



INTER-GOVERNMENTAL  
AGREEMENT ON THE NATIONAL  
MARITIME EMERGENCY  
RESPONSE ARRANGEMENT

29 FEBRUARY 2008

**INTER-GOVERNMENTAL AGREEMENT ON THE NATIONAL MARITIME  
EMERGENCY RESPONSE ARRANGEMENT**

between

**THE AUSTRALIAN GOVERNMENT**

and

**THE STATE OF NEW SOUTH WALES**

and

**THE STATE OF VICTORIA**

and

**THE STATE OF QUEENSLAND**

and

**THE STATE OF WESTERN AUSTRALIA**

and

**THE STATE OF SOUTH AUSTRALIA**

and

**THE STATE OF TASMANIA**

and

**THE NORTHERN TERRITORY**

**THIS AGREEMENT is made on the 29th day of February 2008.**

**BETWEEN**

**The Australian Government; and  
The State of New South Wales; and  
The State of Victoria; and  
The State of Queensland; and  
The State of Western Australia; and  
The State of South Australia; and  
The State of Tasmania; and  
The Northern Territory  
("the Parties")**

**1. BACKGROUND**

The Parties note that:

- 1.1 Shipping around the Australian coast and in the Exclusive Economic Zone (EEZ) presents an inherent risk of a major maritime pollution incident.
- 1.2 International experience has demonstrated that even a single major pollution event may result in enormous losses to the maritime environment, coastal communities, and recreational and commercial activities.
- 1.3 While the likelihood of a maritime casualty imposing a major risk to Australia's coastal interests is small, the potential consequences of such a casualty warrant a high level of on-going cooperation between the Parties to be prepared for such an incident.
- 1.4 The national interest lies in a precautionary approach to the protection of the environment from the consequences of significant pollution in the event of a maritime casualty.
- 1.5 Governments have in place effective nationally coordinated arrangements to respond to pollution under the Inter-Governmental Agreement on the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances and to ensure safety of life at sea under Memoranda of Understanding on Search and Rescue.
- 1.6 On 23 May 2003 the Australian Transport Council endorsed the National Maritime Place of Refuge Risk Assessment Guidelines that provide guidance for decision-making to ensure prompt consideration is given to whether there is a need to provide places of refuge, following a request from a ship in distress, and to facilitate access to such a place of refuge in circumstances where an emergency cannot be dealt with at sea.

- 1.7 Governments have recognised that maritime emergency response requires a nationally coordinated approach to enable timely and effective decision making in the broader public interest to prevent, mitigate or eliminate a pollution risk following a maritime casualty, including appropriate mechanisms such as maritime emergency towage services and infrastructure that provide a first response capability.
- 1.8 There is broad agreement among governments, port authorities and shipping interests that changes in the towage market warrant a greater role for governments to ensure a minimum level of ocean-going emergency towage capability for Australia to assist with accidents or pollution prevention.
- 1.9 It is generally accepted that salvage arrangements for recovery of property should remain clearly within existing commercial arrangements between a shipowner and salvor.
- 1.10 Governments have also recognised the benefits of a single national emergency response management role to address shipping casualties that involve potentially significant pollution, and the need to clarify and strengthen intervention powers.

## 2. **OBJECTIVE**

The objective of this Agreement is to protect the marine environment from ship-sourced pollution by enhancing preventative arrangements through ensuring the continuing provision of an appropriate level of maritime emergency towage capability around the Australian coastline and enhancing the emergency response management framework.

## 3. **DEFINITIONS**

**'Australian Maritime Group (AMG)'** means the forum comprised of Commonwealth, State and Territory government officials responsible for maritime and ports issues. The Group reports to the Australian Transport Council.

**'Australian Maritime Safety Authority (AMSA)'** means the Australian Government authority created under the *Australian Maritime Safety Authority Act 1990* and charged with the operational management of and intervention in actual or potential maritime pollution incidents and which administers the *Protection of the Sea (Powers of Intervention) Act 1981*.

**'Australian Transport Council'** means the forum comprised of Commonwealth, State, Territory and New Zealand government ministers responsible for transport, roads, marine and ports issues, which is chaired by the Commonwealth minister responsible for transport.

**'Coastal Sea'** means (a) the territorial sea of Australia; and (b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or the Northern Territory, as defined in section 10(8) of the *Protection of the Sea (Powers of Intervention) Act 1981*.

**'Coastal waters'** means, in relation to each State or the Northern Territory, (a) the part or parts of the territorial sea of Australia that is or are within the adjacent area in respect of

the State or Northern Territory, and (b) any sea that is on the landward side of any part of the territorial sea of Australia and is within the adjacent area in respect of the State or Northern Territory but is not within the limits of the State or of the Northern Territory.

**'Emergency towage vessel' (ETV)** is an ocean-going vessel that is suitable for undertaking emergency towage services.

**'Exclusive Economic Zone (EEZ)'** means the area beyond and adjacent to the territorial sea of Australia as defined in accordance with Article 55 of the United Nations Convention on the Law of the Sea 1982.

**'High Seas'** means all parts of the sea that are not included in the Exclusive Economic Zone, the territorial sea or the internal waters of a (nation) State or archipelagic waters of a (nation) State as defined in accordance with Article 86 of the United Nations Convention on the Law of the Sea 1982.

**'Internal Waters'** means waters of the sea within the limits of a State or the Northern Territory as defined in the *Protection of the Sea (Powers of Intervention) Act 1981*.

**'Intervention Act'** means the *Protection of the Sea (Powers of Intervention) Act 1981*.

**'Maritime Casualty'** means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo as defined in the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

**'MERCOP'** means the Maritime Emergency Response Commander appointed by AMSA, who is the national decision maker responsible for management of responses to maritime casualties, with intervention powers to take such measures as may be necessary to prevent, mitigate or eliminate a risk of significant pollution, including the power to direct a port to release a tug or designate a place of refuge for a ship in emergency situations that present a risk of significant pollution.

**'NEMERA'** means the National Maritime Emergency Response Arrangement developed by the Parties under this Agreement.

**'Port authority'** means a port or harbour authority, corporation or operator as provided for within the meaning of relevant State or Northern Territory legislation.

**'Protection of the Sea Levy' (PSL)** means the levy imposed on ships under the *Protection of the Sea (Shipping Levy) Act 1981*.

**'SOLAS size limits'** means the size limits expressed within the International Convention for the Safety of Life at Sea, 1974, which govern its application.

**'Stakeholders'** means the industry participants such as shipowners, port authorities, port users and towage providers as well as government agencies and community and commercial associations and organisations that are likely to be impacted by the implementation of the national maritime emergency response arrangement.

#### **4. AGREEMENT**

4.1 The Parties agree to the implementation of a national maritime emergency response arrangement based on the following:

##### **4.1.1 Principles**

- (a) The NMEMA should involve a high level of cooperation between all stakeholders to provide access to relevant information to enable a timely and effective response to a threat of pollution caused by maritime incidents.
- (b) The NMEMA will be developed and implemented in a way which takes into account the ongoing activities of ports, the shipping industry, the towage industry, and other stakeholders related to the provision of emergency towage services.
- (c) In particular, the NMEMA should aim to minimise the potential effects on competitive pressures on harbour towage markets in ports around Australia.
- (d) The primary responsibility for the use of emergency towage services, to be implemented as part of the NMEMA, will lie with the shipping industry. The MERCOM and the State and Northern Territory governments will intervene only where it is necessary to achieve the desired policy outcome of prevention or minimisation of threats of significant pollution.
- (e) The NMEMA will be complementary to but will not encompass or affect existing arrangements established by the intergovernmental agreements for Search and Rescue or the National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances, or the respective powers and responsibilities of governments for wreck and wreck removal.
- (f) Salvage arrangements to recover property following a maritime casualty will remain within existing legal and commercial arrangements between shipowners and salvors and will not form part of the NMEMA.
- (g) The same cost recovery principles as those set out in the Inter-governmental Agreement on the National Plan will be incorporated into the NMEMA; that is:
  - i. Preparedness for actual or potential marine pollution incidents should be funded on the basis of the principle that the potential polluter pays; and
  - ii. Response to actual or potential marine pollution incidents should be funded on the basis of the principle that the polluter pays.

##### **4.1.2 General**

- (a) The NMEMA will include ongoing consultative mechanisms with stakeholders to ensure effective use of maritime resources, expertise and information across Australia as the arrangement is implemented.
- (b) The agreed national priority is to protect the environment from widespread pollution from a maritime casualty. This may involve acceptance of some localised pollution or damage if widespread pollution is to be prevented. Protection of related economic and other interests will also be considered fully as

part of the decision-making process during an incident through the appropriate consultative mechanisms.

- (c) The NMEMA is not intended to alter the existing primary responsibility of shipowners to arrange for the safety of their vessel using commercially available assets wherever possible. The ETV arrangements are intended primarily to provide a minimum capability for Australia, where the normal commercial solutions might be inadequate. Where the Australian Government has put in place ETV assets to provide a minimum capability, the NMEMA will allow the assets to be available for use by the shipping industry and other parties under separate commercial arrangements.
- (d) The NMEMA does not include any component that alters the liability and compensation regime applicable in the event of a maritime casualty. If localised pollution or damage occurs as a consequence of action taken to prevent widespread pollution the principles of "potential polluter pays" and "polluter pays" will continue to apply.
- (e) The NMEMA is not intended to alter the responsibilities of the shipowner under current liability regimes in the event of an Australian Government response to a maritime casualty. Costs of individual responses, including liabilities for compensation to relevant stakeholders in the event of pollution or other damage, will be borne by the owner of the ship requiring assistance in accordance with the generally applicable principles, under international conventions and domestic laws, including any right of shipowners to limit their liabilities in various circumstances.

#### 4.2 Elements of the National Maritime Emergency Response Arrangement

##### 4.2.1 The NMEMA will involve the following elements:

(a) *Emergency Towing Vessels (ETVs)*

The NMEMA will provide an appropriate level of emergency towing capability and availability around the Australian coastline in line with assessed levels of risk. The ETVs will be contracted by AMSA for the maintenance of this capability and may be called upon by MERCOM, port authorities, States/Northern Territory or the shipping industry in emergencies involving risks of significant pollution.

(b) *National Maritime Emergency Response Commander (MERCOM)*

The MERCOM, to be appointed by AMSA, will have responsibility for handling emergency intervention issues in response to maritime incidents whenever there is an actual or potential risk of significant pollution, as assessed by the MERCOM, following a maritime casualty.

The MERCOM will have appropriate statutory powers to enable effective decision-making consistent with the objective of this Agreement.

The MERCOM will be exempt from liability for any damage caused as a result of the exercise of his/her emergency powers, provided the powers exercised

were reasonable and proportionate to the threat posed by the particular maritime casualty.

The MERCOM will endeavour to consider all relevant legal, practical, environmental, socio-economic and operational issues in deciding whether and how to respond to a maritime casualty, as dictated by the circumstances of each particular casualty.

(c) *Regulatory arrangements – powers of intervention*

The NAMERA will include clarification and enhancement of the regulatory framework, including powers of intervention necessary to take effective and expeditious decisions in the public interest and to ensure a coordinated response to maritime casualties.

**5 ROLES AND RESPONSIBILITIES**

The parties agree to the following roles and responsibilities in relation to the NAMERA:

**5.1. Australian Government**

- 5.1.1. The Australian Government will undertake the national management of emergency responses to shipping casualties involving a threat of, or actual, significant pollution of the marine environment.
- 5.1.2. AMSA will establish a position, to be known as the MERCOM, to be responsible for exercising the Australian Government's responsibilities for maritime emergency response coordination and decision making.
- 5.1.3. The Australian Government's intervention powers will encompass all maritime casualties involving a threat of, or actual, significant pollution, as assessed by the MERCOM, on the high seas, in the Exclusive Economic Zone, in coastal seas and internal waters. These powers will include management of ships being taken into, out of, or through internal waters of a State/Northern Territory as part of the incident response.
- 5.1.4. Notwithstanding paragraph 5.1.3, the Parties intend that the Australian Government's responsibilities will primarily address management of maritime casualties which occur outside ports located in a State/Northern Territory and involving shipping subject to the size limits of the International Convention for the Safety of Life at Sea (SOLAS). The MERCOM will not respond to maritime casualties within ports or involving vessels under the SOLAS size limits except where the MERCOM reasonably assesses, on a case by case basis, that there is a threat of, or actual, significant pollution and that adequate measures to deal with the incident are not being taken, or where previous agreement has been reached with a State, the Northern Territory and individual Port Authority.
- 5.1.5. The MERCOM, while making every endeavour to reach agreement with the relevant States, Northern Territory and stakeholders on emergency response actions, will have the responsibility and power to exercise final decision-making on behalf of the Australian Government for management of a maritime casualty.



In taking such a decision the MERCOM will endeavour to take into account agreed guidelines and the known position and views of the States, Northern Territory and relevant stakeholders wherever possible. Decisions will be expeditiously communicated to all relevant parties and fully documented.

5.1.6. The Australian Government will make amendments to its legislation to provide:

- (a) A specific power to issue directions to towage providers, port authorities or others for the release of a towage vessel to assist a ship in distress.
- (b) A specific power to direct persons ashore, such as pilots, harbour masters, port authorities and related interests, to enable the granting of access to a place of refuge or facilities in relation to a maritime casualty, including permission to land a person or cargo, to make facilities available for repair or other works and to undertake those repairs or other works, or to make facilities available for landing, storage or disposal of cargo or other things.
- (c) Clarification that the directions of the MERCOM will prevail over directions by any other person to the extent that there is a conflict;
- (d) Immunity from civil or criminal liability for the MERCOM and persons complying with a direction from the MERCOM in respect of any directions issued in the course of managing a maritime emergency response. In respect of a direction issued to a shipowner, the exemption from civil or criminal liabilities will not extend to the obligations and liabilities of shipowners under relevant international conventions and domestic laws in relation to pollution or other damage.
- (e) For the clarification of powers of intervention within the Exclusive Economic Zone to provide for such powers to be comparable to those exercisable within the coastal sea.
- (f) Clarification of the list of hazardous and noxious substances to which the *Protection of the Sea (Powers of Intervention) Act 1981* applies to provide consistency between intervention powers on the high sea, the EEZ and the coastal sea.
- (g) For the Australian Government's powers of intervention within coastal and internal waters to apply to all ships where there is a threat of, or actual, significant pollution.
- (h) For third parties to recover from the shipowner/insurer direct costs involved in or resultant from intervention properly exercised under the Intervention Act; and
- (i) For payment for the use of requisitioned property, including for damage or loss occurring, while the property is under requisition.

5.1.7 In making provision for the MERCOM to issue specific directions to persons and granting the MERCOM immunity from civil and criminal liabilities in respect of such directions, the Australian Government will ensure that the exercise of such powers of direction will be carried out reasonably and in proportion to the threat of, or actual, pollution involved with the particular maritime casualty.

5.1.8 The Australian Government will establish a national capability for emergency towage at strategic locations around Australia. AMSA will manage appropriate tendering processes and contracts for the provision of the national ETV capability.

5.1.9 Subject to the right to recover costs and expenses under existing international and domestic laws and to the right to enter into commercial arrangements relating to the use of ETV assets where appropriate, including arrangements to allow for the sharing of salvage awards, the Australian Government will fund the ongoing costs of the NNERA through the Protection of the Sea Levy, and will make the necessary consequential amendments to the *Protection of the Sea (Shipping Levy) Act 1981*.

## 5.2 States and the Northern Territory

5.2.1 Notwithstanding paragraph 5.1.3, the States and Northern Territory will retain their powers to manage emergency responses to shipping casualties which occur within ports and in coastal and internal waters of the State or the Northern Territory in accordance with State or Northern Territory legislation.

5.2.2 The Parties intend that the State and Northern Territory government's responsibilities will encompass the management of maritime casualties that occur inside ports located within the State/Northern Territory, involve ships under the SOLAS size limits in coastal and internal waters, and involve ships over SOLAS size limits within coastal or internal waters where the MERCOT has assessed that there is not a threat of significant pollution but where a State or the Northern Territory government considers that there is a need to act within the powers available to it under State or Northern Territory legislation.

5.2.3 The States and the Northern Territory will provide a single point of contact on maritime emergency response issues to develop and implement the agreed national maritime emergency response arrangement for the provision of emergency towage within their jurisdictions.

5.2.4 The States and the Northern Territory agree to review, in consultation with State/Territory departments, bodies or other agencies, relevant state/territory legislation and regulations to determine appropriate legislative amendments required to ensure consistency with the provisions of the agreed NNERA.

5.2.5 The States and the Northern Territory agree to review and, as necessary, amend relevant state/territory legislation and regulations to ensure that there are no provisions that would preclude the use of harbour towage vessels within relevant ports within their jurisdictions as elements of the national ETV capability or availability.

5.2.6 The States and Northern Territory will also encourage, noting they may not have the authority to compel, port authorities within their jurisdictions to:

- (a) where relevant, ensure there are no provisions in their processes, tendering requirements, licensing arrangements or documentation that would preclude the use of harbour towage vessels within their ports as part of the national ETV capability;

- (b) include an emergency towage response clause in harbour towage contracting or licensing arrangements, where relevant, to ensure that emergency towage within ports is charged at a towage rate and not as a salvage award;
  - (c) cooperate with the release of emergency towage vessels as required in response to a maritime emergency; and
  - (d) include in port towage licensing or tendering arrangements, as applicable, appropriate provisions for replacement harbour towage arrangements in the event an ETV is called away to attend a ship in distress.
- 5.2.7 The States and Northern Territory commit to co-operating with relevant Australian Government agencies, including the MERCOM, in giving effect to the provisions of the NNERA.
- 5.2.8 The States and the Northern Territory acknowledge the authority of the MERCOM, as provided under the Intervention Act, to issue directions to persons who may be State or Northern Territory employees or agents when making final decisions on management of maritime casualties under the terms of this agreement, and acknowledge that the decisions and directions of the MERCOM will prevail over any decisions or directions issued by a State or Northern Territory employee or agent that conflict with the decisions or directions of the MERCOM.
- 5.2.9 The States and Northern Territory administrations agree to support such decisions once made, during and post event.

### 5.3 Consultative Framework

- 5.3.1 The Parties will review and revise, in consultation with relevant stakeholders, the existing guidelines and procedures for consultation, cooperation and documentation in the event of a maritime casualty requiring an emergency response with a view to incorporating the objectives of the NNERA.
- 5.3.2 The consultation arrangements will seek to ensure that appropriate information is available to assist decision-making on the options available and the best course of action in response to the specific circumstances of the case, taking into account the objective of preventing significant pollution and the rights and responsibilities of all relevant stakeholders.
- 5.3.3 The procedures are intended to be consistent with and complementary to the Inter-Governmental Agreement on the National Plan and the National Maritime Place of Refuge Risk Assessment Guidelines.
- 5.3.4 The Parties agree to develop consultative mechanisms, as required, with other parties and with other stakeholders to ensure the achievement of the objectives of the NNERA.

### 5.4 National Co-ordination and Accountability

The Australian Maritime Group will report to Transport Ministers, through the Australian Transport Council, on the implementation of the NNERA and any ongoing issues to enable review of the operation of this Agreement during 2008 and, if considered necessary, at agreed intervals thereafter.

#### **5.5 Cross-jurisdictional emergency towage operations**

The Parties, through the single point of contact nominated in accordance with paragraph 5.2.2, will cooperate with the MERCOM to develop and implement a strategy to address the emergency towage arrangements for casualties involving potentially significant pollution which cross jurisdictional borders.

#### **6. FINANCIAL ARRANGEMENTS**

6.1 Each Party will bear its own costs in giving effect to this Agreement.

6.2 Each Party will bear its own costs of managing pollution and other consequential costs resulting from a maritime casualty, consistent with current arrangements and domestic laws, including costs involved in seeking cost recovery or compensation under relevant liability regimes.

#### **7. COMMENCEMENT**

*This* Agreement commences immediately upon its execution by the Parties.

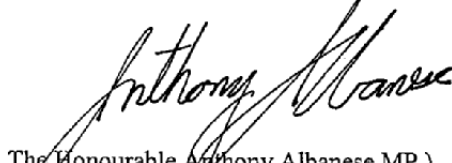
#### **8. TERMINATION**

This Agreement may be terminated at any time by unanimous agreement in writing by the Australian Transport Council.

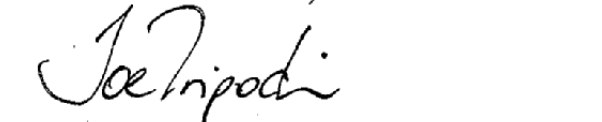
#### **9. VARIATION OF AGREEMENT**

The Parties may vary the Agreement from time to time by mutual consent in writing, as approved by the Australian Transport Council. An amendment to the Agreement takes effect on the date it is signed by the Parties or on a date agreed by the Parties.

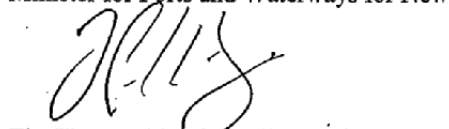
**SIGNED FOR AND ON BEHALF OF EACH OF THE PARTIES BY:**




The Honourable Anthony Albanese MP )  
Minister for Infrastructure, Transport, Regional Development and Local Government )  
Commonwealth of Australia )



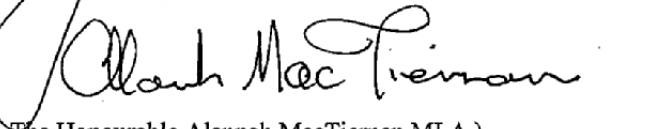
The Honourable Joe Tripodi MP )  
Minister for Ports and Waterways for New South Wales )




The Honourable Tim Pallas MP )  
Minister for Roads and Ports for Victoria )



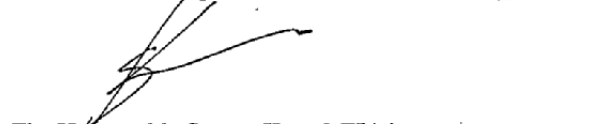
The Honourable John Mickel MP )  
Minister Transport, Trade, Employment and Industrial Relations for Queensland )




The Honourable Alannah MacTiernan MLA )  
Minister for Planning and Infrastructure for Western Australia )



The Honourable Patrick Conlon MP )  
Minister for Transport, Infrastructure and Energy for South Australia )



The Honourable Steven Kons MHA )  
Minister for Transport and Infrastructure for Tasmania )



The Honourable Delia Lawrie MLA )  
Minister for Transport and Infrastructure for the Northern Territory )