



Australian Government
Australian Maritime Safety Authority

Compliance and Enforcement Protocol

*Occupational Health and Safety
(Maritime Industry) Act 1993*



Purpose

1. The Purpose of this Protocol is to provide guidance on the application of AMSA's Compliance and Enforcement Policy as it relates to powers contained within *Occupational Health and Safety (Maritime Industry) Act 1993* (the OHS(MI) Act).
2. This Protocol is also to be read in conjunction with the Seacare Scheme Occupational Health and Safety Regulation Policy (the Policy), to which this Protocol forms an attachment.

Compliance and enforcement principles

3. In meeting our compliance and enforcement obligations under the OHS(MI) Act, AMSA and the Seacare Authority are committed to having systems and processes in place to support the following principles:

Accountability

Inspectors must be conscious at all times of their role and their accountability for promoting the highest level of statutory compliance. The Seacare Authority and AMSA are willing to explain enforcement decision making and uphold avenues of complaint or appeal.

Consistency

The Seacare Authority and AMSA endeavour to ensure that similar circumstances lead to similar enforcement outcomes, thus providing greater protection and certainty. Duty holders need to have full confidence that decision making and actions will be equitable and that comparable situations will have comparable outcomes.

Transparency

The Seacare Authority and AMSA will demonstrate impartiality, balance and integrity. Duty holders must be in no doubt as to the criteria used by the regulators in coming to a decision. A decision and its reasons need to be communicated clearly to the person involved. All decisions must be documented.

Impartiality

Decisions made by the regulators must both be impartial and be seen to be impartial. Any potential conflict of interest that might influence a decision must be disclosed. The decision to take action must not be influenced by:

- the personal views of an inspector concerning the non-compliant person or corporation;
- possible political or commercial advantage or disadvantage to the Government or any entity; or
- public, industry or political criticism, or the possible effect of the decision on the personal or professional circumstances of those responsible for the decision

Proportionality

Decisions made by the Seacare Authority and AMSA will be proportionate to the identified risk to safety, the seriousness of any perceived breach, and/or the level of non-compliance with legislative requirements.

Fairness

The Seacare Authority and AMSA will seek to strike the right balance between assisting voluntary compliance and undertaking enforcement actions, while responding to the competing interests of stakeholders, government and the public.

Constructive

The Seacare Authority and AMSA will provide support, advice and guidance to assist duty holders comply with their obligations.

Overview of the OHS(MI) Act

4. OHS in the Seacare jurisdiction is governed by the OHS(MI) Act and its accompanying regulations and legislative instruments. The objects of the OHS(MI) Act are identified in the Policy.

Appointment and role of Inspectors

5. The OHS(MI) Act creates the position of inspectors to undertake various roles including conducting investigations and activities associated with compliance and enforcement.
6. AMSA may, in writing, appoint inspectors from members of its staff who have had occupational health and safety training as inspectors¹. Upon appointment, AMSA will issue an approved identity card².
7. Inspectors have extensive powers, including to issue statutory notices, and to compel the provision of information and evidence.

Power of entry

8. Inspectors are empowered to stop and detain a ship and enter a “workplace” on the ship at any reasonable time during the day or night³. “Workplace” is defined as “anywhere on board a prescribed ship or prescribed unit:
 - (a) where an employee or contractor works; or
 - (b) under the control of the operator to which an employee or contractor has access”⁴.
9. The Seacare Authority and AMSA interpret “at any reasonable time during the day or night” by its ordinary meaning, in other words, reasonable in all the circumstances of the case. It will usually be a “reasonable time” if some work is being performed or if the premises are otherwise open. In many circumstances, even the fact that no work is being performed will not deprive the entry of reasonableness⁵.

¹Section 84.

²Section 85.

³Sub-section 89(1).

⁴Section 4.

⁵Powers conferred on inspectors under OHS legislation are construed so as not to “unnecessarily circumscribe” the inspectors’ role. The boundaries of investigation “usefully appear by analogy from authorities such as *NCA v A1* (1997) 75 FCR 274 at 286-7 and *MF1 v NCA* (1991) 33 FCR 449 at 459-462”: see *Nelson Bros Funerals v VWA* [2000] VSC 456; 101 IR 303 at paragraph [74] (Ashley J).

10. An inspector's entry of the premises must be "reasonably necessary ... in connection with [the inspector's] investigation".
11. An inspector must take reasonable steps to notify the person in command and the relevant health and safety representative of their purpose for entering the workplace⁶. An inspector must also produce, on request of the person in command, the inspector's identity card and show the person a copy of the written direction from AMSA (if any) received to conduct the investigation. An inspector has no right to remain in the workplace if these documents are not produced on request⁷.

General investigation powers

12. Once an inspector has gained entry to a ship, the inspector may, under sub-section 89(1):
 - (c) search the workplace;
 - (d) inspect, examine, take measurements of or conduct tests concerning the workplace or any plant, substance or thing at the workplace; or
 - (e) take photographs, or make sketches, of the workplace, [etc.]".

Powers to require assistance and information

13. Inspectors have coercive powers to require assistance in the conduct of an investigation, namely by requiring questions to be answered or by requiring the production of documents⁸.
14. Inspectors may ask a wide range of people to assist them with their investigations and these people must cooperate with the inspector unless they have a "reasonable excuse" for not doing so⁹. This expression is not defined in the OHS(MI) Act. Whether a person's excuse is reasonable will depend on the circumstances of the case and the purpose of the applicable statutory provisions. A genuine belief that health or safety will be jeopardised may be sufficient.
15. These powers to require assistance and information do not exclude the privilege against self-incrimination. Therefore, a suspect who is interviewed in respect of his or her own culpability will be appropriately cautioned.

Powers to take possession of plant, substances

16. In the course of an inspection, an inspector may decide that certain plant or substances or things (or samples of substances or things) should be removed from the workplace to enable more detailed examination or testing. If an inspector forms such a view, section 91 sets out a detailed procedure that will be followed. There are also relevant requirements imposed by the regulations.

⁶Section 89(2).

⁷Section 89(3).

⁸Section 90.

⁹Section 90(2) and (3).

Powers to direct that a workplace, plant, substance or thing not be disturbed

17. Inspectors have a broad power to direct that “the person in command” at a workplace ensures that the workplace, a part of the workplace or a particular plant, substance or thing not be disturbed¹⁰. An inspector may only exercise this power if they are satisfied that it is reasonably necessary to:
 - (a) remove an immediate risk to the health or safety of any person; or
 - (b) allow an investigation to take place¹¹.
18. Inspectors must record their reasons for issuing the notice – be it either one or both of the above¹².

Compliance and enforcement options

19. Where an inspection or investigation reveals evidence of an alleged breach, AMSA and the Seacare Authority will consider what enforcement action, if any, should be taken.
20. A number of measures are available to the regulators to compel a duty holder to remedy any identified contravention and to sanction a contravening duty holder. These measures may be used alone or in combination.
21. A combination of the following compliance and enforcement measures may be applied that are appropriate to the circumstances:
 - Investigation;
 - Advice or Guidance;
 - Statutory Enforcement Options;
 - Improvement notice
 - Prohibition notice, and
 - Criminal Prosecution.
22. AMSA implements a ‘compliance pyramid’ in which the relative volume or proportionate use of these tools and the ability to escalate if an initial intervention does not achieve the desired outcome are framed.
23. The lowest level of the pyramid involves an approach which is employed most frequently, often in combination with other tools, to assist duty holders achieve compliance. Sanctions (such as criminal penalties) are at the top of the pyramid and are applied less frequently.
24. This does not mean that AMSA and the Seacare Authority will always commence with provision of information and advice, and only use other tools in an escalated manner.

¹⁰Section 92(1).

¹¹Sub-section 92(1).

¹²Section 25D of the Acts Interpretation Act 1901 (Cth), requires, in these circumstances, that inspectors “set out the findings on material questions of fact” and that they “refer to the evidence upon which those findings were based”.

25. AMSA will commence their intervention using the tools that are most appropriate in the particular circumstances. Some tools, as indicated in this Protocol, are alternatives while others may be used in combination. Using a range of tools in the lower levels of the pyramid may often achieve compliance without needing to escalate to the more serious levels of sanctions.

Monitoring compliance

26. AMSA and the Seacare Authority monitor compliance with the OHS(MI) Act in a number of ways, including the use of investigation powers. AMSA also receives incident notifications and requests to respond to work health and safety issues.
27. Prior to determining whether to take any action in relation to a possible breach, AMSA will undertake inquiries to determine whether a breach has occurred and to gather information that may assist in preventing further breaches.

Investigation

28. One mechanism for monitoring compliance with the OHS(MI) Act is through conducting an investigation. Once an investigation is commenced, a range of enforcement options become available.
29. There are three types of investigations – reactive, responsive and strategic.
 - (a) Reactive investigations are commenced in relation to specific incidents requiring immediate regulatory examination such as a serious injury or death in the workplace.
 - (b) Responsive investigations are initiated as a result of emerging trends of non-compliance with particular provisions of the OHS(MI) Act or regulations by an employer or a number of employers. For instance, a responsive investigation may be initiated as a result of a series of dangerous occurrences in a particular workplace.
 - (c) Strategic investigations focus on broader emerging trends and issues determined through a formal periodic compliance planning process. These investigations typically form part of a collaborative response to an emerging regulatory risk across the jurisdiction. This can also include the regular OHS audits that are conducted annually on Australian Ships that come under the OHS legislation.

What triggers an investigation?

30. AMSA exercises discretion in deciding whether incidents, cases of ill health, or complaints should be investigated. Section 87 of the OHS(MI) Act states that an investigation may, at any time, be conducted:
 - (a) to ascertain whether the requirements of, or any requirements properly made under, the Act or the regulations are being complied with; or
 - (b) concerning a contravention or possible contravention of the Act or the regulations; or
 - (c) concerning an accident or dangerous occurrence that has happened in the performing of work.

31. AMSA may direct an inspector to conduct an investigation:
- (a) to ascertain whether the requirements of, or any requirements properly made under, the Act or the regulations are being complied with; or
 - (b) concerning a contravention or possible contravention of the Act or the regulations; or
 - (c) concerning an accident or dangerous occurrence that has happened in the performing of work;
- and the inspector must, unless AMSA revokes the direction, conduct an investigation accordingly.
32. An involved union may ask an inspector or AMSA to conduct an investigation at a workplace at which an employee, who is a member of the union, performs work for an operator.
33. To maintain a proportionate response, most resources available for investigation of incidents are devoted to the more serious circumstances. It is neither possible nor necessary to investigate all issues of non-compliance notified or identified in the jurisdiction.
34. AMSA will carry out an investigation of a notifiable work-related death, unless there are appropriate reasons for not doing so.
35. The OHS(MI) Act imposes duties on a number of persons and these duties may co-exist and overlap. In circumstances where the activities of a person or an employer are outside of AMSA's jurisdiction, AMSA works closely with the relevant State or Territory workplace health and safety authority and other regulatory agencies. AMSA currently has Memoranda of Understanding with these regulatory agencies which set out the guidelines for cooperation.
36. In deciding whether to commence an investigation, AMSA will take into account a number of factors, including:
- the severity and scale of potential or actual harm;
 - the seriousness of any potential breach of the law;
 - the duty holder's compliance history, including such matters as prior convictions and notices issued;
 - the enforcement criteria (below);
 - the practicality of achieving results;
 - the wider relevance of the event, including matters of significant community concern or emerging issues.
37. During the course of an investigation, a duty holder will be advised of the issue of possible non-compliance that is the subject of the investigation and the relevant provisions of the OHS(MI) Act or regulations being considered. Duty holders and relevant witnesses will be asked to provide evidence to an inspector in accordance with the powers of inspectors described above.

Criteria which may guide enforcement decision making

38. Decisions about appropriate enforcement measures occur at various stages of an investigation. Not all of the principles outlined below may be relevant: for example, where there is an immediate threat to the health and safety of a person, a prohibition notice may be issued without regard to all of the principles.
39. In deciding whether, and to what extent, enforcement action is warranted, AMSA applies objective policy considerations to foster consistency and proportionality. These considerations are outlined in the National Occupational Health and Safety (OHS) Compliance and Enforcement Policy and supplemented below, taking into account the particular legislative and administrative framework within which AMSA operates.

Adverse effect

40. This involves a consideration of the facts, whether it is foreseeable that harm could be caused and the practicability of avoiding the actual or potential harm.
41. A systematic failure by an employer to appropriately address a known or foreseeable risk is likely to be viewed more seriously than a risk to which an employee was exposed because of a combination of inadvertence on the part of an employee and a momentary lapse of supervision.
42. It is also relevant to consider:
 - the extent of the risk;
 - the seriousness of the breach; and
 - the actual or potential consequences.
43. The gravity of the consequences of an incident does not itself dictate the seriousness however the occurrence of death or serious injury may manifest the degree of the seriousness of the safety breach.
44. In circumstances of serious risk, breach or actual or potential consequences, the most serious enforcement action may be applied where it is considered necessary to meet reasonable community expectations, encourage future compliance with the OHS(MI) Act or deter non-compliance.

Culpability

45. Culpability involves a consideration of how far below acceptable standards the conduct has fallen. It may be relevant to consider whether the duty holder had a licence or permission to undertake particular activities. It might also be relevant to consider industry codes of practice. AMSA may rely on expert evidence in making an assessment of the culpability of each duty holder.

Compliance history and attitude

46. This involves consideration of any previous findings of non-compliance made against a duty holder and may involve an analysis of relevant incident data. Regard may also be had to the duty holder's cooperation during the investigation.

Likelihood of any breach being repeated

47. This involves consideration of a duty holder's approach to managing OHS, the steps taken to prevent risk of injury and any alleged failure to comply with a statutory notice issued by an inspector.

Impact of enforcement on encouragement or deterrence

48. The objects and provisions of the OHS(MI) Act make it clear that general deterrence and specific deterrence are relevant considerations. Employers are required to take all reasonable steps to ensure safety in the workplace and should adopt an approach to safety which is proactive and not merely reactive. In many cases it will be necessary to have regard to the need to encourage a sufficient level of diligence by duty holders in the future. This is particularly so where an employer conducts a large enterprise which involves inherent risks to safety.

Any mitigating or aggravating circumstances

49. It is a significant aggravating factor if the risk of injury was foreseeable even if the precise cause or circumstances of exposure to the risk were not foreseeable. The situation may be further aggravated if the risk of injury is not only foreseeable but actually foreseen and an adequate response is not taken by the duty holder. The neglect of simple, well-known precautions to deal with an evident and great risk of injury, take a matter towards the worst case category.
50. AMSA will also consider any mitigating circumstances including the extent of effort a duty holder has expended in controlling risks.

Whether the risk to health and safety is imminent or immediate

51. If that is the case, the situation will be assessed by an Inspector to determine whether, in the first instance, it is appropriate to issue a Prohibition or Improvement Notice.

Remedies that may be achieved through a particular course of enforcement action

52. It is relevant to consider the remedies that may be achieved and a combination of enforcement and compliance strategies may be utilised by AMSA and Inspectors.

Advice or guidance

53. Advice and guidance aims to raise workplace parties' awareness of their rights and obligations and help duty holders know how to comply with work health and safety laws and build their capability to address work health and safety issues and achieve compliance.
54. Having provided the duty holder with advice or guidance as to how compliance may be achieved, if satisfied that a person has taken timely and satisfactory steps to remedy a breach at the time of detection or through agreed action, AMSA or the inspector may decide to take no further action.
55. Advice and guidance can also be provided to support the use of other compliance and enforcement tools, such as Improvement and Prohibition notices.

Circumstances under which the issue of an Improvement Notice may be appropriate

56. The aim of issuing Improvement and Prohibition notices is to ensure that non-compliance with work health and safety laws and serious risks are remedied.
57. An Improvement Notice is a statutory notice issued by an inspector requiring a person to undertake certain action following the conduct of an investigation. The Notice has effect as soon as it is given to the person, and the Notice includes a time limit for completion.
58. An Inspector issues an Improvement Notice based on the opinion that a person is breaching a provision of the OHS(MI) Act or regulations, or has breached a provision of the OHS(MI) Act or regulations and it is likely that the breach will be repeated. An Improvement Notice will be issued in writing to the person in command and must specify the contravention of the Act or regulations that has occurred.
59. An Improvement Notice is used in situations which, while requiring improvement, do not warrant the additional restrictions of a Prohibition Notice. As its name indicates, this instrument is to be used by an inspector who wishes to require an improvement to a workplace or system of work to bring it into compliance with the law.
60. Improvement Notices are therefore issued where a contravention of the Act has occurred that does not pose an immediate threat to health and safety of a person. This can include a situation where a workplace activity, plant or substance requires improvement to no longer be contravening the Act, but are not yet in a state where an immediate threat is posed.
61. The OHS(MI) Act does not impose a minimum time for compliance with the Improvement Notice. An inspector may, where appropriate, consult the relevant parties (including the health and safety representative) in setting an appropriate timeframe.
62. An inspector may, by written notice, extend the term of an Improvement Notice. The OHS(MI) Act provides for penalties for failure to comply with a Notice.

Circumstances under which the issue of a Prohibition Notice may be appropriate

63. An inspector may issue a Prohibition Notice that prohibits an activity that the inspector believes involves, or will involve, an immediate threat to the health and safety of any person. A Prohibition Notice will therefore be issued in circumstances where immediate action is required.
64. The issue of a Prohibition Notice may mean an immediate stop is put to:
 - a workplace activity
 - the use of equipment or plant
 - the use of a substance.
65. If an inspector forms an opinion that an immediate threat exists and that it is reasonably necessary to issue a Notice to remove that threat, the inspector must issue the notice. It is not a requirement that the inspector identify a specific breach of the Act or regulations. However, it is unlikely that there will be many situations where an inspector issues a Prohibition Notice and there is not such a breach.

66. The people at risk need not be employees of the operator - they could be contractors, third parties, or any other person. Further, a Prohibition Notice may either prohibit an “activity” absolutely or conditionally.
67. A Prohibition Notice has a more serious impact on the person to whom it is issued than an Improvement Notice, because the activity cannot be started again until the inspector is satisfied that adequate action has been taken to remove the threat. For this reason, an inspector must be satisfied that the threat to health and safety is immediate. The OHS(MI) Act also provides for penalties in relation to non-compliance with Prohibition Notices.
68. Improvement and Prohibition notices are ‘remedial’ enforcement measures, not ‘punitive’ measures (i.e. they are not punishment). This means that in cases where punishment is warranted, other measures such as prosecution may also be taken in addition to notices issued by an inspector.

Escalation of enforcement strategies

69. Where an investigation reveals evidence of non-compliance, enforcement strategies may graduate from a notice issued by an inspector through to investigation reports or a criminal prosecution being commenced.
70. AMSA may make recommendations in regard to the commencement of more serious enforcement strategies.
71. In assessing the need for escalation of compliance and enforcement strategies, AMSA will have regard to the following priority areas:
 - Failure to comply with an Improvement or Prohibition Notice;
 - Where an alleged breach of the OHS(MI) Act or regulations has resulted in a fatality, serious personal injury, or injuries to a number of people;
 - Where an inspector alleges an operator or person has wilfully repeated the same offence;
 - Where either an inspector or health and safety representative alleges a Provisional Improvement Notice has not been complied with;
 - Where there are offences in relation to inspectors (e.g. assault or obstruction, provision of false information provided) alleged;
 - Where there is an allegation of discrimination against an employee for any action in relation to occupational health and safety;
 - Where a person has interfered with safety equipment; and
 - Work related fatalities and serious injuries or where there is a risk of such consequences.

Criminal Prosecutions

72. Criminal prosecution is available for specific breaches of the OHS(MI) Act that cause death or serious bodily harm, or expose a person to a substantial risk of death or serious bodily harm, through negligence or recklessness.
73. Prosecution is also available for certain breaches of Part 4 of the OHS(MI) Act (powers of inspectors) and of the regulations.

74. Prosecution is a discretionary action, with the laying of charges to be determined by the Commonwealth Director of Public Prosecutions (CDPP) having regard to the Prosecution Policy of the Commonwealth. Not every breach of the OHS(MI) Act is automatically prosecuted.
75. The CDPP has the authority to determine whether or not a prosecution will proceed. The Office of the CDPP administers the process of any prosecution with assistance from AMSA.
76. AMSA will review all matters where a referral to the CDPP may be warranted. If AMSA considers that other enforcement options may not be sufficient, the matter may be referred to the CDPP. If AMSA consider that prosecution action is warranted, a brief of evidence will be supplied to the CDPP.

When and why will a decision to prosecute be made?

77. The decision of whether to bring a criminal prosecution for a breach of OHS laws is significant as the effect on those impacted by the decision (the defendant, worker or family of a deceased worker for instance) will be considerable.
78. The Australian Directors of Public Prosecutions (DPP) have agreed upon a common set of principles to be used in determining whether or not a prosecution should be commenced or, if commenced, should be permitted to proceed. Although in some jurisdictions these criteria are expressed in different language, they do not differ in substance.
79. In determining whether or not to prosecute, three criteria which are common to all jurisdictions in the DPP guidelines need to be met. They are as follows:
 - The existence of a prima facie case, that is, whether the evidence is sufficient to justify the institution of proceedings.
 - There needs to be a reasonable prospect of conviction, that is, an evaluation of how strong is the case likely to be when presented in court. This takes into account such matters as the availability, competence and credibility of witnesses and their likely impression on the court or tribunal that will determine the matter, the admissibility of any confession or other evidence and any lines of defence
 - The public interest which may include (but is not limited to) the following considerations:
 - the seriousness or, conversely, the triviality of the alleged offence or whether it is only of a technical nature;
 - any mitigating or aggravating circumstances;
 - the characteristics of the duty holder – any special infirmities, prior compliance history and background;
 - the age of the alleged offence;
 - the degree of culpability of the alleged offender;
 - whether the prosecution would be perceived as counter-productive, that is, by bringing the law into disrepute;
 - the availability and efficacy of any alternatives to prosecution;
 - the prevalence of the alleged offence and the need for deterrence, both specific and general; and
 - whether the alleged offence is of considerable public concern.

Within what timeframe must a prosecution be brought?

80. Time limits for criminal prosecution of an individual for a breach of the OHS(MI) Act is governed by s15B of the *Crime Act 1914* (Cth):
- A prosecution of an individual for an offence against any law of the Commonwealth may be commenced:
 - (a) if the maximum penalty which may be imposed for the offence in respect of an individual is, or includes, a term of imprisonment of more than 6 months - in the case of a first conviction—at any time;
 - (b) in any other case—at any time within one year after the commission of the offence.
 - A prosecution of a body corporate for an offence against any law of the Commonwealth may be commenced:
 - (a) if the maximum penalty which may be imposed for the offence in respect of a body corporate is, or includes, a fine of more than 150 penalty units - in the case of a first conviction—at any time;
 - (b) in any other case—at any time within one year after the commission of the offence.

How will a decision be communicated?

81. A duty holder may be advised of AMSA's decision to refer a brief of evidence to the CDPD for consideration at any time during the course of, or following completion of an investigation.
82. The outcome of successful proceedings will be published to maximise the deterrent value and educate duty holders. Publication of cases draws attention to the consequences of poor occupational health and safety and the need for real and sustainable improvement in workplace health and safety.

Enforcement action against employees

83. In deciding whether to pursue enforcement action against an employee, AMSA takes into account the role, involvement and circumstances of each duty holder in applying the principles contained in this Protocol. For example, the employee's duty is complementary to an employer's duty to provide appropriate training, information, instruction and supervision to enable the employee to fulfil their general duty of care.
84. When determining whether an employee has failed to take reasonable care of their own or other persons' safety, AMSA will pay particular regard to:
- whether an employee has taken all reasonable steps to comply with s27 of the OHS(MI) Act;
 - whether an employee has taken steps to ensure that he or she does not create a risk, or increase an existing risk, to his or her own health or safety or to the health or safety of other persons at or near the work place;
 - whether an employee has cooperated with the operator, or with any other person, to the extent necessary to enable the operator or other person to fulfil a duty or obligation imposed on the operator or other person by the OHS(MI) Act; and
 - whether the employee has used any necessary equipment in accordance with the instructions given by the operator regarding its safe and proper use.

85. Should AMSA decide that a criminal prosecution against an employee may be warranted, it would refer the matter to the CDPP. AMSA would consider referring a matter against an employee to the CDPP where:
- an alleged breach causes death or serious bodily harm; and
 - the employee was either: negligent as to whether the breach would cause death or serious bodily harm or; reckless as to whether the breach would cause death or serious bodily harm.

Appeal Rights

86. The OHS(MI) Act provides for certain classes of persons affected by a decision made by an inspector to lodge an appeal with Fair Work Australia (FWA).

Which decisions may be appealed?

87. Rights of appeal against an inspector's decision are detailed in section 100 of the OHS(MI) Act. The following decisions made by an inspector may be appealed:
- to take possession of plant, substances or things;
 - to issue a 'Do Not Disturb' notice, either verbally or in writing to direct that a workplace, plant, substance or thing not be disturbed;
 - to confirm, vary or cancel a provisional improvement notice issued by a health and safety representative;
 - to issue an Improvement Notice or Prohibition Notice;
 - that an employer who is issued with a Prohibition Notice has not taken adequate action to remove the threat to health and safety identified by the Prohibition Notice; and
 - that an employer who has been issued with a Prohibition Notice has taken adequate action to remove the threat to health and safety identified by the Prohibition Notice.

Who may appeal a decision?

88. The following persons may appeal a decision by an inspector:
- An operator affected by the decision;
 - A person in command to whom an Improvement or Prohibition Notice has been issued;
 - The health and safety representative for a designated work group in which is included an employee affected by the decision;
 - An involved union in relation to a designated work group or in relation to an employee who is affected by the decision;
 - The owner of any plant, substance or thing to which a decision relates; or
 - A person who has been issued with a provisional improvement notice.

How to appeal a decision?

89. For information on how to lodge an appeal, including the required time period within which to do so, see the FWA rules at: www.fwa.gov.au/
90. The FWA may affirm or revoke the Inspector's decision. It may also vary the Inspector's decision and substitute its own decision. To do this, the FWA will conduct a hearing into the matter, taking into account relevant evidence.

What happens to a notice or decision once an appeal has been lodged?

91. Once an appeal is lodged with the FWA, the decision of the inspector, including a decision to issue a notice, remains in effect unless the FWA makes an interim order to the contrary.
92. The operation of an improvement notice however, is suspended until the appeal has been determined by the FWA or it makes an interim ruling to the contrary.

Reference material

93. Information on Seacare Authority and AMSA publications and compliance assistance material may be accessed via the Seacare Internet Website at www.seacare.gov.au or the AMSA Internet website at www.amsa.gov.au.

