



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE

Oversight of the Australian Maritime Safety Authority

(Public)

TUESDAY, 4 DECEMBER 2018

CANBERRA

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SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE

Tuesday, 4 December 2018

Members in attendance: Senators Brockman, Gallacher, Patrick, Sterle, Stoker.

Terms of Reference for the Inquiry:

To inquire into and report on:
Australian Maritime Safety Authority

WITNESSES

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EAST, Ms Clare, Acting General Manager, Standards, Australian Maritime Safety Authority

KINLEY, Mr Mick, Chief Executive Officer, Australian Maritime Safety Authority

Committee met at 08:00

ACTING CHAIR (Senator Sterle): I declare open this public hearing of the Senate Rural and Regional Affairs and Transport Legislation Committee. The committee is inquiring into matters of maritime safety under Senate standing order 25(2)(a). I welcome you here today. This is a public hearing and a *Hansard* transcript of the proceedings is being made. Before the committee starts taking evidence, I remind all witnesses that in giving evidence they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken. The committee will determine whether it will insist on an answer, having regard to the ground that is claimed. If the committee determines to insist on an answer, a witness may request the answer be given in camera. Such a request may of course also be made at any other time.

I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only requests asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

Finally, on behalf of the committee, I would like to thank those officers here for attending today. I now welcome officers of the Australian Maritime Safety Authority. Do you wish to make an opening statement before we go to questions?

Mr Kinley: Thank you. I understand the purpose of the hearing is to consider how AMSA has implemented headcounts and other safety measures following the coronial findings in relation to the death of Mr Damien Mills in Western Australia in 2014 and that the committee is also interested in the decision not to proceed with prosecutions in the matter. Firstly, I acknowledge the continued efforts of the Mills family to advocate for improved safety outcomes.

I would like to address the second purpose of the committee's hearing first, and that is the prosecution matter. It is correct that the Commonwealth Director of Public Prosecution makes the final decision to bring charges. The CDPP makes this decision following receipt of a recommendation from the responsible agency by applying the prosecution policy of the Commonwealth. Whether or not AMSA makes such a recommendation is guided by the available evidence and usually involves pre-discussions with the CDPP. In the case of the Mills fatality, I can confirm that AMSA did not make any such recommendations to the CDPP. The decision not to progress the brief of evidence was made by AMSA after consultation with the CDPP as there were limited prospects for a successful prosecution on the available evidence taking into account the standard of proof required.

The Western Australia Water Police investigated the missing person incident. In February 2015 the WA Water Police recommended to AMSA that the master of the vessel *Ten-Sixty-Six* be prosecuted for failure to implement and comply with the vessel's safety management system because he did not (a) conduct a count of the passengers at the conclusion of the charter or (b) properly induct the deckhand. The Commonwealth Director of Public Prosecutions was consulted in August 2015 and raised concerns that there was no conclusive evidence that Mr Mills actually fell overboard and no conclusive evidence as to whether or not the operator conducted a headcount of passengers on disembarkation, which is required by the safety management system but not specifically under the national law. They advised that, on the basis of the evidence to hand, it could not be proven beyond a reasonable doubt that the master had committed any offences under the Marine Safety (Domestic Commercial Vessel) National Law. AMSA accepted that advice because there was no evidence that would counter the master's claim that he had conducted the required headcounts, and the induction issue was not significant in the circumstances.

The Western Australian Department of Transport investigated the operations of the owner of the *Ten-Sixty-Six*. AMSA received the Department of Transport's report in December 2014. It recommended prosecution against the operator for alleged breaches of the national law for a range of matters not associated with the Mills fatality.

However, the material in the report lacked evidence. AMSA tried to obtain better and further particulars to support the recommended enforcement actions, discussed the available evidence with the DPP and decided that there was insufficient evidence to recommend prosecution. Nothing has changed that would alter these decisions, and it's also noted that the time frame for prosecution of the master has passed. With regard to headcounts, the coroner noted AMSA's intention to promote headcounts as a safety measure which may be relevant in circumstances like those of Mr Mills.

In turning to the first part of the committee's agenda, AMSA has implemented a suite of regulatory and operational measures to improve the safety outcome in passenger operations, noting the diverse nature of the passenger vessel fleet. Since 1 July 2018 we've ended the grandfathering of the operational safety standards, so owners and operators of passenger vessels must, as a condition of their certificate of operation, comply with the contemporary safety standards for operations, including headcount requirements set out in marine order 504. We've strengthened safety management requirements. There is now an explicit requirement that the safety management system for the vessel specifically address these operational safety standards, giving clearer substance to safety management system obligations, and vessel owners won't be issued a certificate of operation if they don't do this. And we've bolstered the obligation to undertake at least one headcount and know the number of passengers on the vessel any time, by requiring vessel owners to ensure that the number of crew on board is adequate to ensure that passengers are appropriately monitored. These regulatory changes represent one facet of our approach to driving greater rigour around the approach of passenger vessel owners to headcounts.

On an operational and compliance level, since 1 July this year our Western Australian regional office has carried out inspections on 48 class 1 passenger vessels. There are five passenger vessels that operate between the mainland and Rottnest Island, and we've inspected all but one of those vessels this year. We've carried out safety management systems assessments with an emphasis on headcounts on board all the vessels operating to Rottnest. Two inspections have been carried out on vessels operating between the mainland and Rottnest on separate occasions. When certifying vessels, passenger vessels are categorised as high risk throughout the application process for both an initial and a renewed certificate of operation. This means that a vessel's safety management system is reviewed as part of the application process, to ensure it includes appropriate procedures, among other things, for monitoring passengers.

From a safety education perspective, safety management system workshops have been conducted by AMSA in Western Australia, targeting all domestic commercial vessel sectors. These workshops assist operators to conduct risk assessments in their operations and develop mitigation strategies and a safety management system. These workshops are focused on ensuring operators ensure their SMS obligations as they apply to their particular vessels and operation. The safety education is evidence based, meaning we target campaigns based on incident reports, inspections and safety management system assessments and relevant research. Our safety education efforts will focus on all classes of vessels—that is, fishing, passenger, cargo, hire and drive—throughout the next few years. The focus will be on developing core knowledge with more targeted workshops being planned that will include passenger management.

We've also developed new guidance on safety management systems, including information on headcounts, and our dedicated industry liaison officers in each state use this guidance in their work with operators. We've also published a suite of guidance material on meeting safety management system obligations and the operational safety requirements, including practical guidance on developing, implementing and maintaining the safety management system. Finally, as part of our compliance efforts, we assess the safety management systems for passenger vessels which are considered at high risk during the process for issue or renewal of a certificate of operation and, as part of that process, the safety management system is reviewed to ensure it includes procedures for monitoring passengers. Between July and November 2018, we carried out 85 assessments on safety management systems for passenger vessels.

We have a plan for a safety management system forum to cover the larger industry sectors, such as passenger ferries and cargo vessels, planned for 2019 and, in our safety briefings for industry, especially in relation to class 1 passenger vessels, we place a focus on headcounts. In the last two years, we've had in excess of 50 people attend briefings in West Australia, including 25 from passenger vessels. This includes fleets such as the Rottnest Island Express and Captain Cook.

In closing, the safety record for passenger ship vessels is generally very good. While tragic events, like the Mills fatality, are quite rare, as a maritime safety regulator, our focus is on having a positive influence on the culture of the commercial vessel operations. I'd be happy to answer any questions the committee may have.

ACTING CHAIR: All right, Mr Kinley. Just bear with me.

Senator BROCKMAN: Can we have that tabled.

ACTING CHAIR: Yes, I was going to request that we have that tabled. Thanks, Senator Brockman. I'm very mindful of the time. We don't have much time, and a number of senators want to ask some questions. Mr Kinley, I do just want to put this on the record before I go to my colleagues—Senator Stoker with her legal background and Senator Patrick with his seafaring background—that was the biggest load of crap that I have ever had to sit through, bureaucratic bullshit, backside-covering. That was a disgraceful opening to any hearing that I have ever had the misfortune of sitting through. I am going to let you know now—everyone in the department—that we will be putting a motion through the Senate for a full-blown inquiry here. I can't believe that there is a family that's going to have their fifth Christmas without their father and husband, while the legislators, the regulators, sit back and say: 'Everything's Mickey Mouse. We've got a pretty good industry.' We've got a captain out there with three ships—and I've read the Western Australia Police report that you, AMSA, commissioned through the Department of Transport. I've read the coroner's inquest. I've read the witness statements that the three ships that this rogue operates in Western Australia, and is still operating, didn't even have fire extinguishers. He fiddled with the logbook—and you know that; you know he fiddled with it. Everyone knows that. He changed the figure. He has life rafts, and the experts have come back and said there was tampering with the registration number or whatever it is on there, and you sit back and expect me to swallow that crap? Senator Stoker.

Senator STOKER: Hi. You'll know this case much better than I do, but I've got some familiarity with the Marine Safety (Domestic Commercial Vessel) National Law Act—and I should probably give you the heads-up that I used to be a prosecutor for the Commonwealth. That's part of the reason why I know it a little bit at least. In the course of the investigation, which of the potential offences under that law were enquired into?

Mr Kinley: There were potential charges in relation to the vessel *Ten-Sixty-Six*, and they were related to the failure to meet the general safety duties under the act because of the issues around failing, allegedly, to follow their own safety management system with regard to headcount.

Senator STOKER: Was that a section 12 duty of owners?

Ms East: No, it was section 16, duty of a master.

Senator STOKER: Okay. Section 16 provides:

The master ... must, so far as reasonably practicable, ensure the safety of:

- (a) the vessel; and
- (b) marine safety equipment that relates to the vessel; and
- (c) the operation of the vessel.

It seems to me that having a process for running a headcount falls within the scope of the operation of the vessel. Is that the basis upon which that was looked into?

Ms East: The obligation on the master is to implement and comply with the safety management system so far as reasonably practicable. The safety management system, among other things, set out the requirement to undertake a headcount, and that was the basis of the WA police recommendation.

Senator STOKER: Okay. You knew that the boat—the vessel, I should say—had a safety management system. Is that right?

Ms East: Correct.

Senator STOKER: That was established?

Ms East: Yes.

Senator STOKER: And there was evidence to show that a headcount was performed as passengers embarked upon the vessel?

Mr Kinley: Yes.

Senator STOKER: And there was evidence to show either that a headcount wasn't conducted at the point of disembarkation or that it was not correctly conducted—is that right?

Mr Kinley: There was no conclusive evidence, certainly, in the statement of the master. He was adamant that he had conducted headcounts—three in total. He had not recorded two of them in the logbook, but he was certainly adamant that he had conducted headcounts when the vessel was at Parakeet Bay.

Senator STOKER: You said there were three headcounts. Was the one that was recorded the one conducted upon embarkation.

Mr Kinley: The initial one, yes.

Senator STOKER: So the master said that two further headcounts were conducted?

Mr Kinley: Yes.

Senator STOKER: But they weren't recorded in the logbook?

Mr Kinley: No.

Senator STOKER: Every safety management system I've ever seen requires that there be a recording in the logbook of headcounts. That's right, isn't it?

Mr Kinley: And it was the requirement of the safety management system that it should be recorded in the logbook.

Senator STOKER: In circumstances where the safety management system requires entry in the logbook and the master says that he conducted three headcounts, two of which weren't recorded, isn't that itself prima facie evidence that there has been a breach of section 16?

Mr Kinley: Again, in our discussions and the witness's statement, we heard that the witness had undertaken headcounts and he had not recorded them because it hadn't changed. That was my understanding of his statement. It shows complacency.

Senator STOKER: But that's not what the safety management system requires, is it?

Mr Kinley: That's not what the safety management system requires.

Senator STOKER: So there has been a breach of it.

Mr Kinley: Potentially, but—

Senator STOKER: How could it be understood any other way?

Mr Kinley: Because, again, it said a headcount's got to be recorded in the logbook. It had been recorded. The number hadn't changed on that voyage. It's not a particularly good excuse, but again, from our discussions about the potential of actually having the ability to prove beyond reasonable doubt that these actions led to general safety duties being breached, as opposed to not following a particular element of a safety management system, the chances of prosecuting on that basis would not be good. Again, there was different evidence from passengers that potentially the missing person had been seen when the vessel was disembarked from, or had not been seen. That was not clear.

The master of the vessel was adamant he had maintained the head counts and actually did that in his head. He counted passengers. He had been very experienced and he did this regularly and that was how he did it. So for us to prove beyond reasonable doubt to a level of criminal evidence that those actions led to an unsafe vessel, it was thought to be not worth it; the chances of a successful prosecution were not high enough to warrant proceeding.

Senator STOKER: Thought by whom?

Mr Kinley: Us, AMSA, in consultation with the CDPP.

Senator STOKER: Was a brief of evidence referred to the CDPP for assessment?

Mr Kinley: No.

Senator STOKER: So you were getting advice from the CDPP in circumstances where they didn't have before them the whole suite of evidence?

Mr Kinley: Before we go through the effort of actually producing a full brief of evidence, we would always consult with the CDPP before undertaking all of that work.

Senator STOKER: I understand you say there is conflicting evidence. It is often the case, as I am sure you know, in a criminal prosecution. But in circumstances where you have, presumably, in an admissible interview an admission from the master of the vessel that on his best version he conducted three head counts, and only recorded one of them, either way you look at it, either he didn't do the head counts and he breached the safety management system or he did conduct three head counts and he didn't record in accordance with safety management system. Either way, it seems to me that you have, on his own admission a high standard of evidence—because it is based on his own admission—that an offence was committed. The safety consequences are self-evidence in that a man was not on board the vessel when he should have been, and the coroner says that if there had been earlier detection of the fact that he wasn't on board, he would most likely have been found alive. All of that is true, isn't it?

Mr Kinley: It is true that the coroner said that. However, the fact that the master of the vessel said that he did a head count on those three occasions—yes, two were not recorded in the log book and, in his case, it was, 'That was already recorded in the log become because the number did not change.' Ultimately, head count, while we have agreed with the coroner that we are pushing head counts as a way to improve safety and to hopefully prevent

this sort of incident happening again, head counts in themselves are not, especially on a vessel such as this, necessarily going to be a guaranteed and foolproof way to make sure that the exact number of people are there regardless because counting people—

CHAIR: For the truck driver, just go over that again. I sort of missed something there. Sorry.

Mr Kinley: This is why we are also working with industry looking at whether technology can help with this, counting people on a boat who may be moving around or mobile we think it can assist in safety and it is certainly something that we are supporting and we are encouraging. But a person saying that they have counted so many people on a boat is actually not an exact science. People actually can get counts wrong, regardless. I think the initial headcount on the vessel was 35.

Ms East: Correct.

Mr Kinley: I think there was even debate about how many people—

ACTING CHAIR: About what, sorry?

Mr Kinley: I think the number of people who were originally counted on the boat and recorded in the logbook was 35, and I think there were actually 34 people on board.

ACTING CHAIR: You know that there were actually 34 and you also know that the skipper altered it after being contacted by the WA Police. So, Mr Kinley, let's get straight to the point. Let's not waffle; we don't have much time.

Senator STOKER: It is either that the skipper conducted one or three headcounts, three were conducted and it wasn't recorded in accordance with the primary document that is used for governing the safety of a vessel, or headcounts weren't conducted. One way or the other—it doesn't really matter which version is right—there has been a plain contravention of the act regarding the duty of the master, in circumstances where the consequence was that a person died. It seems to me that there has been a failure on the part of AMSA to fulfil its primary duty, which is to ensure the safety of people and vessels in operation. That's the primary responsibility of AMSA, isn't it?

Mr Kinley: That's one of our primary responsibilities.

Senator STOKER: It seems that there has really been no effort made to pursue the consequences here, and I ask that you provide an explanation of why it is that AMSA doesn't seem to be discharging this important responsibility.

Mr Kinley: Prosecution is one of the many mechanisms and one of the many tools that we use to enforce compliance and encourage compliance. As I stated earlier, a lot of our focus is on improving the standards in the industry, educating industry and working with industry to actually improve their operations. The time, as we've said, has passed for the prosecution of the master in this instance; however, from my discussions with our people in our legal areas and our prosecutions area, there has actually been no change to the evidence that was gathered by the Western Australian police at the time that would lead us to consider that we would have a better chance of prosecution now than we did at the time.

Senator STOKER: Nothing further, Chair.

ACTING CHAIR: Thank you, Senator Stoker. I just want to get that one more time. So the chance to prosecute has passed?

Mr Kinley: The statutory time limit to prosecute the master has passed.

ACTING CHAIR: Well, isn't that convenient? If anyone in AMSA or the DPP thinks that we're going to take the foot off the accelerator, they are grossly mistaken. I'm going to let you know now, Mr Kinley, and you can take this back to the department, that I am not resting until someone is responsible. What I have seen here is just disgraceful—absolutely disgraceful.

Mr Kinley: On what basis, Senator?

ACTING CHAIR: On what basis? I have the investigating report and the recommendations relating to the charges. Do you want me to read it into *Hansard* so the whole world can know? I am more than happy to do so. The summary talks about the breaches of the safety act and his own open safety management system. While I try to find it, I will go to Senator Patrick. I will then read it into *Hansard*, and then you can answer it.

Senator PATRICK: Mr Kinley, you'd be aware of some of the findings of the banking royal commission, just in a personal capacity, no doubt. Hopefully you are aware that one of the findings of the commissioner is that the situation that we found with the banks, insurance companies and financial entities is in some sense the responsibility of the regulators. Are you aware of that?

Mr Kinley: I'm aware of that, Senator.

Senator PATRICK: I put it to you, as someone who has spent a lot of time at sea, that it's very easy for things to go wrong at sea and very easy for things to go wrong really, really quickly. What normally prevents that is one of two things: the professionalism of the crew and, indeed, the culture of the crew, which is driven from the top. I put it to you that it is the regulator that sets the ultimate tone. Would you accept that, based on what has happened in respect of this incident, there has been a failing in respect of that driving of professionalism and culture from the very top from the regulator's perspective?

Mr Kinley: No, Senator, I wouldn't. Certainly, we take our responsibility to foster a safety culture in the industry extremely seriously. We certainly take any fatality very seriously. We are prosecuting several cases at the moment under the various legislations that AMSA have. We will always, though, in doing prosecutions, certainly with a mind to the resources that prosecutions take, in line with the Commonwealth policies with regard to prosecution and our organisation's own policy, examine the chances of a successful prosecution before we will push forward with that. Our advice in this case was that those chances were not high.

Senator PATRICK: So, you say that the advice back from the DPP was that the burden of proof was not sufficient?

Mr Kinley: No. Based on the offences that we were considering and the evidence that was available to get the standard of proof beyond reasonable doubt that is required in a criminal prosecution in regard to intent and those other things, we did not have sufficient evidence.

Senator GALLACHER: But you didn't prepare a brief and get that advice from the DPP. You didn't even go that far. You didn't put a brief to the DPP. You made that decision.

Mr Kinley: At the time, in our discussions with the DPP—and, yes, the DPP certainly, if we had provided a brief, would have made the ultimate decision.

Senator PATRICK: Noting the matter has finalised, the statute of limitations has passed and it appears this committee will conduct a full inquiry, I presume there would be no prejudice to legal proceedings if you were to table the correspondence that took place between the DPP and your own organisation?

Mr Kinley: No, there should not be.

Senator PATRICK: You would be happy to table that?

Mr Kinley: May I consult with my legal counsel first?

Senator PATRICK: Sure. Before we move off that, please understand that legal professional privilege is not accepted as public interest immunity, particularly if proceedings have concluded. We may very well need to examine the conduct in this particular instance to give us a view of how you conduct your business, which is what our business is.

ACTING CHAIR: I'm going to go back to Mr Kinley on what I was talking about. On 20 November 2014, the Department of Transport sent out their maritime safety investigators to look at the three vessels that were owned by this same company—you know those vessels—the *Ten Sixty Six*, the *Takashi* and the *Pia Rebecca*. There is a list of things here talking about no compass adjustment cards on board, no life raft certificates on board, no fire-extinguishers on board and that the geographical location of at least one logbook entry had allegedly been altered on 1 November 2014. This is on the *Ten Sixty Six*, and we know the tragic incident happened the day before. So there's one logbook entry that has been allegedly altered. They say allegedly, but that's how they talk. It has been proven, anyway. And an incorrectly mounted life raft cradle. On the other vessel operated by the same company, *Takashi*: incorrect number of flares on board, no fire-extinguishers on board, allegedly no legitimate and valid annual inspection certificates for vessel's fixed and portable firefighting systems and allegedly no legitimate life raft inspection certificate on board. Then we go to the third vessel, The *Pia Rebecca*: bilge high-water alarm not operational, no fire-extinguishers on board, allegedly no legitimate and valid annual inspection certificate for vessel's fixed and portable firefighting systems and incorrectly mounted life raft cradle. These are vessels that take people out on charters, alright? You're nodding your head.

Mr Kinley: Some vessels were prohibited from operating.

Senator STERLE: And they're all back. I know. But this is what's giving me the screaming abdabs, that there is no prosecution that has gone through. This is before I start on the serious stuff. There are, obviously, flaws and the flaws start at the top with AMSA—unless you want to argue that the Western Australian police and the Department of Transport don't know what they are talking about. Then you asked me on what basis, and we also go through here—you've got this paperwork. I'm going to the summary on page 14, the second-last paragraph. It says, 'Log book entries for vessels *Takashi* and *Ten Sixty Six* allegedly indicate that the vessels carried more

passengers than was permitted on their certificate of survey.' You might think, 'That's not a big deal,' but it is, because there is a trend with this operator.

Evidence suggests that over an extended period of time Mr Lippiatt, who was the skipper of the *Ten Sixty Six*—correct me if I'm wrong—and owner of the overall business that owns the three boats—is that correct?

Mr Kinley: Which is not in operation anymore.

ACTING CHAIR: What's not in operation?

Mr Kinley: The company.

ACTING CHAIR: It's just folded up and gone away?

Mr Kinley: I know two of the vessels, I think all three of the vessels, have been sold to other operators.

ACTING CHAIR: This is even worse! What were you people doing? What were you doing while this was all going on? And don't interrupt me; I'm coming back to it. Mr Lippiatt 'has exposed members of the public to an unreasonable risk'. He has done so by 'operating in his role as master or permitting the operation in his role as owner-director of DDCF', which is the company that owned the three vessels at the time, that you lot have got your hands over your eyes about. Vessels were operating both with 'unserviceable safety equipment and too many passengers for certified or certain prescribed waters'. I could keep going.

I'm going to the recommendations by the WA Department of Transport and the WA Water Police. I'm not going to read them all, I haven't got time. Let's go to part 3 of your National Law Act 2012, that you're in charge of. Part 3, division 1, is 'Duties of owners'. At the end of the day, this section 13 is the recommendation that this bloke should have been prosecuted under. It says:

Penalty: Imprisonment for 2 years ...

This is one of the recommendations. And I'll flick down to division 3, 'Duties of masters,' section 18, which is 'Offences relating to contraventions of section 16 or 17'. It says:

Penalty: Imprisonment for 2 years ...

Do I have to keep going? You've got this all in front of you. You can see my frustration.

Mr Kinley: We will table the correspondence. Those items were considered, and the chances of success of prosecution were also considered.

Senator GALLACHER: Mr Kinley and Ms East, you're the custodian of the act, the rules. That's correct, isn't it?

Mr Kinley: We're the custodian of the marine orders and the standards.

Ms East: Correct.

Senator GALLACHER: As Senator Stoker identified, there was clearly evidence that someone didn't follow their own rules, their own safety protocol, and your rules. There's a person missing and it appears that if there had been an earlier indication they might have survived. That's uncontested, isn't it?

Mr Kinley: That's certainly in the coroner's findings; yes, that was clear.

Senator GALLACHER: So what I'm really curious about is that, faced with that, you look at your act, your rules, and you look at their compliance or lack of compliance, and you look at the fairly obvious result. I don't think it would be an onerous task to prepare a brief, in those circumstances, of where, potentially, charges could have been laid. You didn't do that. You engaged in discussion with the DPP, which, I take, is that you had decided you weren't going to do anything. So you got assurance from the DPP that it would have been difficult to prosecute.

Mr Kinley: No, Senator.

Senator GALLACHER: Then why didn't you prepare a brief and send it to the DPP and have a brief back from the DPP, saying, 'These are the difficulties.' Then you would have had evidence to support yourself. At the moment, you're swinging in the breeze.

Mr Kinley: As I said, we can table correspondence. As I said earlier, this is certainly an issue that we'd been supporting, the issue of headcounts, and, working with industry—

Senator GALLACHER: I used to work in an airport. I used to have to sign a form to say how many bags I'd put in the locker, and if I didn't sign it correctly I'd get the sack. So if you've got a captain that can't count people going on and off a boat, he should get the sack too. We know how this critical transport infrastructure works. You can't have someone guessing how many people are on a ship and then someone flailing around the ocean for six or 24 hours because someone got the count wrong. So I'm just curious. You were the decision-maker. A prudent

decision-maker would cover themselves in governance. If there were a serious situation that happened and there were irregularities apparent in the evidence, a brief would be prepared and sent off to another independent entity, and that would come back. You didn't do that, though, did you?

Mr Kinley: No, we did not proceed to a brief in this case.

Senator GALLACHER: I can't understand why.

Senator PATRICK: I will just ask you to take this on notice: can you provide the committee with details of other incidents that have occurred where a brief has been considered but not advanced, and the circumstances over, perhaps, the last two years in which that has occurred?

Mr Kinley: Yes.

Senator PATRICK: Also, you mention the company has now wound up. I presume the operating licences for the—

Mr Kinley: They're certainly not operating.

Ms East: I think they've applied for deregistration.

Senator PATRICK: I just wonder if you could perhaps do a bit of due diligence for the committee and track back to the directors and the operators and advise us as to whether or not there's another company that's been formed that may be operating in your area with the same people and, indeed, the same master if that's possible, please.

Mr Kinley: Yes.

Senator PATRICK: Thank you.

Senator BROCKMAN: Just really quickly, obviously Mr Mills's case is tragic, and we want to see improvements to the law to make sure that we minimise the risk of this ever happening again. The coroner stated that it was difficult to see the benefit of a single headcount. I can't see the point, to be perfectly honest.

Mr Kinley: No.

Senator BROCKMAN: If you know how many people get on a boat, that's pretty irrelevant if you don't know how many people get off. How confident are you that the work you say you have done ensures that the risk of what happened to Mr Mills happening again is minimised to the greatest degree possible today and that, on the boats that you see going out every day from Barrack Street Jetty, Elizabeth Quay and Fremantle, these procedures are actually being followed correctly?

Mr Kinley: As I've said, with the work we've done starting with the standards—and I understand your comment about requiring at least one headcount—we have to regulate for all sorts of vessels. The reason we've said, 'Do at least one headcount and know the number of passengers on board at any time,' is that, for example, those regulations also cover the commuter ferries on Sydney Harbour where in fact, if you've seen the volumes of people there, they count the people on but they don't count the people off. So they do one headcount there, because of the volumes and the fact that the gates open and everybody goes off. So our view is that we should be doing our regulation on an outcomes basis, and that is that you do know where the people are. That's why we've said, 'Do at least one headcount and know the number of people on board at all times.'

The work around safety management systems, for us, is critical. It's about educating the people, because you can have a safety management system that says, 'Do all of these things,' but if there is not the culture there to actually do that then there is no use to it. So our focus is on educating people and working with the industry and actually helping them to develop that safety culture. So we have worked closely with that sector of the industry. As I said, we've had workshops. All of those vessels, I think, have been represented. We've inspected the vessels. We've looked at the records to ensure that they are actually recording the headcounts as their safety management says. So we have done a lot of focus on that. Can I ever be 100 per cent confident that at all times everything is happening? Of course I can't be, but I think that the culture of the vessels and the operators have certainly taken it on board, and they're working well with us. Industry have taken it very seriously, and they are doing the best in their abilities to look after the safety of their passengers.

Senator BROCKMAN: I have just one final question: do you believe that, for charter vessels, there should be mandatory headcounts off and on?

Mr Kinley: I think there should be a way of making sure they know that their passengers are safe. There may be technology that comes along. I know there are people looking at things like wristbands that you put on people that can actually track them so you know where they are. Doing a headcount off and a headcount on is one make way to make sure that you have everyone there, but we're all for looking at better ways to develop that. Knowing

the number of people on board at any one time is the other thing that we've said must be done. If that means you do a headcount off, in the middle or whenever you need to do it, then you do it. We've also said that the safety manning needs to look after the passengers, and that has to take into account—there is a need to know—where the passengers are. So there are a whole lot of things around this.

Focusing on why Mr Mills ended up in the water in the first place is the other part of safety management here. Our focus should be on actually keeping people on the vessel as well. So there are a lot of aspects to this and a lot of things that, certainly, we are working with industry to learn, to try and make sure this never happens again.

ACTING CHAIR: I'm not suggesting that this industry is full of ratbags—not at all. Let's make that very clear. I don't think there are many skippers who head out in the morning who don't think their first priority is to look after the visitors on their vessel. But I want you to think about this over the break, Mr Kinley: are you prepared to sit down and say that far more can be done, and prepared to listen to experts and say, 'How can we make sure that we can minimise the chances of this ever happening again,' or are you fixed on the idea that AMSA are doing the best possible job they can and that's the end of the conversation?

Mr Kinley: Of course. We always—

ACTING CHAIR: Okay. I just want a yes. That's good, because I've got the written response from the Hon. Michael McCormack MP, Deputy Prime Minister, minister for—you know all that. He has had the wool pulled over his eyes. This is a pathetic attempt to whitewash this whole thing. I'm happy for you to have a look. You'll see it anyway. You probably helped him write it. It says AMSA's doing a great job and everything's okay. The minister has been blindsided. It's about time the minister grabbed a set and actually made a decision to improve it. He's got the opportunity to sit down with this committee as well. I don't think he has the bottle to do it—there's the challenge—because that minister has form on this.

Going back to this inquiry, I know that you can't be on every vessel, making sure that the skippers and the deckies are doing what they should be doing and following the safety management system. I don't expect you to have an answer to this. But, when the cop who's in charge of coming down on the odd ratbag that breaks it, you don't send out a very strong message—not you personally, Mr Kinley, but AMSA. Do the wrong thing, and what's the big deal? The DPP will sulk off and take their big fat pay packets. I don't know. Have a think about that over the break, Mr Kinley.

Senator GALLACHER: Mr Kinley, can you take on notice how many prosecutions you have enacted, particularly under this provision of the act, safety management on boats—or do you know the answer off the top of your head?

Mr Kinley: I don't know the answer off the top of my head.

Senator GALLACHER: Is it somewhere between zero and two, or zero and 20, or is it just zero?

Mr Kinley: It's somewhere around 10, I think, but I'd like to take that on notice.

Senator GALLACHER: Okay. On notice, can you tell me the 10 prosecutions that you have enacted—

Mr Kinley: And breach notices as well.

Senator GALLACHER: the success rate of the prosecutions and what they were for. And it would be handy to see your activity level on breach notices, too, over the last three years. Thank you.

ACTING CHAIR: Unfortunately, we've run out of time. Mr Kinley and Ms East, thank you very much. We'll be in contact. You know how to get us if you want to have a conversation before we leave here on Friday morning; please feel free. The challenge is out there for the minister to get off his backside and fix this. The due date for answers to questions on notice is 18 December. Everyone happy with that? Yes, everyone is happy with that. That concludes this hearing.

Committee adjourned at 08:49