



Senator Susan McDonald
Chair
Senate Standing Committees on Rural and Regional Affairs and Transport
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Dear Senator McDonald

I am writing to provide the Committee with an update on the status of the *Ten Sixty Six* prosecution and new passenger safety rules under an amendment to safety regulations.

Firstly, in relation to the *Ten Sixty Six*, on 12 September 2019 AMSA reopened the investigation into breaches of the Marine Safety (Domestic Commercial Vessel Safety) National Law Act 2012 (National Law) by the owner and operator of the *Ten Sixty Six*.

One of our investigators travelled to Western Australia to re-interview witnesses and take statements, as recommended by the Commonwealth Director of Public Prosecutions (CDPP). The statements and exhibits were referred to the CDPP on 8 November 2019.

I understand from recent conversations with the CDPP that this information is currently being considered by their senior counsel.

Further to my letter of 20 December 2019, following extensive public consultation I have today signed an amendment to Marine Order 504 —*Certificates of operation and operation requirements—national law* to implement new passenger safety rules.

The amendment includes measures to clarify and strengthen requirements for passenger counts and managing emergencies in missing person situations.

I attach a copy of the updated marine order. The key changes mandate:

- the requirement for crew to record passenger counts at the end and beginning of voyages
- a requirement for higher risk vessels, such as cruise boats, tourism vessels, and charters (like the *Ten Sixty Six*), to count passengers whenever they are getting on and off the vessel – in addition to a count at the start and end of a voyage.
 - passenger counts must be recorded in the vessel logbook, to verify compliance, and also to provide a ready reference for the master about the numbers on board.
 - all vessels that carry passengers must have:
 - procedures for monitoring passengers written into their mandated Safety Management System; and
 - emergency procedures in the Safety Management System will need to address the situation of a person being unaccounted for.

We have also clearly defined the responsibilities for operators to have effective procedures to monitor passengers and for operators to have evidence of their safety and emergency procedures recorded in their Safety Management System. This will ensure we as the regulator can verify compliance.

Based on industry feedback, the changes will enable operators to use the best safety systems and technology as appropriate for their operations, whether that is on/off counting, electronic wristbands, CCTV monitoring, or other tools, to ensure their crew can respond to passenger safety incidents as quickly as possible.

The changes will affect vessels that carry passengers, but the more specific requirements for certain vessels to count passengers on and off the vessel have only been applied where we consider there is a higher risk. That is, we have applied these requirements to operations similar in size and nature to the operation of the Ten Sixty Six – that is, smaller vessels (up to 75 passengers) operating in D, C or B waters, or in E waters at night. To exclude commuter ferries from the requirements we have excluded voyages less than 30 minutes, and vessels which do not stop in the first 30 minutes of their voyage.

Our regulation uses passenger capacity (75 passengers) rather than vessel length because the passenger capacity on a long vessel can vary greatly depending on the configuration of the vessel (for example, with multiple decks and seating arrangements). This makes the purpose, risk and the practical application of the requirement directly relevant to the number of passengers.

There is clear criteria to effectively exclude public transport ferries based on voyage length. This will avoid loop holes and confusion about what vessels are excluded as the term “public transport” is not currently defined in the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, Marine Orders or National Standards for Commercial Vessels.

For head counts, the count can be “at or around the time” the passenger gets on or off the vessel. This is important as the count must ensure an accurate record of the number of passengers who embarked or disembarked the vessel. An example where this flexibility may be needed is at a busy, multi-user wharf. Passengers tend to prepare early to disembark and scatter after they leave the vessel. This makes it difficult to recount, or address any discrepancies in counts.

AMSA will be holding information and education sessions to ensure owners and operators can comply with the new rules and implement these improvements to strengthen passenger safety. This will ensure that they are ready when the new rules take effect on 31 May 2020.

Although we have undertaken extensive consultation to ensure the new changes do not adversely impact on industry, as we get further experience with implementing these changes further amendments may be necessary.

I remain available to assist the Committee with its inquiry and would be pleased to clarify any matters for the Committee or members.

Yours sincerely

MICK KINLEY

28 February 2020

Encl.