and maintain, so far as is practicable for employees, a working environment that is safe and without risks to health. As a part of our commitment to occupational health, safety & environment statutory obligations [Agent's company name], requires all service providers (including their employees, agents and subcontractors) to abide by their obligations under the Act.

Prior to making arrangements for you to visit the vessel/terminal/wharf facility we wish you to confirm the following:

- That you and your employees will adhere to the obligations under the Act and the occupational health, safety & environment requirements of the Terminal/wharf facility that you are required to visit (including access requirements e.g. identification and attendance of induction programs as appropriate); and
- You have in place valid and appropriate Public Liability, Workers Compensation and Professional Indemnity insurance cover (throughout the duration of your visit to the vessel/terminal/wharf); and
- Wearing of personal protective equipment as required by the Terminal/wharf facility occupational health, safety (OH&S) regulations; and
- All employees engaged requiring special licensing, hold such valid and current licences as required during the entire time the work is to be performed and are appropriately trained to commensurate the task(s) to be performed; and
- Your company has an OH&S policy.

Yours faithfully

[Agent's usual sign-off]
For and on behalf of a Named Principal

By signing this document I acknowledge that I am a duly authorised officer of the company whose level of authority enables me to accept the obligations and liabilities as detailed within the document on behalf of the company.

.....
Name of Signatory	Title	Signature
Company name and Address	
Date	

Agents Letterhead

Appendix C

Date
The Manager
ABCD Pty Ltd
PO Box 0000
SUBURB STATE 9999

Dear Sir/Madam

Entry Conditions to [Name of wharf or terminal] – [Vessel name & Voyage Number] – [ETA]

[Agents Company name] is committed to workplace safety on the Victorian wharves and Terminals. From time to time, on behalf of our principals, we as agents arrange for representatives of [name of third party service provider] to attend either vessels or equipment at these facilities. These arrangements are made on behalf, and for the account of our principal and as such they are not subcontractors of the [Agent's company name] and we take no responsibility for their actions as the Principal Contractor nor their subcontractors.

The Victorian Occupational Health and Safety Act 1985 (Act) requires an occupier of a workplace to take such measures as are practicable to ensure that the workplace and the means of access to and egress from the workplace are safe and without risks to health. It also requires an employer to provide and maintain, so far as is practicable for employees, a working environment that is safe and without risks to health.

We understand that in your capacity as licensee and facility supervisor/manager at [name of berth/facility] in respect of the subject vessel, you will be responsible for controlling the access of visitors to the site. Please be advised that the following contactors' personnel are expected to attend the site and vessel:

Name	Company Name	Tasks to perform

We may need to add to this list, depending on services required and will notify you in writing with the details of any additional visitors.

Please ensure that all the above visitors that arrive at your site adhere to your occupational health, safety & environment requirements, including the wearing of Personal Protective Equipment as appropriate. Please also provide them with a copy of the site access rules and a copy of the site emergency/evacuation procedure.

Yours faithfully

[Agent's usual sign-off]
For and on behalf of a Named Principal

By signing this document I acknowledge that I am a duly authorised officer of the company whose level of authority enables me to accept the obligations and liabilities as detailed within the document on behalf of the company.

.....
Name of Signatory Title Signature Date