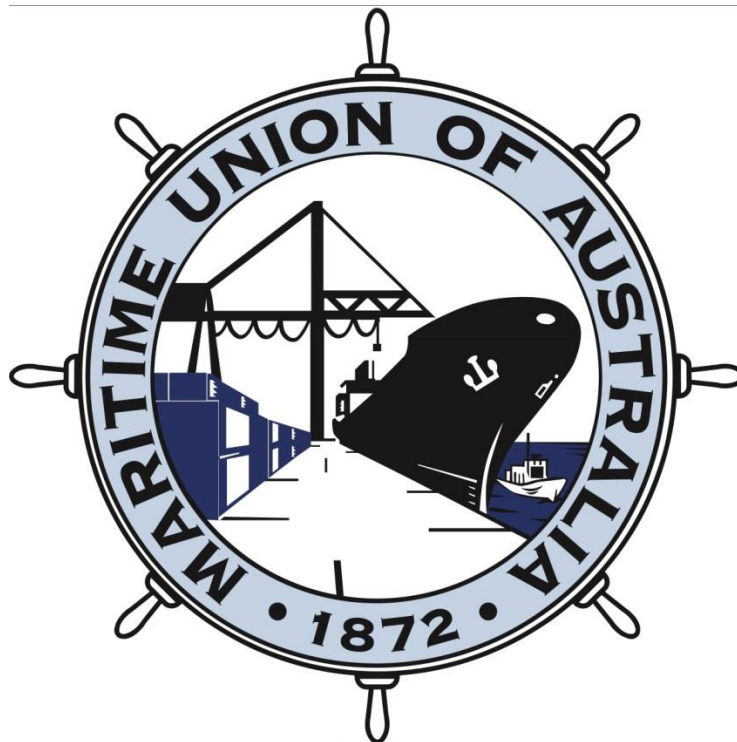


# **MUA Submission: Inquiry into the Performance of the Australian Maritime Safety Authority**



**3 April 2019**

*Senate Rural and Regional Affairs and Transport Legislation Committee*

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## 1. Introduction

This submission has been prepared by Maritime Union of Australia (MUA). The MUA is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union. The MUA represents approximately 14,000 workers in the shipping, offshore oil and gas, stevedoring, port services and commercial diving sectors of the Australian maritime industry. Approximately half the MUA membership are seafarers.

Seafarer members of the MUA work in a range of seafaring occupations across all facets of the maritime sector including on coastal cargo vessels (dry bulk cargo, project cargo, general cargo) as well as passenger vessels, towage vessels, salvage vessels, dredges, ferries, landing barges, community supply vessels, construction vessels, cruise ships, and recreational dive tourism vessels. In the offshore oil and gas industry, MUA members work in a variety of occupations on vessels which support offshore oil and gas exploration e.g. on drilling rigs, seismic vessels; in offshore oil and gas construction projects including construction barges, pipe-layers, cable-layers, rock-dumpers, dredges, accommodation vessels, support vessels; and during offshore oil and gas production, on Floating Production Storage and Offtake Tankers (FPSOs), FSOs and support vessels. MUA members work on LNG tankers engaged in international LNG transportation. Many former ship based seafarers work in onshore roles.

The MUA is an affiliate of the 20-million-member International Transport Workers' Federation (ITF), and as an ITF affiliate has played a role in the development of international maritime conventions at the ILO and the IMO. The MUA work closely with the ITF Australian Inspectorate, who are members of the Australian Seafarers' Welfare Council.

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## 2. Summary of problems: Lack of insight, oversight and resources

AMSA has faced major challenges with the implementation of the National System in 2013, when it took over the regulation of 20,000-27,000 domestic vessels from states. The beginning of the National System coincided with a major push for deregulation from the Commonwealth government, with government agencies being instructed to conform with its 'Deregulation Agenda' from September 2013 (Section 5). AMSA's resources were not increased sufficiently to cope with this enormous increase in responsibility (Section 9), and in the same time period its existing responsibilities for international vessels continued to grow and become more complex (Section 22). It is our submission that AMSA has coped with the challenge of implementing the National System by effectively de-regulating the maritime industry, and that its ability to ensure the safety of international vessels visiting Australia has also been affected.

The de-regulation agenda that AMSA has pursued does not appear to have been informed by any analysis of the safety needs of the industry. Compared to other Australian jurisdictions, there is a remarkable lack of safety data, combined with a rate of fatalities that is between 6 and 18 times higher than the average for Australian industries, and a number of damning coroner's investigations. The data that is reported is inconsistent from year to year, and inconsistent with practices in other safety jurisdictions (Sections 6, 7, and 8).

The purposes of developing the National System were to simplify and remove barriers to trade, and to increase safety in the industry.<sup>1</sup> AMSA was the obvious choice to take on the delivery of the National System, given their track record in regulating the vessels under the *Navigation Act 2012* (the Navigation Act) including both Regulated Australian Vessels (RAVs) and Port State Control of international vessels. However, AMSA has not improved the safety of the Domestic Commercial Vessel fleet. States with higher safety standards have seen these disappear, and every incentive is in place for RAVs to transition to the much lower standards allowed for DCVs. AMSA's deregulation agenda has also been applied to vessels that remain RAVs.

AMSA has been handed a difficult legislative situation, in that vessels which were previously held to the higher standards of the Navigation Act can now surrender their international certificates and effectively self-regulate under the National Law, as long as they do not leave Australia. The MUA has examined this legislative problem and how it should be addressed in our submission on to the current inquiry into Australian shipping being carried out by the Senate Rural and Regional Affairs and Transport References Committee, and we recognise

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<sup>1</sup> National Approach to Maritime Safety Reform: Regulation Impact Statement, 2009

that AMSA has not created this system.<sup>2</sup> However, the issuing of Marine Orders under both the National Law and the Navigation Act fall entirely within the responsibilities of the CEO of AMSA, and is one of AMSA's primary functions.

Marine Orders separate vessels into classes and operating areas, and set seafarer qualifications, number of crew required on board (crewing or manning), and vessel safety systems. There was nothing preventing AMSA from retaining higher standards for vessels above a certain size or engine power or operating further from shore. We are not aware of any compelling reason for AMSA to allow NSCV standards developed for inshore use to be extended to cover operations up to 200nm offshore. The enormous disparity between Navigation Act and National Law standards that AMSA has created through Marine Orders means that there is every incentive for vessels to reduce the financial and regulatory burden of adhering to the Navigation Act, and to switch to the DCV jurisdiction. Vessels are allowed to do this, so long as they do not travel overseas.

AMSA has done a good job bringing in the new requirements of the Maritime Labour Convention for international vessels, and a national committee overseeing the welfare of international seafarers. However, these standards have not been applied to domestic vessels, even very large ones. Levels of Port State Control inspections of international vessels have declined sharply since 2015, while the number of vessels visiting Australia continues to increase (Section 22). AMSA puts considerable effort into its presence at the IMO and in 2017 became a Category B member of the IMO Council, yet virtually all IMO standards are disappplied for domestic vessels operating out to 200nm, and domestic qualifications and crewing bear no relation to IMO Standards for the Training and Certification of Watchkeepers.

### **3. Summary of solutions: Prescription and integration with WHS systems**

To improve and maintain basic safety standards in the hazardous industry it regulates, AMSA must retain prescriptive regulation that ensures that there are enough seafarers with sufficient training and qualifications on board vessels. AMSA also needs to improve its coordination with WHS agencies in Australia to significantly improve its approach to safety and to ensure it is based on evidence, best practice, and can be easily understood by the seafarers who it regulates. There is an urgent need to develop a Safety Code of Practice for the Domestic Commercial Vessel industry, which can give practical and flexible guidance to seafarers and vessel operators in the industry, with specific chapters to address the diverse

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<sup>2</sup> Maritime Union of Australia, *A Plan to save the Australian Shipping and Maritime Industries: Good for the economy, employment, the environment and national security*, Submission to the Inquiry into the policy, regulatory, taxation, administrative and funding priorities for Australian shipping, Senate Rural and Regional Affairs and Transport References Committee, 5 March 2019.

sectors of the industry. This could bring some consistency to the current deregulated hodgepodge of ‘safety management systems’ that vessel operators are currently required to develop individually.

AMSA must begin to see itself as a safety regulator with other Australian safety regulators as its peers and take steps to harmonise its operations with WHS best practice in Australia (Section 18). Like Safe Work Australia, it should carry out research that seeks to understand and report on safety issues in the industry and produce statistics that are comparable with other jurisdictions (Section 6 and 7). This must range from simple reporting of safety statistics, to more complex analysis of investigations.

For several years, AMSA has explicitly rejected a prescriptive approach to regulation for domestic vessels, while it enthusiastically participates in the largely prescriptive approach to international maritime safety regulation through the International Maritime Organisation (IMO). There are clear reasons why aspects of the maritime industry need prescriptive regulation – this is why it features so strongly in the IMO’s approach. Prescriptive approaches are necessary, particularly for physical standards of vessels and safety equipment, but also when it comes to:

- minimum vessel crewing,
- minimum seafarer qualifications, and
- vessel areas of operation.

Prescriptive minimum standards offer a critical safety net for the hazardous maritime industry where small operations and casual work is common.

Beyond AMSA’s immediate remit, legislative change is also needed to significantly expand the jurisdiction of the Navigation Act. Consideration may also need to be given to a more differentiated approach to sectors of the DCV fleet, for example, the fishing industry may prefer to develop its own qualification and crewing standards.

## 4. Recommendations

**Recommendation 1:** AMSA must significantly improve how it reports fatality data, and ensure it is done consistently and is comparable with Safe Work Australia’s reporting. Much better estimates of the number of vessel crew need to be developed to facilitate the reporting of fatality and incident rates. AMSA must also find ways to compile injury data, perhaps from state Workers’ Compensation jurisdictions.



**Recommendation 2:** That the Committee recommend to the Australian Government that AMSA carry out publication and analysis of statistics on safety and prosecutions in line with the standards set by Safe Work Australia.

**Recommendation 3:** That an independent investigation be carried out into the death of Tim Macpherson, the role of the national regulator and their delegates in issuing exemptions and certificates, as well as the oversight of AMSA accredited surveyors. It is the MUA's opinion that if due diligence had been carried out by the regulator and their delegate, it is possible the loss of Mr Macpherson could have been prevented.

**Recommendation 4:** An urgent, independent investigation be carried out into the timeliness and effectiveness of AMSA's actions (if any) following the sinking of *Returner*, and if those actions, if carried out in a more timely and effective manner, could have prevented the loss of *Cassandra*, *Seabring*, *Night Raider* and *Dianne* and the subsequent loss of life.

**Recommendation 5:** An urgent, independent investigation be carried out into the regulatory response following Mr Donoghue's death. The MUA's view is that it demonstrates the need for a safety code of practice for Domestic Commercial Vessels to be created and implemented as a matter of urgency. In addition, the training and qualifications of crew working on domestic commercial vessels be reviewed, with particular reference to formal training on work health and safety before commencing employment.

**Recommendation 6:** An urgent, independent investigation be carried out into the regulatory response following Mr Bradshaw's death, and including the necessary legislative changes to ensure that negligent operators can be prosecuted effectively. The right of crew to go ashore should also be regulated so that the action of forbidding crew to go ashore cannot be the solution to a safe means of access and egress to the vessel.

**Recommendation 7:** That the Committee recommend to the Australian Government that a review be made of resources available to AMSA, the allocation of those funds within AMSA, and whether further resources need to be allocated to enable AMSA to achieve their stated outcomes to the standard expected of an Australian Safety Authority.

**Recommendation 8:** That the Committee ensures that the current Inquiry includes a consideration of the impact of the implementation (over a transition period from 2013 to 30 June 2018) and operation (under AMSA's management) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law) and associated Marine Orders, exemptions, and directives, with a focus on how this has rapidly degraded standards of ship safety, cargo integrity, passenger safety, occupational health and safety, crew certification and associated VET qualifications, particularly relative to the much higher and internationally recognised standards given effect by the *Navigation Act 2012* (which implements Australia's obligations to conform with IMO Conventions (like the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Convention).

**Recommendation 9:** That the Committee recommend to the Australian Government that it acknowledge that the National Law Act does not provide a sound basis for the revitalisation of a viable coastal trading fleet, and undertake the task of developing a new application

framework for the National Law Act and the Navigation Act that applies the Navigation Act and IMO Convention standards to commercial vessels as the default standard, to include a provision for statutorily defined ships to be regulated under different standards. It is the view of the MUA that a new application provision require that all commercial vessels must be regulated by the *Navigation Act 2012*, except those which:

- Voyage only within 12nm of the coast and a safe haven.
- Are 24m or under in length.
- Carry less than 50 passengers.
- Are fishing vessels under 35m in length.
- Do not carry dangerous or polluting cargoes, including oil and gas.
- Do not proceed on voyages of more than 36 hours in length.
- Do not carry out 'high risk' operations.

**Note 1:** Vessels greater than 24m and less than 80m and not engaged in high risk operations can apply to be regulated under the National Law providing the vessel remains in smooth waters or partially smooth waters.

**Note 2:** Vessels carrying more than 50 passengers and under 24m in length may apply to be regulated under the National Law providing the vessel remains in smooth waters or partially smooth waters.

**Note 3:** 'High risk' operations include tugs, ro-ros, dredgers, tankers, passenger vessels carrying more than 50 passengers and high-speed craft 12m and over in length. The national regulator may add (but not remove) vessels and classes of vessels to the schedule of 'high risk' vessels at any time.

**Note 4:** Vessels other than tankers regulated under the Navigation Act but less than 80m long, with less than 3000kw engine power, and of less than 3000GRT and operating only in smooth waters or partially smooth waters may apply to use the General Purpose Hand qualification as part of their Minimum Safe Manning, subject to an assessment of required STCW short courses according to vessel operational functions and equipment

**Recommendation 10:** That AMSA apply the bulk of the provisions of Marine Order 11 (Living and Working conditions on vessels) to Domestic Commercial Vessels as a matter of priority.

**Recommendation 11:** That AMSA apply the bulk of the provisions of Marine Order 28 (Operations Standards and Procedures) to Domestic Commercial Vessels as a matter of priority.

**Recommendation 12:** That the Committee recommend to the Australian Government that AMSA must publish on its website of a list of vessels that are RAVs and DCVs. The Navigation Act and National Law must be amended to make this a requirement.

**Recommendation 13:** Consideration needs to be given to a greater level of separation between prescriptive standards for qualification and crewing for the fishing industry, as compared to passenger and trading vessels.

**Recommendation 14:** AMSA must bring the *Model Code of Practice: Managing Risks in Stevedoring* to the status of Regulation under Marine Orders to repair the damage it has

done to the regulatory framework for stevedoring safety. In the meantime, AMSA must also add the Code as 'Related Information' on its Marine Order 32 website.

**Recommendation 15:** That the Committee inquire into what work AMSA has done to promote the new *Code of Practice: Health and Safety in Shipboard Work, including Offshore Support Vessels*, and recommend that AMSA make the Code available on its website and distribute it to seafarers and operators during inspections of relevant vessels.

**Recommendation 16:** That the Committee examine why AMSA has excluded fishing vessels that are RAVs from the requirement to have a safety management system. That the Committee recommend to the Australian Government that AMSA amend Marine Order 31 to require Regulated Australian Vessels that are fishing vessels to have in place a safety management system in accordance with the ISM Code and the ISM Guidelines.

**Recommendation 17:** That the Committee recommend to the Australian Government that minimum crewing of DCVs under the National Law Act must also be established for the normal operation of all commercially operated vessels in writing by AMSA and reviewed periodically. Minimum crewing should be included on the vessel's certificate of operation, and a copy displayed in a location of the vessel where it can be readily seen by the crew and any passengers, as well as be included in the crew's familiarisation training.

**Recommendation 18:** That the Committee recommend to the Australian Government that any exemptions issued by AMSA should only be issued after an appropriate risk assessment and vessel inspection, subject to the approval of two or more managers, and published on AMSA's website.

**Recommendation 19:** That the Committee request from AMSA a copy of Exemption 13A and investigate the safety analysis that supports the issue of this exemption and other specific exemptions that have been issued by AMSA in its role as the national regulator.

**Recommendation 20:** That the Committee recommend to the Australian Government that a full and transparent review of the seafarer qualification framework and associated VET certificates and units of competency be carried out. Domestic and international seafarer qualifications must be streamlined in order to have STCW standards of competence integrated at all levels in order to have a qualification system that allows all seafarers to develop their career and training in a straightforward process. Incorporating the higher standards of STCW, at an appropriate level, into the units of competency of the VET certificates will increase the overall standards of Australian seafarers, reduce the complexity of the system and reduce overall training costs. It is also recommended that all personnel working on any type of vessel must have health and safety training specific to work on vessels, as well as STCW-compliant survival and fire prevention training.

**Recommendation 21:** That the Committee recommend to the Australian Government that AMSA suspend its current MO505 review process and not bring in a revised Marine Order until other review processes have settled a more effective and durable safety regulatory system for Australian ships. The review needs to focus on the way that the coming into force of the National Law Act has rapidly degraded standards of ship safety, cargo integrity,

passenger safety, occupational health and safety, crew certification and associated VET qualifications, particularly relative to the much higher and internationally recognised standards given effect by the Navigation Act (which implements Australia's obligations to conform with IMO Conventions (like the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Convention).

**Recommendation 22:** That the Committee recommend to the Australian Government that it:

- \* Establish a multi stakeholder maritime workforce development task force that is fully funded to build on the work of the previous Maritime Workforce Development Forum undertaken in the period 2011 to 2013 up until release of the Maritime Workforce Development Strategy in May 2013, and that inter alia, the Task Force:

- ^ Undertake a review of current and future maritime workforce capabilities and skill needs having regard to the MIAL Seafaring Skills Census Report 2018, taking account of industry skill requirements, especially in management of cargoes, emerging technologies that could impact on job roles and skill requirement including the opportunities for better integration of commercial maritime skills and qualifications with those required for Navy, Border Force and other government ship operations; and

- ^ Review how onboard maritime skills and qualifications can be integrated into onshore roles to help achieve better labour mobility, workforce flexibility and career paths for all occupational groupings in the shipping industry.

- ^ Review the core competencies that currently underpin seafarer qualifications to ensure that the competencies reflect required industry skills and not just the safety aspects required by the regulator.

- ^ Conduct a review of training providers approved to deliver seafarer qualifications to identify offerings, trends in enrolments and completion rates, location of offerings and their pricing principles.

- \* Propose that the AISC authorise and fund Australian Industry Standards to abandon its current approach to reviewing the Maritime Training Package affecting the Ratings stream, and to arrange a high level conference, to be independently facilitated, comprising owner/operators and employer representatives with an interest in the Navigation Act and STCW standards, the MUA representing Ratings, AMSA and METL as the only group training organisation in the industry to prepare a new national framework of Ratings qualifications and Skill Sets, including a timetable, not exceeding 18 months, for implementation of a new Ratings qualifications framework, and that AISC adequately fund curriculum development and approval of the necessary changes to the Training Package to meet such a timeframe.

- \* Work with the States/NT to fully fund a limited number of approved RTOs, subject to quality, innovation in delivery methods and cost conditions, to deliver the new Ratings qualifications and Skill Sets over a 10 year forward program as an essential part of the overall revitalisation of the Australian shipping industry.

**Recommendation 23:** That the Committee recommend to the Australian Government that it implement a national system for testing and issuing marine qualifications through an independent public agency such as AMSA that is separate from RTOs. In the short term, the application of the 'low-complexity' designation to DCV qualifications should be removed.

**Recommendation 24:** That the Committee ensures that the current Inquiry includes a consideration of the arrangements for issuing Minimum Safe Manning Documents (MSMDs) for RAVs under the Navigation Act. We ask the Committee to recommend to the Australian Government that a new transparent procedure that provides for stakeholder participation in determining minimum safe manning, and the operational and crew qualifications conditions to be included in MSMDs. AMSA marine surveyors or inspectors with practical experience of the vessel should also be consulted.

**Recommendation 25:** That the Committee recommend to the Australian Government that the Navigation Act be amended to ensure that every Regulated Australian Vessel 'must' be issued a Minimum Safe Manning Document by the national regulator with a maximum validity of 5 years (Navigation Act 2012, Chapter 2, Part 4, Division 2).

**Recommendation 26:** That the Committee recommend to the Australian Government that Marine Order 21 be amended to ensure that all Regulated Australian Vessels must be crewed with seafarers with qualifications under the Navigation Act. Currently MO21 (s.10) allows for AMSA to make a determination in writing that RAVs under 3000GT may carry seafarers with DCV certificates issued under Marine Order 505. These certificates are designed for Domestic Commercial Vessels and are a far lower standard than the STCW compliant certificates issued under the Navigation Act. AMSA has issued these determinations for the entire crew of a vessel, significantly lowering the standard of safety and training.

**Recommendation 27:** That the Committee recommend to the Australian Government that a Safety Code of Practice for the Domestic Commercial Vessel industry be developed, in line with the current *Code of Practice: Health and Safety in Shipboard Work, including Offshore Support Vessels*, which has been developed for larger vessels more likely to be RAVs. Such a Code can give practical and flexible guidance to seafarers in the industry, with specific chapters to address the diverse sectors of the industry.

**Recommendation 28:** That the Committee recommend to the Australian Government that AMSA should become a member of Safe Work Australia. At a minimum, it must develop an MOU with Safe Work Australia, and make every effort to align its safety reporting and analysis with Safe Work Australia standards.

**Recommendation 29:** That the Committee recommend to the Australian Government that the Domestic Commercial Vessel industry be declared a 'national priority industry' for preventative action, and that AMSA should work with Safe Work Australia and maritime unions to develop a strategy to reduce fatalities and injuries in the Domestic Commercial Vessel industry.

**Recommendation 30:** That the Committee recommend to the Australian Government that all AMSA employees undertake a training program about the WHS Act and how it functions.

**Recommendation 31:** That the Committee recommend to the Australian Government that AMSA produce a fact sheet for vessel operators to ensure that they are aware that they are

also covered under the WHS Act, and also update safety guidance documents to refer to the fact that vessels are also covered by the WHS Act (or in some cases the OHS(MI) Act).

**Recommendation 32:** An urgent, independent investigation be carried out into the enforcement actions taken by AMSA as a response to serious marine incidents and breach reports since 1<sup>st</sup> July 2013. This should include an assessment of AMSA's internal legal advice and briefs presented to the DPP. The adequacy of the safety duties under the National Law should also be assessed. There must be more transparent reporting of enforcement actions going forward.

**Recommendation 33:** That the committee recommend to the government that it review the composition of the AMSA board. The Australian Maritime Authority Act, Section 13 should be amended to ensure that at least two of the board members of AMSA are representatives of seafarer employees, nominated in consultation with seafarer unions.

**Recommendation 34:** That the Committee recommend to the Government that it review if the resources for carrying out Port State Control inspections are sufficient to the increasing challenge AMSA faces in regulating international shipping.

## 5. The 'deregulation agenda' and AMSA's regulatory approach

AMSA operates within a context of highly prescriptive international maritime safety regulations, determined by the IMO's international conventions, and the process-based Work Health and Safety legislation of the States and Territories.<sup>3</sup> It has taken over regulation of a large Domestic Commercial Vessel fleet of approximately 20,000 vessels from states. Our observation is that AMSA's strategy to cope with this has been to:

- Deregulate safety to reduce the workload of managing a large number of vessels. With the revision of MO 504 on 1 July 2018 AMSA has invented its own process-based safety system, 'outcomes-based safety'. This system hands over self-regulation to individual domestic commercial vessel operators, at the same time that AMSA is aware that significant sectors of this fleet do not have a good safety culture in place. We are not aware of any basis in Australian safety law for this approach, and we find it deficient in a number of ways (section 7).
- Revise regulations mainly in response to sectional complaints from industry, rather than adopt an evidence-based approach that seeks to understand safety problems in industry and adopt a broader approach to addressing them. See for example the consultation documents produced for MO 504 and MO 505 (section 20).
- For prescriptive safety standards from the IMO, remove their application domestically. While the DCV legislation does not require application of IMO conventions, we are not aware of anything preventing AMSA from applying Navigation Act Marine Orders (or sections of them) to DCVs.
- For process safety standards involving work organisation, AMSA prioritises international standards above domestic standards. International standards, such as those set in the International Safety Management Code (ISM Code) and the Guidelines on Offshore Maritime Operations, lack requirements for training, consultation and participation of workers, which is a critical part of Australian WHS law and best practice (section 18). In contrast we could find no mention of the application of the WHS Act or of Australian Safety Codes of Practice or of fatigue management on the AMSA website. The new *Code of Practice: Health and Safety in Shipboard Work, including Offshore Support Vessels*, approved by the Seacare Authority, is not available on AMSA's website. AMSA's guidance on fatigue is weaker than Safe Work Australia's guidance on fatigue, and it is unclear why (section 18).
- Draw false boundaries between 'maritime safety' and occupational health and safety, seeking to remove things it deems to be occupational health and safety from its Marine Orders, for example in relation to stevedoring (section 11).

In September 2013, the newly elected Australian Government established an Office of Deregulation in the Department of the Prime Minister and Cabinet, and wrote to all

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<sup>3</sup> AMSA's jurisdiction also abuts the *Occupational Health and Safety (Maritime Industry) Act 1993 (OHS(MI) Act)*, which also has a process-based approach that is similar to the WHS Acts and is likely to be fully harmonised into Australia's national WHS system within a few years. It applies to a smaller numbers of larger vessels.

agencies about their 'Regulatory Reform Agenda'.<sup>4</sup> The 'Deregulation Agenda' was later shifted to the Department of Jobs and Small business.<sup>5</sup> AMSA appears to have wholeheartedly taken on this agenda. We are not aware of any assessments that were made about how such an agenda would affect maritime safety, which has historically involved a high level of prescription. This approach was rapidly adopted in AMSA's document 'Our regulatory approach 2014', which cited a 'performance-based, not prescriptive' approach to regulation.<sup>6</sup> In the 2018 consultation on Marine Order 504, this was updated to an "outcomes-based" approach to regulation of operational safety under the National Law'.<sup>7</sup> AMSA released a 'Statement of Regulatory Approach' later in 2018, which then described the approach as to 'be non-prescriptive where possible, leaving choice to those who bear responsibility for the outcome'.<sup>8</sup>

Our view is that AMSA has pursued a deregulation agenda for maritime safety since about 2014 in order to satisfy the political priorities of government, and not based on any evidence that it would improve maritime safety. Since that time, there has been a significant lack of collection of evidence about maritime safety, and a series of significant steps were taken which in our view have caused maritime safety to deteriorate.

AMSA must adopt a basic and improved level of prescription in its regulatory approach, particularly when it comes to:

- minimum vessel crewing,
- minimum seafarer qualifications, and
- vessel areas of operation.

AMSA must also become much better integrated with other Australian safety agencies and WHS standards.

Before examining these regulatory issues further, we will first examine scope of the safety problems in the domestic commercial vessel industry.

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<sup>4</sup> Guidance to support implementing the Government's regulatory reform agenda, Department of the Prime Minister and Cabinet: <https://www.pmc.gov.au/regulation/guidance-policymakers/guidance-support-implementing-government%E2%80%99s-regulatory-reform-agenda>.

<sup>5</sup> Deregulation Agenda, Department of Jobs and Small Business: <https://www.jobs.gov.au/deregulation-agenda>.

<sup>6</sup> AMSA. 'Our regulatory approach 2014'.

<sup>7</sup> AMSA, Operational Safety Review: Consultation on proposed new Marine Order 504 (Certificates of operation and operation requirements – national law) p.1.

<sup>8</sup> AMSA, 'Statement of Regulatory Approach', October 2018, p.2.



## 6. AMSA's reporting of safety data

One of the functions of the National Regulator is “to collect, analyse and disseminate data relating to marine safety” (National Law Act s. 10). It appears that there was not a co-ordinated effort by AMSA to undertake this function for the Domestic Commercial Vessels it took responsibility for when the National Law came into effect on the 1<sup>st</sup> of July 2013. Collecting and analysing data related to marine safety leads to an understanding of the regulated community and the general industry environment. However, the last survey of domestic seafarer safety available on the AMSA website is dated 1997 and focuses on the larger blue water and offshore fleet.<sup>9</sup> Instead, AMSA has written and implemented Marine Orders for this fleet apparently without any systematic data collection, analysis or dissemination of results.

AMSA's first report of national DCV fatalities was in 2016-17, with 13 reported in the Annual Report section on Key Performance Indicators (Appendix 2). The following year (2017-18), 9 fatalities are reported, but oddly it says the number is 'not reported' for 2016-17 or 2015-16 (Appendix 3). The 2017-18 Annual Report says the 'measure for 2017-18 was updated to include a proportionate component'. Oddly, this is done in terms of a percentage, and not the convention used by other Australian safety agencies to report fatalities per 100,000 workers.<sup>10</sup> The Report also explains that percentages are calculated 'on the assumption of 27,000 vessels and 66,500 seafarers'.

In September 2018, however, the MUA received a communication from a senior AMSA manager explaining that although 24,716 is the total count of domestic commercial vessels in the AMSA DCV system, there are actually only 19,452 active vessels due to vessels being registered in more than one class or area of operation. If fatalities are reported proportionately, it is critical to get the denominator, or relevant population of seafarers, correct. 27,000 vessels with 66,500 seafarers assumes approximately 2.5 seafarers per vessel. But if the number of real vessels is actually 19,452, at 2.5 crew per vessel, this would be 48,630 seafarers.

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<sup>9</sup> A.W.Parker PhD, L.M.Hubinger, S. Green, L. Sargent, and R. Boyd. 1997. A survey of the health, stress and fatigue of Australian Seafarers.

<sup>10</sup> See for example Safe Work Australia, *Work-related Traumatic Injury Fatalities*, Australia 2017.

**Table 1:** Domestic Commercial Vessel fatalities reported by AMSA in 2016-17 and 2017-18.

	DCV fatalities	Fatality rate per 100,000 at 66,500 seafarers	Fatality rate per 100,000 at 48,630 seafarers	Fatalities per 100,000 workers in Australia (2017)
<b>2016-17</b>	13	19.5	26.7	1.5
<b>2017-18</b>	9	13.5	18.5	

**Source:** AMSA Annual Report 2016-17 and 2017-18, Safe Work Australia, *Work-related Traumatic Injury Fatalities*, Australia 2017. Fatality rate calculated as  $(13 / 66,500) \times 100,000 = 19.5$  DCV deaths per 100,000 workers in 2016-17.

Table 1 shows that whatever estimate is used, the DCV fatality rate is between 6 and 18 times the average fatality rate for Australian workers. It is comparable or higher than the most dangerous industries as reported by Safe Work Australia in 2016 (Table 2), and than the seven industries identified by Safe Work Australia as 'national priorities for prevention activities' due to their high rate of fatalities and injuries.<sup>11</sup>

In the more prescriptive Navigation Act and OHS(MI) Act and jurisdiction, there have been approximately 6 fatalities in the past 24 years in the broadest possible interpretation of the coverage of these Acts.<sup>12</sup> This includes vessels working in hazardous industries such as offshore oil and gas, carriage of bulk cargo, tankers, roll on and roll off general cargo vessels. These vessels are much more likely to have a strong union presence and trained Health and Safety Representatives. It is our experience that there is much better management of safety on these vessels.

<sup>11</sup> <https://www.safeworkaustralia.gov.au/book/australian-strategy-priority-industries-and-conditions> and Safe Work Australia, *Work-related traumatic injury fatalities in Australia*, Table 2 - number and incidence rate of work-related fatalities by industry (2012 to 2016), <https://www.safeworkaustralia.gov.au/system/files/documents/1805/number-and-incidence-rate-of-injury-related-fatalities-by-industry-2012-2016.pdf>

<sup>12</sup> Compiled by the MUA from Seacare Authority Annual Reports. Six fatalities since 1993 includes the 1993 fatality on the Maersk Runner, and at least two fatalities which were technically out of OHS(MI) Act jurisdiction, but which we have included because the vessels were effectively part of the same fleet (Trevor Moore and Andrew Kelly).

**Table 2:** Sample fatality rates of dangerous Australian industries.

Most dangerous SWA-reported industries in 2016	Fatality rate per 100,000
Road freight transport	18.1
Agriculture, forestry & fishing	14
Transport, postal & warehousing	9
Electricity, gas, water & waste services	5.8
Construction	3.3
Mining	2.7

**Source:** Safe Work Australia, Fatality statistics by industry, Table 2: Worker fatalities: fatality rate (fatalities per 100,000 workers) by industry of employer, 2003 and 2012 to 2016 (sorted by 2016 rate).

There is an explanation below the 2016-17 fatality data that:

“AMSA is working closely with partner agencies and authoritative bodies to investigate these incidences. In the process it identifies and actions any required safety campaigns or areas for improvement in the relevant standards.”<sup>13</sup>

However, there are no other reports on these activities in the 129-page Report or on the AMSA website. The 2018 consultation documents for the review of Marine Order 505 on vessel safety systems did not contain any such data (Section 20).

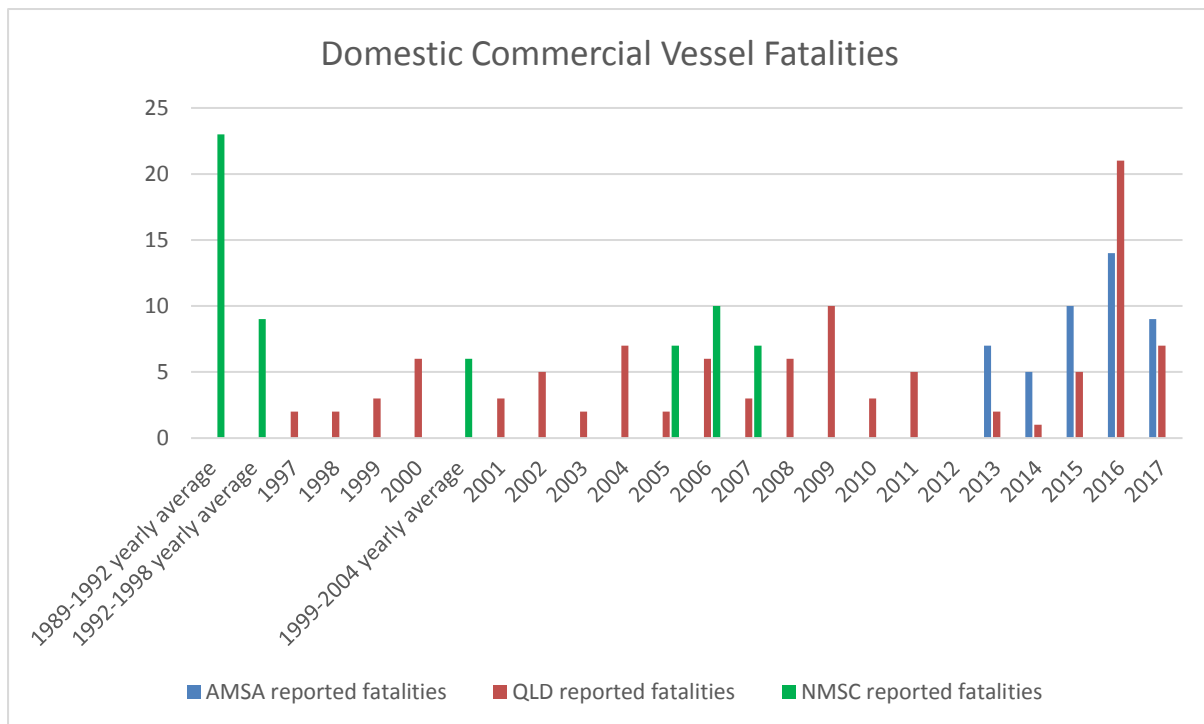
This level of fatalities should not be surprising to AMSA. Figure 1 provides fatality data over a longer time, including what was supplied to the MUA by personal correspondence from AMSA (Appendix 4), along with data published by Maritime Safety Queensland,<sup>14</sup> and data from the National Maritime Safety Committee.<sup>15</sup> Unfortunately none of this information is supplied per 100,000. There are significant gaps in the national data. Indications are that absolute numbers of DCV fatalities have been similar over time, with 2016 being an exceptionally bad year.

<sup>13</sup> AMSA 2016-17 Annual Report p.54

<sup>14</sup> Marine Incident Annual Reports, Maritime Safety Queensland: <https://www.msg.qld.gov.au/About-us/Marine-incident-annual-reports>

<sup>15</sup> National Approach to Maritime Safety Reform: Regulation Impact Statement, 2009 pg. 37

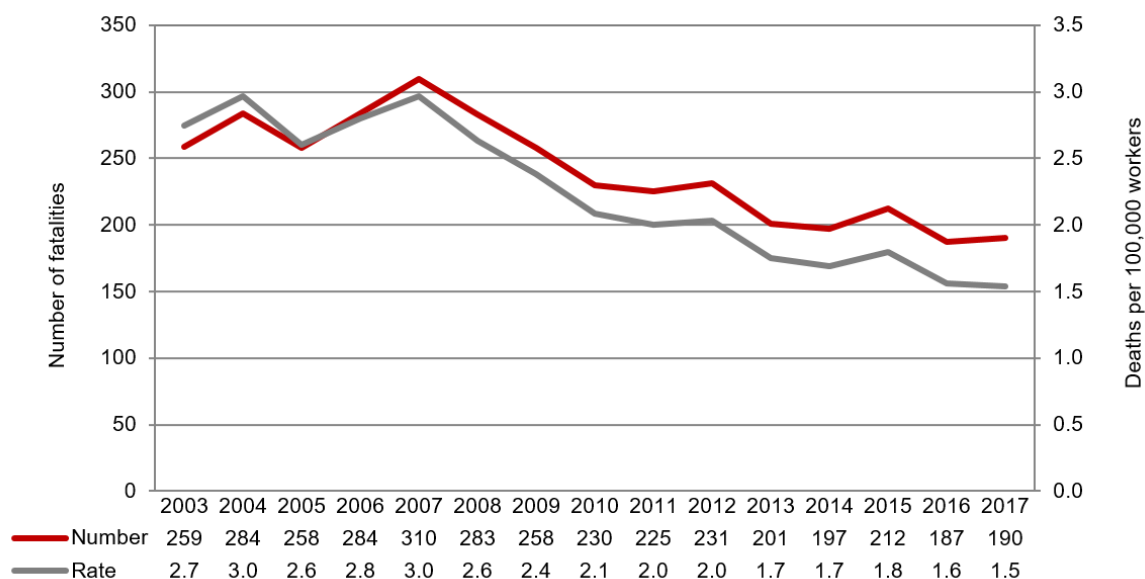
**Figure 1:** Domestic commercial vessel fatalities, 1989-2017.



**Source:** Compiled by the MUA from data from AMSA (Appendix 4), National Approach to Maritime Safety Reform: Regulation Impact Statement, 2009 pg. 37 and Maritime Safety Queensland Marine Incident Annual Reports 1997 – 2017.

While fatalities on Domestic vessels appear to have remained at about the same level since 1992, the fatality rate across Australian industries since 2003 has declined by almost half (Figure 2).

**Figure 2:** Total fatalities and rate of fatalities per 100,000 workers across all Australian industries, 2003-2017.



**Source:** Safe Work Australia, p.8 <https://www.safeworkaustralia.gov.au/system/files/documents/1812/work-related-traumatic-injury-fatalities-report-2017.pdf>

Queensland and Victoria supply marine safety data online.<sup>16</sup> Requests to the other states and territory for similar data were referred back to AMSA as the 'owner' of the data. The only other source of information on fatalities for DCVs we are aware of is combing through coroner's and ATSB reports. It is unclear to us why Queensland reported more DCV fatalities than AMSA in 2016, but this should be investigated.

We have gone to some effort to compile the numbers of commercial vessel fatalities since the National System came into effect on the 1st of July 2013 (Table 3). Considerable gaps remain and we request that the Committee make an attempt to complete this table and publish it in their report so that it is available on the public record. Appendix 5 lists the relevant Coroners and ATSB reports we are aware of.

<sup>16</sup> Very few fatalities were reported through Maritime Safety Victoria so we have not separately included these numbers.

**Table 3:** Australian Commercial Vessel Fatalities from 1 July 2013.

Name	Date	State/ Territory	Vessel	Sector
<b>Company purchaser*</b>	3-Jul-13	SA	Atlantic Princess/ Switcher	Trading
<b>Glen Anthony WILSON</b>	26-Jul-13	QLD	Norlaus	Fishing
<b>Thomas Francis LEVINGE</b>	7-Oct-13	WA	Sun Princess	Passenger Vessel (foreign)
<b>Ryan Harry DONOGHUE</b>	29-Nov-13	NT	Newfish 1	Fishing
<b>Ian Graham THOMPSON</b>	3-Dec-13	TAS	Efishent	Fishing
<b>Paul McVEIGH</b>	13-Dec-13	VIC	Moonraker	Passenger Vessel
	2013	TAS		Hire and Drive
	2013	NT		Hire and Drive
<b>Leila Michelle TROTT</b>	6-Apr-14	QLD	Ocean Free	Passenger Vessel
<b>Damien Mark MILLS</b>	31-Oct-14	WA	Ten Sixty Six	Passenger Vessel
	2014	VIC		Fishing
	2014	NSW		Hire and Drive
	2014	NSW		Hire and Drive
	2014	QLD		Fishing
<b>Murray Allan TURNER</b>	11-Jul-15	WA	Returner	Fishing
<b>Mason Laurence CARTER</b>	11-Jul-15	WA	Returner	Fishing
<b>Chad Alan FAIRLEY</b>	11-Jul-15	WA	Returner	Fishing
<b>Andrew KELLY**</b>	14-Jul-15	WA	Skandi Pacific	Offshore
<b>Allan Geoffrey (Joe) RUSSELL</b>	14-Apr-15	TAS		Fishing
<b>John ROGERS</b>	26-Mar-15	SA	Australis II	Fishing
	2015	QLD		Trading
	2015	NSW		Passenger Vessel
	2015	QLD		Passenger Vessel
	2015	QLD		Passenger Vessel
	2015	QLD		Passenger Vessel
<b>Matthew Neil ROBERTS</b>	4-Apr-16	QLD	Cassandra	Fishing
<b>David Barry CHIVERS</b>	4-Apr-16	QLD	Cassandra	Fishing
<b>Martin CUNNINGHAM</b>	25-May-16	QLD	Cygnat Lass	Fishing
	8-Nov-16	QLD	Seabring	Fishing
	12-Nov-16	QLD	Night Raider	Fishing
	12-Nov-16	QLD	Night Raider	Fishing
	12-Nov-16	QLD	Night Raider	Fishing
	2016	QLD		Passenger Vessel
	2016	QLD		Passenger Vessel
	2016	QLD		Passenger Vessel
	2016	QLD		Passenger Vessel
	2016	QLD		Passenger Vessel
<b>Luke Anthony MURRAY</b>	19-Jan-16	WA	Napoleon	Fishing

	2016	QLD		Hire and Drive
<b>Daniel Thomas BRADSHAW</b>	8-Jan-17	NT	Sammy Express	Trading (landing craft)
<b>Tim Macpherson</b>	1-Mar-17	NSW	Maeve Anne	Trading (construction barge)
<b>Benjamin Patrick LEAHY</b>	16-Oct-17	QLD	Dianne	Fishing
<b>Adam Jeffrey BIDNER</b>	16-Oct-17	QLD	Dianne	Fishing
<b>Adam Ross HOFFMAN</b>	16-Oct-17	QLD	Dianne	Fishing
<b>Zachary John FEENEY</b>	16-Oct-17	QLD	Dianne	Fishing
<b>Christopher David SAMMUT</b>	16-Oct-17	QLD	Dianne	Fishing
<b>Eli Davey TONKS</b>	16-Oct-17	QLD	Dianne	Fishing
	6-11-2017	NSW	Sydney Ferry	Passenger Vessel
<b>Harry EVANS</b>	4-10-2018	NT	Ocean Exporter	Fishing
	11-10-2018	NSW	Sydney Ferry	Passenger Vessel
<b>Shalina HUSSEIN</b>	2-Feb-19	NSW	Lady Rose	Passenger Vessel

\*Person's name not reported

\*\*Bahamas flag vessel, but fully Australian crewed

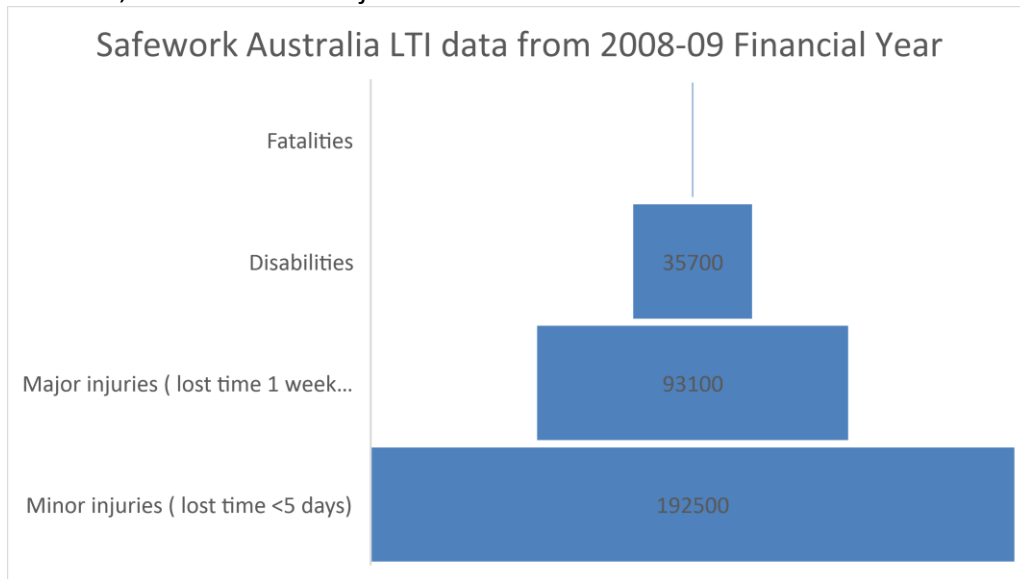
**Source:** Compiled by the MUA from relevant coroner's reports and data from AMSA (Appendix 4), media reports and Marine Safety Queensland Marine Incident Annual reports. Coroner's reports are listed in Appendix 5.

Safe Work Australia's data on compensated lost time incidents (LTIs) from 2009<sup>17</sup> shows that the frequency and severity of incidents generally follows the principle of the safety pyramid: that for every major incident, there is a larger number of minor incidents (Figure 3).

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<sup>17</sup> Issues in the measurement and reporting of work health and safety performance: a review. Pg 7-9  
<https://www.safeworkaustralia.gov.au/system/files/documents/1703/issues-measurement-reporting-whs-performance.pdf>

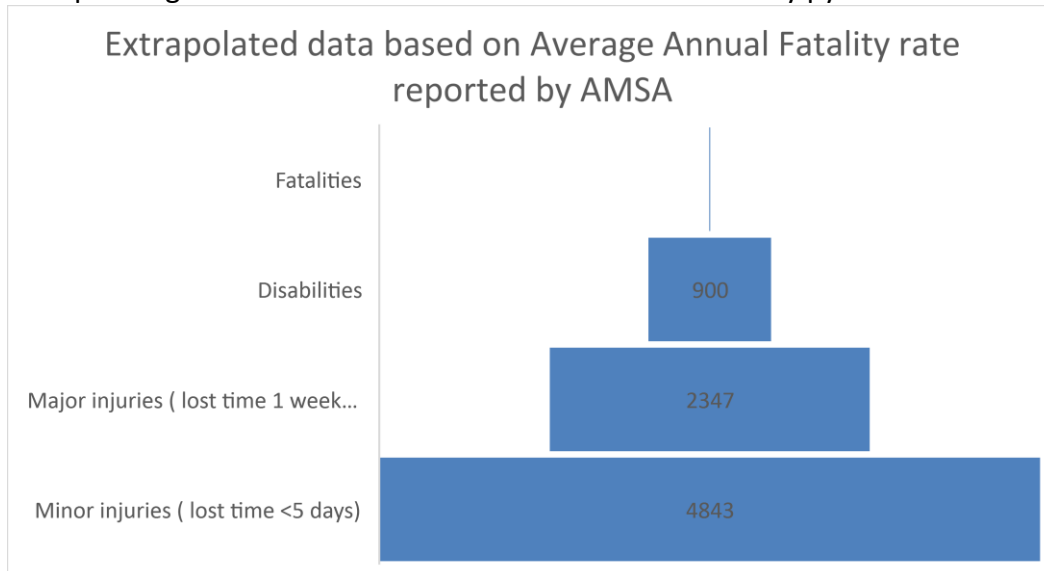
**Figure 3:** Safe Work Australia Lost Time Injuries (LTI) data showing the ratio between fatalities, disabilities and injuries.



**Source:** <https://www.safeworkaustralia.gov.au/doc/issues-measurement-and-reporting-work-health-and-safety-performance>

AMSA data on DCV fatalities provided in Appendix 4 give us an average of 9 fatalities per year from 2013-2017. Using the data from Safe Work Australia's ratio of injuries, we can extrapolate an approximate number of disabilities and injuries in the Domestic Vessel industry, which should be reported to AMSA, and in turn form part of their safety reporting.

**Figure 4:** Expected level of disabilities and injuries in the Domestic vessel industry, extrapolating from 9 fatalities and Safe Work Australia safety pyramid ratios in Figure 3.



**Source:** AMSA provided information (Appendix 4), Safework Australia, *Measuring and reporting work health and safety performance*.



In the 2017-2018 financial year, AMSA reported 9 fatalities and 90 serious incidents. Extrapolating from Safe Work Australia data in Figure 3, there is potentially 8000 injury causing incidents and 900 people disabled in the Domestic vessel industry in Australia annually. While fatalities are only one measure of safety in an industry, it is expected for a modern Australian regulator to be actively gathering, analyzing and data not only on fatalities, but also on health effects, disease, retirement due to injuries, and suicide. Some of this data will be held by workers' compensation authorities, but it does not appear to be collected by AMSA. Regardless of how 'serious incidents' are defined by AMSA, there is clearly a large gap in reporting both to and from AMSA, and only the vaguest analysis or dissemination of this information to the relevant stakeholders.

**Recommendation 1:** AMSA must significantly improve how it reports fatality data, and ensure it is done consistently and is comparable with Safe Work Australia's reporting. Much better estimates of the number of vessel crew need to be developed to facilitate the reporting of fatality and incident rates. AMSA must also find ways to compile injury data, perhaps from state Workers' Compensation jurisdictions.

**Recommendation 2:** That the Committee recommend to the Australian Government that AMSA carry out publication and analysis of statistics on safety and prosecutions in line with the standards set by Safe Work Australia.

## 7. Lack of analysis or evidence for safety approach

Despite AMSA having access to, and conducting investigations, there has been no published analysis of the Domestic Commercial Vessel industry, incidents, accidents, issues, or even the number of vessels or personnel it regulates. No information of this kind has been circulated with recent consultations on revisions of Marine Orders related to DCV safety (for example Marine Order 504 and 505). Analysis is needed as publicly available coroner's reports and ATSB reports demonstrate that there is a lack of safety culture, crew training, and adequate vessel crewing in terms of both numbers of crew and qualifications they hold.

In 2018 AMSA released a study on safety culture on international vessels visiting Australia. 6% of the vessels surveyed were Australian flagged.<sup>18</sup> The research was carried out by university researchers under an Australian Research Council Linkage Grant, which would have required substantial resources from AMSA. It is a useful study; however, it is unclear to us why AMSA prioritised this group of seafarers when so little appears to be known about the Domestic Vessel fleet that it was in the process of taking much more direct control over,

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<sup>18</sup> The study clearly targeted international seafarers and the Australia flagged vessels appear only to have been included incidentally, as survey questions such as "How long is your current contract for this ship?" assume international and not Australian working conditions. <https://www.amsa.gov.au/sites/default/files/assessing-the-determinants-consequences-of-safety-culture-in-maritime-ind.pdf>

and which has demonstrable safety issues. We are aware that AMSA and university researchers are investigating the possibility of a similar research project being undertaken to cover domestic vessels, and we urge that this be progressed as quickly as possible.

For example, the coroner's findings of the death of passenger and snorkeler Eric Davis FINLAYSON on the 9<sup>th</sup> of October 2012 describe how the Master of the vessel had to personally respond to an unconscious person on the beach, perform CPR, drive back to the anchored vessel as no other available crewmember could drive the tender, collect resuscitation equipment, drive back to the beach, continue with CPR, leave the patient in the hands of passengers as the crew were too distraught, drive back to the vessel to contact emergency services, and return to the beach to assist with CPR. All the while, he was responsible for a total of 33 passengers and 10 crew.<sup>19</sup>

On the 14<sup>th</sup> of April 2012, Jarrod Arthur HAMPTON, a pearl diver in WA, got into distress during the last dive of the day. Even though there were other crew onboard – a cook, an engineer and a deckhand, it was the master who jumped in the water to try to recover Jarrod, who was unresponsive, commence and continue CPR, contact the company health and safety contact person, who contacted a doctor, who then rang the vessel back, emergency services and nearby vessels for assistance, all the while responsible for the vessel and divers still in the water decompressing.<sup>20</sup>

Leila Michelle TROTT was in charge of a tourist sailing vessel on the 6<sup>th</sup> of April 2016 and swam to retrieve the vessel's tender which had come loose. The crewmember left on board was a dive instructor and had no maritime qualifications. When Ms Trott went missing, he radioed nearby vessels for assistance immediately, and only radioed a 'PAN PAN' when instructed by another vessel, approximately 40 min after she was noticed missing.<sup>21</sup>

Ryan Harry DONOGHUE died on the 29<sup>th</sup> of November 2013 while using an electric angle grinder. The Skipper started CPR, then contacted Austal Fisheries, who called a doctor, who called the vessel back to give advice. CPR continued for 75 minutes, but there was no defibrillator on board to restart his heart. He was 19 years old, had 4 months of experience, and was the 'First Mate'. He was also working barefoot the day he was killed.<sup>22</sup>

Daniel Thomas BRADSHAW died on the 8<sup>th</sup> of January 2017. He fell between the vessel and the quay wall. There was no safe means of access to the vessel.<sup>23</sup>

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<sup>19</sup> Links to Coroner's report available in Appendix 5

<sup>20</sup> Links to Coroner's report available in Appendix 5

<sup>21</sup> Links to Coroner's report available in Appendix 5

<sup>22</sup> Links to Coroner's report available in Appendix 5

<sup>23</sup> Links to Coroner's report available in Appendix 5

Glenn Anthony WILSON drowned on the 26<sup>th</sup> of July 2013, having capsized the dory he was working in while trying to free the anchor. He was not wearing a lifejacket.

The coroner's report into the death of Mr Wilson called for the introduction of baseline safety standards:

"However, SMS's, like that on Norlaus, demonstrate that there is a very serious and large gap between regulators' expectations and what many owners and operators are capable of achieving. The nature and extent of that gap has not been measured. I acknowledge AMSA is aware of the issue and is working diligently with owners and operators to close the gap. However, the absence of reliable information about the nature and extent of the gap must make strategic planning to close the gap very difficult.

In my view, AMSA needs to undertake a benchmarking exercise. Presumably, AMSA has clear criteria for an effective SMS against which it can audit owners and operators. If a sample size of a marine sector (dory fishing operations) is selected and audited, strengths and weaknesses can be assessed; and an overall level of performance can be determined. This will fix a base line from which future efforts to improve safety can be based. AMSA can then plan over what period and with what resources it will achieve a specified target level of overall safety performance within that sector. I don't doubt that planning was involved in past efforts to improve safety. However, without standards and measurements, regulatory progress in safety performance is unable to be externally monitored."<sup>24</sup>

On the 1st of March 2017, Tim Macpherson was struck and killed by a steel beam while working on board the barge 'Maeve Anne' constructing the new ferry hub at Barangaroo, Sydney. The MUA is of the understanding that a coroner's inquest will be undertaken, and that there will potentially be a prosecution forthcoming from Safework NSW. As in many other situations described in this submission, the interaction between Work Health and Safety and the National Law is convoluted and confusing, however, the decisions made by AMSA and NSW Maritime as the delegate provide a paper trail that shows a concerning precedent.

This tragic incident was raised in the Senate by Sen Doug Cameron on the 22<sup>nd</sup> March 2017<sup>25</sup>. The MUA has established a timeline as follows:

- In **August 2015**, AMSA gave advice to Brady Marine and Civil Pty Ltd (BMC), the operator of the *Maeve Anne*, that the vessel would require a Certificate of Survey if the vessel was to change geographical area.<sup>26</sup>

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<sup>24</sup> See links to coroner's reports in Appendix 5

<sup>25</sup> Extract from Hansard available at:

[https://www.aph.gov.au/Parliamentary\\_Business/Hansard/Hansard\\_Display?bid=chamber/hansards/5a8fad58-1c5f-4288-b0fd-4bc542ae11ce/&sid=0056](https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansards/5a8fad58-1c5f-4288-b0fd-4bc542ae11ce/&sid=0056)

<sup>26</sup> Information available on request

- At some point in **February 2016**, the *Maeve Anne* was moved from Brisbane to Sydney for use in the construction of the Barangaroo Ferry Hub. BMC was a sub-contractor for Mc Connell Dowell, the contractor for construction of the ferry hub.
- On the 30<sup>th</sup> **May 2016** a prohibition notice for *Maeve Ann* was issued to BMC for operating the vessel without National Law certification.
- On the 8<sup>th</sup> **June 2016**, Roads and Maritime NSW issued a temporary operations exemption for the barge.
- In **June 2016**, the MUA contacted RMS with concerns regarding the vessel.
- On the 6<sup>th</sup> of **October 2016**, Mr Brian Hemming, National Operations Manager, Domestic Vessels, AMSA, issued a specific exemption for the vessel.
- On the 21<sup>st</sup> **October 2016**, the vessel was issued with a Certificate of Survey and Operation by RMS on behalf of AMSA.
- In **November 2016**, the MUA was refused right of entry to the barge and worksite after seeking access under NSW WHS legislation.
- Following Mr Macpherson's death on the 1<sup>st</sup> of **March 2017**, the MUA was finally granted access to the site on the 7<sup>th</sup> **March 2017**, and identified a significant number of safety concerns<sup>27</sup>
- On the 15<sup>th</sup> **March 2017**, RMS inspected the barge and issued an 'improvement notice'.

AMSA had made the BMC aware of the regulatory requirements that would apply to the vessel, and yet, even in the light of a prohibition notice being issued for a breach of these same requirements, AMSA and RMS still felt confident in issuing a Temporary Operations Exemption, a Specific Exemption, and a Certificate of Survey and Operation. It is unclear if at any time during this process of issuing paperwork, a physical safety inspection of the barge was carried out by a Maritime Safety Inspector, or even a desktop audit of the vessel's Safety Management System was carried out.

AMSA's new requirement for vessels to carry float free EPIRBS from January 2021 is a positive safety change.<sup>28</sup> AMSA has not clarified its position on using unqualified personnel to stand a navigational watch, refuses to regulate the wearing of lifejackets, the qualifications required for crew on vessels, even first aid requirements for crew on passenger vessels. In many cases, the Master of the vessel is the only person qualified and trained to use the radio and communication equipment, one of two trained in first aid, and the only person qualified to stand a navigational watch.

The lack of direct access to a doctor is also a commonality which could be investigated. In the case of Mr DONOGHUE, it is hardly mentioned that the vessel did not have a

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<sup>27</sup> Information available on request

<sup>28</sup>AMSA Media Release: <https://www.amsa.gov.au/news-community/news-and-media-releases/float-free-epirbs-mandatory-january-2021>

defibrillator on board, and it is not mentioned if having access to one would have saved his life.

In light of the coroner's comments above, the 'regulatory approach' that allows vessel owners to determine for themselves what safety measures are required on board does not seem to reflect the steps that need to be taken to secure the safety of seafarers, passengers, and the marine environment.

**Recommendation 3:** That an independent investigation be carried out into the death of Tim Macpherson, the role of the national regulator and their delegates in issuing exemptions and certificates, as well as the oversight of AMSA accredited surveyors. It is the MUA's opinion that if due diligence had been carried out by the regulator and their delegate, it is possible the loss of Mr Macpherson could have been prevented.

## 8. Coroners' analysis of regulatory problems

It has been established that the Domestic Commercial Vessel Industry in Australia is a dangerous industry to be working in. It is therefore essential that in any serious incident be investigated thoroughly and lessons to be learned, disseminated and applied both in regulation and to other seafarers and vessel operators as soon as possible to prevent further similar incidents.

Unfortunately, AMSA does not publish incident reports or analysis, and while the ATSB do, they are not resourced to investigate every incident. Coroner's reports are unfortunately the main source of investigation and analysis of fatal maritime incidents occurring in Australia. Coroners' findings detail serious gaps in the regulation and enforcement of the Domestic commercial maritime industry, and an artificial separation of Work Health and Safety and Maritime Safety. Many of the coroner's recommendations made have been ignored, or implemented so slowly or ineffectively so as to be ineffective in preventing repeat incidents.

### **Fishing Vessels *Returner*, *Cassandra*, *Seabring*, *Night Raider* and *Dianne***

*Returner* was a fishing vessel that was lost with all hands in July 2015.<sup>29</sup> One of the contributing factors to the loss of the vessel was insufficient stability following a major refit of the vessel. Among the coroner's recommendations is that grandfathering of standards should end:

"I recommend that AMSA, as the National Regulator of the National Law, should give consideration to establishing a transitional approach to ending the grandfathering of

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<sup>29</sup> Coroner's report Carter, Fairly and Turner. See Appendix 5

safety standards for existing vessels. Compliance with current standards in regard to vessel operations and safety equipment should be given priority.”

Since the sinking of *Returner* in 2015, the fishing vessels *Cassandra* (April 2016), *Seabring* (November 2016), *Night Raider* (November 2016) and *Dianne* (October 2017) have all been lost, with a total of 12 fatalities. The coroner’s inquest into *Cassandra* and *Dianne* are being carried out at the time of writing this submission.

**Recommendation 4:** An urgent, independent investigation be carried out into the timeliness and effectiveness of AMSA’s actions (if any) following the sinking of *Returner*, and if those actions, if carried out in a more timely and effective manner, could have prevented the loss of *Cassandra*, *Seabring*, *Night Raider* and *Dianne* and the subsequent loss of life.

### **Ryan Harry Donoghue, Fishing Vessel *Newfish 1*, 29 November 2013**

Ryan Donoghue was fatally electrocuted while using a non-surge protected angle-grinder on the open deck of the prawn trawler ‘*Newfish 1*. Ryan was 20-years old at the time of his death and working as the ‘first mate’. It was found that Ryan was not appropriately supervised and was not wearing any kind of personal protective equipment. The vessel is operated by Austral Fisheries Pty Ltd (**Austral**), a well-established maritime company with a \$100m annual turnover.

The death of Mr Donoghue was an entirely preventable tragedy. It is recommended that the coroner’s report be read in full<sup>30</sup> as it details a host of issues including risk assessments, safety Management Systems, training, qualifications, crew experience, PPE, electrical safety, first aid equipment, convoluted legislation and regulation spanning QLD and the NT, the response of the regulators, grandfathered vessel standards, and Worksafe.

The coroner, Judge Greg Cavanagh explicitly states that ‘(Domestic Commercial) Vessels are workplaces’ and yet, legislative and regulatory deficiencies have allowed for ‘artificial separation [to be] fostered between marine safety and workplace health and safety... a dangerous myth’.<sup>31</sup> In Ryan’s case, the myth had fatal consequences. Cavanagh goes on to describe how this affected this case:

“In my view, the evidence at this inquest has highlighted the unacceptable and indeed the shameful state of workplace safety on large numbers of Australian domestic fishing vessels. The lack of regulation and enforcement by authorities is of great concern.”

And

“you’ve got the two most junior blokes here doing a job for the very first time, they’ve never done before. It’s a recipe for disaster, isn’t it?”

“The artificial separation that has been fostered between marine safety and workplace health and safety is therefore likely to continue.”

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<sup>30</sup> Appendix 5

<sup>31</sup> Judge Greg Cavanagh, *Inquest into the death of Ryan Harry Donoghue [2016]*, p. 37-38.

Judge Cavanaugh goes on to explain how the legislation, regulations and response of AMSA is unacceptable.

“Marine Order 503(8) continues the grandfathering of Standards and Codes....”

“The Australian Maritime Safety Authority also took no compliance or enforcement action as a consequence of the death of Ryan Donoghue...That no Commonwealth, State or Territory regulatory authority has pursued any action against the employer is most unsatisfactory. The lack of action beggars belief and is shameful. ...The failure of the regulatory authorities to respond to the death of Ryan Donoghue is unacceptable and must be remedied.”

Judge Cavanagh goes on to say that:

“Workers are entitled to the benefit of the safety laws that control workplaces. They should not pay with their lives for failures by others to abide the law. Families should be entitled to have confidence that their children will not be killed in the workplace through the non-compliance of employers. The Community is entitled to think that when its laws are breached, resulting in the death of its members, there will be a response.”

One of the recommendations made by the coroner in this case was that:

“I recommend that the Australian Maritime Safety Authority take the lead in ensuring that the legal requirements and duties of the workplace are communicated through the mechanisms of marine safety and in particular the message that Domestic Commercial Vessels are workplaces....”

The litany of failures of the national regulator is compounded by the knowledge that that Bradley THOMAS died in a similar incident in 2000, and the same issues were raised by the WA coroner at the time.

**Recommendation 5:** An urgent, independent investigation be carried out into the regulatory response following Mr Donoghue’s death. The MUA’s view is that it demonstrates the need for a safety code of practice for Domestic Commercial Vessels to be created and implemented as a matter of urgency. In addition, the training and qualifications of crew working on domestic commercial vessels be reviewed, with particular reference to formal training on work health and safety before commencing employment.

### **Daniel Thomas Bradshaw, *Sammy Express*, 8 January 2017**

Daniel Bradshaw fell to his death while climbing from the barge *Sammy Express* on to the quay wall in the early hours of the morning. The death of Mr Bradshaw was also an entirely preventable tragedy. More than 3 years following the death of Mr Donoghue, the convoluted Health and Safety and National Law legislation had not been reformed or

clarified. The coroner's findings are attached (Appendix 5) and again, it is recommended that the findings are read in full.

The coroner's report describes how no gangway or safe means of access was fitted, and in fact no gangway was available at all:

"No one on the boat considered it necessary to put in place a gangway."

"I was told by the Master of the vessel that there was another gangway in the yard, but it was too short and not a compliant gangway. He said, "Yes, I haven't seen a compliant gangway in the yard as long as I've worked there, that has – that follows that SMS requirement. I've never seen a boarding catch net under any gangway.""

The Coroner's report highlighted that no measures were taken by either NT Worksafe or AMSA to ensure that company had complied with the NT Worksafe Improvement Notice (issued 9 January 2017)<sup>32</sup> or the AMSA Direction Notice (issued on 7 November 2017) to ensure safe access to the wharf. Instead, the company altered its Safety Management System paperwork without any physical mechanism for safe access being requested or provided. They instead forbade the crew from going ashore if there was no gangway rigged. AMSA explained

"it is the accepted practice where a lot of notices issued on behalf of AMSA or by AMSA are done in either through self-declaration or voluntarily giving us the information."<sup>33</sup>

However, it is clear that no effective action was taken as the Coroner concluded that:

'at the date of the inquest [11-12 December 2017] there was no evidence to suggest that any mode of access or egress to and from barges was compliant or safe.'<sup>34</sup>

Both NT Worksafe and AMSA must take steps to ensure compliance with the notices they issue to companies. If no steps are taken to ensure problems that lead to directly to fatalities are addressed, what hope do workers have of getting the support of regulators for raising preventative safety issues? The Coroner found that:

"regulatory authorities appear to be either slow or unwilling to denounce unsafe practices."<sup>35</sup>

Despite the state delegate of the national regulator submitting a breach report to AMSA recommending prosecution, the coroner was told

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<sup>32</sup> Judge Greg Cavanagh, *Inquest into the death of Daniel Thomas Bradshaw* [2018] p. 12

<sup>33</sup> Judge Greg Cavanagh, *Inquest into the death of Daniel Thomas Bradshaw* [2018] p. 17

<sup>34</sup> Judge Greg Cavanagh, *Inquest into the death of Daniel Thomas Bradshaw* [2018] p. 23

<sup>35</sup> Judge Greg Cavanagh, *Inquest into the death of Daniel Thomas Bradshaw* [2018] p. 23



“by Mr Brian Hemming, the National Operations Manager for Regions at AMSA, that it was the view of AMSA that there were “insufficient grounds to refer the matter to the Commonwealth Department of Public Prosecutions”.

At the time of the coroner’s inquest, it was found that no means of safe access on or off the vessel were in place.

AMSA’s attitude towards regulation was uncovered at the coroner’s inquest. The following conversation explains that AMSA does not feel any sense of responsibility or urgency to regulate and enforce safety measures.

**“Counsel Assisting:** What you're saying is that gangway safety is one of the lower or lesser priorities?

**Mr Hemming:** I wouldn't say it's a lesser - it is a lesser priority. What I am saying also there are other significant safety influences that take priority over that - for example the wearing of life jackets has significant priority. The application and development of relevant SMSs to address the behaviour and change of culture over time has a significant influence on our approach, as examples.

**Counsel Assisting:** Is what you are saying there are so many noncompliances in relation to the domestic commercial vessels that it's a very long list?

**Mr Hemming:** Without being controversial, yes it is. We have a significant generational, cultural change ahead of us and in some cases we need to take small steps, in other cases, you know, over time we need to use the full extent of the suite of tools available to us to influence that change.”

The coroner concludes with the following statements which the MUA supports completely:

“I was told that change in the industry will be “generational”. However, if that means that this generation of workers are exposed to risks that legally should not exist, it is not good enough..... Where there is a death resulting from unsafe practices the community is entitled to expect that the unsafe practices be denounced in the strongest possible terms. This is the second such inquest relating to a domestic commercial vessel, in the Northern Territory in the last 18 months, where the regulatory authorities appear to be either slow or unwilling to denounce unsafe practices. In the first death (Inquest into the death of Ryan Harry Donoghue [2016] NTLC 009), no action at all had been taken two and a half years after the death by any regulatory authority.”

**Recommendation 6:** An urgent, independent investigation be carried out into the regulatory response following Mr Bradshaw’s death, and including the necessary legislative changes to ensure that negligent operators can be prosecuted effectively. The right of crew to go ashore should also be regulated so that the action of forbidding crew to go ashore cannot be the solution to a safe means of access and egress to the vessel.

## 9. Lack of resources

AMSA's vessel regulation task has increased dramatically since taking over as the Regulator for the National Law. In 2010, AMSA was responsible for regulating less than 100 Regulated Australian Vessels, approximately 4,500 international ship visits, search and rescue, aids to navigation, pollution response and other regulatory functions. On the 1<sup>st</sup> of July 2013, the Navigation Act 2012 came into force with the added responsibility of inspecting and regulating the provisions of the Maritime Labour Convention on both RAVs and visiting international vessels. On the same day, AMSA also became responsible for the development and enforcement of regulations under the Marine Safety (Domestic Commercial Vessel) National Law Act 2012. This new responsibility came with it (as estimated by AMSA in 2016) 27,000 vessels and 66,000 seafarers.<sup>36</sup>

The National Law regulates vessels covering the entire spectrum of floating transport from kayaks for hire to intrastate trading vessels, from water taxis to the Manly ferries, and every type of vessel and operation in-between.

It has only been since the 1<sup>st</sup> of July 2018 that AMSA has taken over full-service delivery of the National System for Domestic Commercial Vessels, and in preparation AMSA has significantly increased its IT infrastructure to cope with certification systems that the states were previously responsible for – AMSA reported computer software assets of \$24 million in 2017-18, compared to \$3.4 million in 2009-10.<sup>37</sup>

Figure 5 and Figure 6 compare AMSA's annual expenses and staffing expenses from 2009-10 to 2017-18 to the numbers of vessels it is regulating. While there has been some increase in relation to CPI, the increase is nowhere near commensurate with the additional burden of regulating 20,000-27,000 vessels and crew. Visits by individual international vessels have increased from 4,500 to 5,900 and the inspection process for these vessels is more complex and time-consuming due to new MLC provisions.

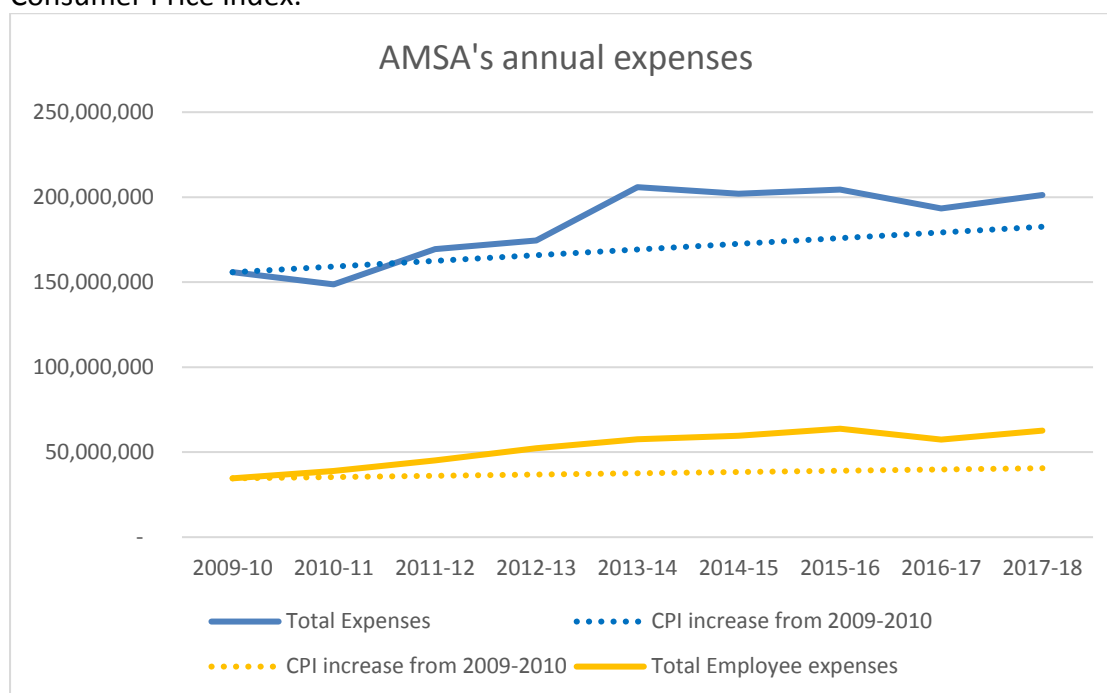
While a significant increase in IT expenditure has taken place, it appears to us that AMSA is significantly under resourced to carry out the job it has been given. More Maritime Safety Inspectors (MSIs), Port State Control Officers, and Marine Surveyors are needed. Resources are needed to provide the kind of safety analysis identified in Sections 6 and 7, to develop appropriate regulatory response and education materials and to interface properly with other jurisdictions.

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<sup>36</sup> Noting inconsistency in numbers as described in section 6.

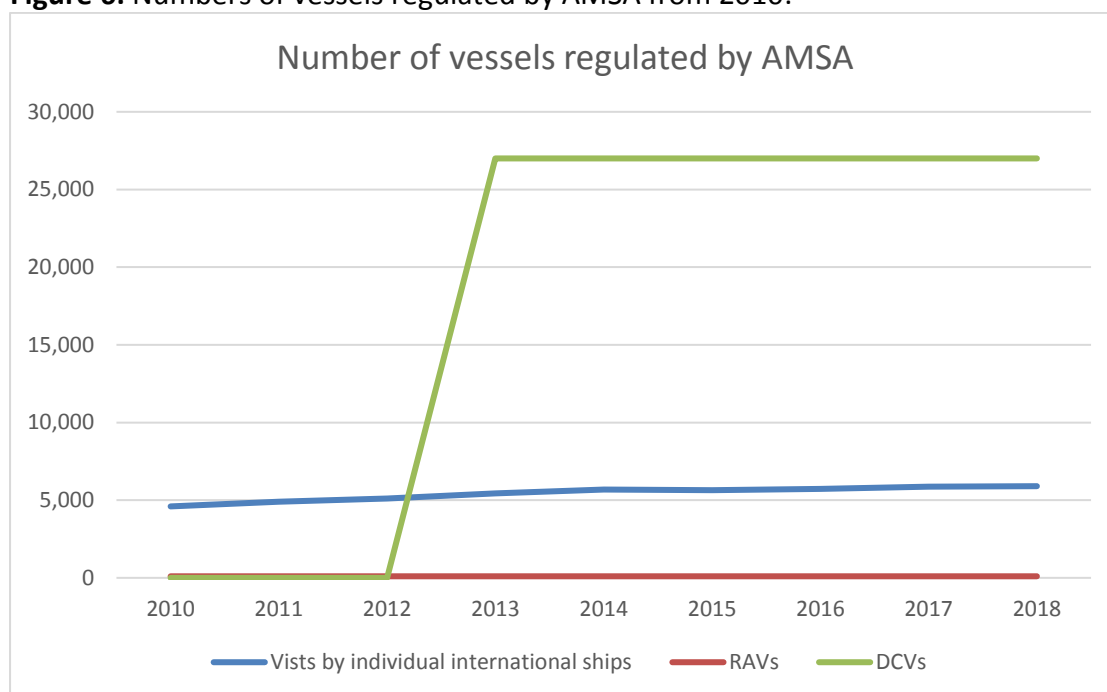
<sup>37</sup> AMSA's Annual Reports 2010- 2018

**Figure 5:** AMSA's Annual Expenses and Total Employee Expenses compared to the Consumer Price Index.



**Sources:** AMSA's Annual Reports 2010-2018, Australian Bureau of Statistics.

**Figure 6:** Numbers of vessels regulated by AMSA from 2010.



**Sources:** AMSA's Annual Reports 2010-2018, AMSA Port State Control Annual Reports 2010-2018. We do not know the actual number of RAVs but a figure of 100 has been used for this graph. This number is likely to be lower in recent years.

**Recommendation 7:** That the Committee recommend to the Australian Government that a review be made of resources available to AMSA, the allocation of those funds within AMSA, and whether further resources need to be allocated to enable AMSA to achieve their stated outcomes to the standard expected of an Australian Safety Authority.

## 10. How deregulation has been implemented

When the new National System of vessel regulation was proposed, it was initially put forward by government that AMSA would regulate the national industry via an expansion of the Navigation Act, and that the National Standard of Domestic Commercial Vessels (NSCV) would form the basis of the Marine Orders that would regulate the domestic fleet.<sup>38</sup> The MUA and AIMPE strongly argued that the NSCV were not of a high enough standard to regulate a national fleet.<sup>39</sup> Subsequently, legislative decisions were made that contracted the jurisdiction of the Navigation Act, and introduced the National Law with significantly lower standards. Since AMSA has taken over the regulation of the Domestic Commercial Vessel Fleet, the lowest standards of all the previous state jurisdictions - even lower than the NSCV - have become the default standard for Domestic vessels.

The interaction between the Domestic Commercial Vessel Fleet and the Regulated Australian Vessels has created an uncompetitive system in which two vessels, of similar design and doing similar work, can be regulated by two completely different Acts, with the Regulated Australian Vessels, with a better safety record, higher crew numbers and standards, unable to compete with DCVs which are effectively able to self-regulate. Instead of bringing the domestic Australian fleet up to the high standards which AMSA were renowned for, AMSA has effectively placed regulatory responsibility on the shoulders of individual vessel operators of one of the most dangerous and remotely located industries in Australia.

Although AMSA does not make available any list of either DCV or RAVs, we have attempted to assess the numbers of the major Australian Trading fleet which fall into either category. Of the 17 vessels in this fleet, 41% are DCVs. As far as we are aware, the only vessel on this list that regularly travels more than 200nm from shore is the *Aurora Australis*. There is nothing preventing the remaining 16 vessels from becoming DCVs (Table 4).

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<sup>38</sup> This is the proposal contained in Australia Department of Infrastructure, Transport, Regional Development and Local Government and Australian Maritime Safety Authority, *National Approach to Maritime Safety Reform: Consultation, Regulation Impact Statement Round 2 April 2009*.

<sup>39</sup> MUA and AIMPE, *Background Brief, Joint MUA-AIMPE lobbying paper for State/NT Ministers with responsibility for vessel safety regulations, MUA-AIMPE proposal for a move to national vessel safety regulations for commercial vessels. For discussion with state ministers prior to Australian transport council, 2 May 2008*. Prepared 3 April 2008.

**Table 4:** status of vessels in the Major Australian trading fleet.

Ship name	DWT	RAV or DCV?	Status
<b>Spirit of Tasmania I</b>	5,651	RAV	Bass Strait Cargo and Passenger trade
<b>Spirit of Tasmania II</b>	5,651	RAV	Bass Strait Cargo and Passenger trade
<b>Searoad Tamar</b>	9,958	RAV	Bass Strait Cargo and Passenger trade
<b>Searoad Mersey II</b>	7,980	RAV	Bass Strait Cargo and Passenger trade
<b>Tasmanian Achiever II</b>	12,000	RAV	Bass Strait Cargo and Passenger trade
<b>Victorian Reliance II</b>	12,000	RAV pending delivery	Bass Strait Cargo and Passenger trade
<b>Newcastle Bay</b>	2,750	DCV	Community cargo - QLD
<b>Trinity Bay</b>	3,158	DCV	Community cargo - QLD
<b>Accolade II</b>	8,140	RAV	Dry bulk - Cement
<b>Goliath</b>	15,539	RAV	Dry bulk- Cement
<b>Aurora Australis</b>	3,911	RAV	Scientific vessel
<b>Aburri</b>	3,300	DCV	Transhipment of zinc concentrate in Bing Bong, NT.
<b>Wunma</b>	5,140	DCV	Returned to transshipping zinc concentrate in Karumba, Qld after being laid up in PNG March 2016- October 2018.
<b>Donnacona</b>	28,115	RAV	Iron ore transhipment in Cape Preston WA
<b>Larcom</b>	3,963	DCV	Gladstone bunker barge. Flagged in Australia Aug 2013.
<b>Toll Osprey</b>	2,045	DCV	Regional construction projects.
<b>Spencer Gulf</b>	4,766	DCV	Whyalla iron ore transhipment

**Source:** BITRE, *Australian Sea Freight 2015-16*, MUA industry knowledge, IHS Maritime commercial ship database. The database shows the certificates that vessels are required to hold under IMO standards, which under the Navigation Act would require them to be a RAV. Vessels which do not hold these certificates are by default a DCV under the National Law (Appendix 1).

The Navigation Act and the associated regulations are the appropriate regulatory standard for large and seagoing vessels. Although the standards are prescriptive, the reasons for these regulations are the result of world wide cooperation and agreement that vessels are a unique environment and face unique risks. Australia and AMSA has a global reputation for

holding both its own and visiting vessels to among the highest standards in the world for shipping. When passengers walk on to an Australian vessel, they expect the highest standards of safety and training. When shippers send their cargo on an Australian vessel, they expect the same. Officers, engineers and crew that work on any vessel in Australia also expect to find Australian work place safety standards as well as living quarters that are of an appropriate quality. Visitors and Australians participating in on water activities in Australia expect the standard of safety to be amongst the highest in the world. Accidents such as the sinking of the duck boat on the 19<sup>th</sup> of July 2018 in the United States where 17 people died are not expected to happen here.<sup>40</sup>

Unfortunately, vessels regulated under the National Law often not only fail to meet the standards of a safe Australian workplace or accommodation, but even the standards expected of all international vessels. This is because Marine Orders have been drafted to only bring international minimum standards of the Maritime Labour Convention and the Standards for the Training and Certification of Watchkeepers into effect for RAVs operating under the Navigation Act. Vessels must travel overseas or hold certificates to travel overseas in order to be covered by this Act (Appendix 1). Otherwise, they are covered by the National Law and Marine Orders have been drafted so that these standards do not apply. This is the reason that the Navigation Act jurisdiction must urgently be expanded.

One of the benefits of prescriptive regulation is that it sets a level commercial playing field for all involved. Shippers, vessel operators and crew all benefit from knowing that the vessel, safety, training and operational requirements are consistent for the same type of vessels and operations.

The current Australian system, however, has two completely different sets of standards under which sister vessels can operate. The key differences are outlined in a table in Appendix 1. However, even similar vessels in similar operations can have vastly different operational costs and standards when operated under the National Law.

One operator, potentially with no training or experience, could design a perfect safety management system on paper, complete with risk assessments and controls, and create an appropriate crewing assessment in line with Marine Order 504 and yet only have a single person acting as both the master and engineer, and a couple of uncertified casually employed backpackers acting as deckhands.<sup>41</sup> This arrangement is allowed under the Marine Order 504 minimum crewing requirements on vessels up to 35m in length and

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<sup>40</sup>Preliminary report into the sinking of *Stretch Duck 7*  
<https://www.nts.gov.au/investigations/AccidentReports/Pages/DCA18MM028-prelim.aspx>.

<sup>41</sup> Coroner's report FINLAYSON available at:  
[https://www.courts.qld.gov.au/\\_\\_data/assets/pdf\\_file/0007/543949/cif-finlayson-ed-20171127.pdf](https://www.courts.qld.gov.au/__data/assets/pdf_file/0007/543949/cif-finlayson-ed-20171127.pdf)

travelling up to 200nm offshore.<sup>42</sup> This operator will only find out that their safety management system was not robust enough in an emergency but will probably not face any penalty as they have complied with the National Law. MO 504 does require vessel operators to do a risk assessment to determine the 'appropriate crew', which may be more than the minimum crew, but there is no requirement for AMSA to check this. There is, however, substantial commercial incentive for operators to reduce crew numbers.

Another operator, with more training, experience, and a greater understanding of the risks, might realise that it is appropriate to employ a separate Master and Engineer, in case of engine trouble, as well as an additional Master, chief mate or watchkeeper to handle the vessel and request assistance in case of a passenger or crew emergency, and additional trained and experienced ratings to moor the vessel, manage the passengers, and handle emergency situations. This operator might also employ their crew for an extra few hours a week to do drills and training, conduct safety meetings and seek the crew's expert and practical advice in reviewing and updating the risk assessments. They may also employ all the crew on a permanent basis, rather than as casuals, knowing that permanent employees are better able to participate confidently and knowledgeably in these safety systems.<sup>43</sup> This operator will have much higher crewing costs but knows that it will pay off in case of an emergency situation. Reasons for carrying out such actions are vividly illustrated in the coroners' reports quoted in Section 8.

Both operators are superficially in compliance with the National Law, and their general safety duties, and have the same certification from AMSA. AMSA will argue that MO504 requires the operator to consider all the risks and address them appropriately. Unfortunately, this relies on an objective perception of risk by the vessel operator, and for the operator not to be influenced by commercial pressures. An AMSA employee, working in maritime search and rescue, and working with the consequences of maritime incidents everyday, may, for example, never proceed to sea without wearing a lifejacket, personal locator beacon, attaching a float free EPIRB to the vessel, having a medical check, comprehensive first aid training and carrying a full first aid kit including a defibrillator. A 20 year old untrained British backpacker finding their first job on a prawn trawler would not be aware of such measures or the reasons for taking them.

Perception and understanding of risk are subjective, and heavily influenced by experience and training. AMSA, as the national regulator, must increase prescriptive regulation for DCVs and oversight of individual operators to enable a safe and competitive commercial

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<sup>42</sup>AMSA's crewing guidance: <https://www.amsa.gov.au/vessels-operators/domestic-commercial-vessels/crewing-guidance-domestic-commercial-vessels>

<sup>43</sup> Contingent Workers and Occupational Health: a review on the health effects of non-traditional work arrangements. Available at: <http://harvardpublichealthreview.org/wp-content/uploads/2018/12/Garry-L.-Mullins-Jr.pdf>

environment. In particular, minimum crewing and qualifications must be prescribed, and qualifications must be significantly improved and linked to STCW standards. A safety code of practice for DCVs must also be developed as a matter of urgency, to help develop a common understanding of best practice in the domestic commercial vessel fleet.

It may be that classes of vessels and the stakeholders representing them may not be willing to accept higher levels of prescriptive regulation, and they may have distinctive safety needs. Consideration may need to be given to a greater level of separation between standards of qualification and crewing for the fishing industry and other types of passenger and trading vessels. Where industries are willing to accept a higher level of regulation in order to maintain a level playing field and safety in their industries, they should not be prevented from doing so. If a greater degree of separation is allowed between standards for industries, it should also be maintained so that fishing industry vessels should not be allowed to work in the offshore industry or to carry passengers, unless they meet the standards of those industries.

The prescriptive regulations for vessels in the Navigation Act and associated Marine Orders are more appropriate than the National Law for large and seagoing vessels, many of which can now choose to be regulated under the National Law. These regulations have been developed from years of experience and marine incidents worldwide. It is naive to think that such tragic incidents such as occurred with the *Estonia*, *Herald of Free Enterprise*, *Costa Concordia*, and *El Faro*<sup>44</sup> could not happen to Australian vessels, passengers and crew. The MUA is advocating for the coverage of the Navigation Act to be significantly expanded, as recommended below.

The minimum standards of the Maritime Labour Convention and the STCW convention must also apply to DCVs (with sensible limits on vessel size). This includes the watchkeeping standards included in STCW, which require vessels to have a dedicated lookout at all times, particularly in the hours of darkness. MLC also includes the provision for regulated work and rest hours, appropriate food and accommodation standards and procedures for making complaints regarding safety concerns.

The Navigation Act also enshrines protections for seafarers including repatriation at the end of a voyage, and even exemption from jury duty while serving at sea.

Australia cannot rebuild a viable, commercial and sustainable shipping industry if its ship and seafarer safety legislation and regulatory system is undermining the very skills base and

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<sup>44</sup> The *Estonia*, a ro-ro passenger ferry sank in the Baltic Sea on the 28<sup>th</sup> of September 1994, with 852 fatalities. The *Herald of Free Enterprise*, a ro-ro passenger ferry, sank near Zeebrugge, Belgium on the 6<sup>th</sup> March 1987, with 193 fatalities. The *Costa Concordia*, a large cruise ship, ran aground on the 13<sup>th</sup> January 2012, with 32 fatalities. The *El Faro*, a US flagged container ship, was lost at sea with all 33 crew in a hurricane on October 1, 2015.



the requirements of ships to be crewed by internationally (STCW) certificated seafarers, that will be necessary for a revitalised shipping industry.

**Recommendation 8:** That the Committee ensures that the current Inquiry includes a consideration of the impact of the implementation (over a transition period from 2013 to 30 June 2018) and operation (under AMSA's management) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law) and associated Marine Orders, exemptions, and directives, with a focus on how this has rapidly degraded standards of ship safety, cargo integrity, passenger safety, occupational health and safety, crew certification and associated VET qualifications, particularly relative to the much higher and internationally recognised standards given effect by the *Navigation Act 2012* (which implements Australia's obligations to conform with IMO Conventions (like the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Convention).

**Recommendation 9:** That the Committee recommend to the Australian Government that it acknowledge that the National Law Act does not provide a sound basis for the revitalisation of a viable coastal trading fleet, and undertake the task of developing a new application framework for the National Law Act and the Navigation Act that applies the Navigation Act and IMO Convention standards to commercial vessels as the default standard, to include a provision for statutorily defined ships to be regulated under different standards. It is the view of the MUA that a new application provision require that all commercial vessels must be regulated by the *Navigation Act 2012*, except those which:

- Voyage only within 12nm of the coast and a safe haven.
- Are 24m or under in length.
- Carry less than 50 passengers.
- Are fishing vessels under 35m in length.
- Do not carry dangerous or polluting cargoes, including oil and gas.
- Do not proceed on voyages of more than 36 hours in length.
- Do not carry out 'high risk' operations.

**Note 1:** Vessels greater than 24m and less than 80m and not engaged in high risk operations can apply to be regulated under the National Law providing the vessel remains in smooth waters or partially smooth waters.

**Note 2:** Vessels carrying more than 50 passengers and under 24m in length may apply to be regulated under the National Law providing the vessel remains in smooth waters or partially smooth waters.

**Note 3:** 'High risk' operations include tugs, ro-ros, dredgers, tankers, passenger vessels carrying more than 50 passengers and high-speed craft 12m and over in length. The national regulator may add (but not remove) vessels and classes of vessels to the schedule of 'high risk' vessels at any time.

**Note 4:** Vessels other than tankers regulated under the Navigation Act but less than 80m long, with less than 3000kw engine power, and of less than 3000GRT and operating only in smooth waters or partially smooth waters may apply to use the General Purpose Hand qualification as part of their Minimum Safe Manning, subject to an assessment of required STCW short courses according to vessel operational functions and equipment

**Recommendation 10:** That AMSA apply the bulk of the provisions of Marine Order 11 (Living and Working conditions on vessels) to Domestic Commercial Vessels as a matter of priority.

**Recommendation 11:** That AMSA apply the bulk of the provisions of Marine Order 28 (Operations Standards and Procedures) to Domestic Commercial Vessels as a matter of priority.

**Recommendation 12:** That the Committee recommend to the Australian Government that AMSA must publish on its website of a list of vessels that are RAVs and DCVs. The Navigation Act and national Law must be amended to make this a requirement.

**Recommendation 13:** Consideration needs to be given to a greater level of separation between prescriptive standards for qualification and crewing for the fishing industry, as compared to passenger and trading vessels.

## 11. Deregulation of safety systems

### Marine Order 504

Marine Order 504 (Certificates of Operation) came into force on 1 July 2018 and solidified AMSA's policy position as the national regulator of the Domestic commercial fleet. The main premise of the Marine Order is that the owner<sup>45</sup> is solely responsible for identifying risks onboard, analysing and minimising those risks, and preparing a Safety Management System for the safe operation of the vessel. Unlike best practice health and safety management, no consultation from crew, workers, or even the master of the vessel is required in conducting these risk assessments, just a declaration that a Safety Management System is in place and reviewed every 12 months.<sup>46</sup>

Marine Order 504 removes prescriptive regulation and replaces it with 'outcomes-based safety' a term which is not defined.<sup>47</sup> No specific outcomes or measurement of outcomes are proposed. We cannot find any reference to this 'outcomes-based' approach to safety in the National Law, or the NSCV Part E. We are not aware of a precedent for this approach in any other Australian law. Perhaps in a regulatory environment where there is a strong safety culture, a high level of training, knowledge and experience, robust inspection and a low rate of incidents this method of regulating may be effective. However, the Australian Domestic Commercial Vessel industry has very low levels of training, a very poor safety culture, poor safety management systems, and a very high fatality rate.

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<sup>45</sup> 'Owner' is the term used in the National Law to describe the person with the responsibility for the vessel. Safety duties are outlined for the owner, master, crew, passengers.

<sup>46</sup> Marine Order 504, Schedule 1, Clause 12 (4)(b)

<sup>47</sup> Operational Safety Review: Consultation on proposed new Marine Order 504 (Certificates of Operation and operation requirements – national Law) April 2018

This approach to regulating safety does not appear to be based on an analysis of safety challenges in the industry and a vision for how they should be approached. Rather, it appears to flow from the current government's deregulation agenda (Section 11), combined with a lack of resources. One outcome of this situation, combined with the lack of a safety vision from AMSA is that the agency appears to be primarily regulating safety in response to sectional complaints from industry, particularly from vessel operators with commercial motivations. For example the AMSA consultation documents for MO504 and MO505 (dealing with qualifications) do not offer any safety data, analysis or vision, but rather list a series of 'stakeholder concerns' that AMSA is responding to.<sup>48</sup>

Instead, AMSA must be adequately resourced to adopt an evidence-based approach that seeks to understand safety problems in industry and adopt a broader strategies to address them. In this process it should make greater use of both international safety standards flowing the IMO and MLC, and the Australian WHS system, which has successfully reduced fatalities in a whole range of industries.

### **Stevedoring safety and revision of MO32**

AMSA's deregulatory approach to safety has also has an impact on stevedoring safety regulation. AMSA participated in the intensive process, led by Safe Work Australia through a Temporary Advisory Group (TAG), to develop a Stevedoring Safety Code of Practice in 2009-2013. The process was complex due to the overlapping of WHS Act and Navigation Act regulatory regimes but resulted in a solid and useful document that was agreed by the TAG in approximately 2013, and finally approved and released by Safe Work Australia in December 2016. The Code was developed due to a recognition of a safety crisis in the stevedoring industry and an unacceptable number of fatalities. Due to MUA campaigning, there is now a high level of awareness of the Code and it is widely used to set the standard for safety practices in the stevedoring industry. The MUA has also produced its own Guide to the Code for MUA members. Despite some terrifyingly close calls, the MUA is pleased to report that we have not had any stevedoring fatalities in MUA organised stevedoring worksites since death of Anthony Attard in Melbourne in May 2014.<sup>49</sup> This is a significant achievement.

The Code references relevant acts of legislation, other Codes of Practice and Marine Orders under the Navigation Act, in particular Marine Order 32. Astonishingly, after the draft Code

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<sup>48</sup> Operational Safety Review: Consultation on proposed new Marine Order 504 (Certificates of Operation and operation requirements – national Law) April 2018, and Near Coastal qualifications review, Marine Order 505( Certificates of Competency – national law) and NSCV PART D -Crew competencies, Policy Settings, Major Review 2018.

<sup>49</sup> Mark Roberts was severely injured and later died on March 2019 in Port Kembla. He worked at a Port Kembla coal loading terminal organised by the CFMEU, but where workers, including health and safety reps, had been locked out of the terminal by the employer.

was agreed by the TAG, in 2016 AMSA subsequently revised Marine Order 32 to remove virtually all sections referenced by the Code, effective 1 January 2017. It must be noted that the Code is only Guidance and has less regulatory effect than Marine Orders. The effect is to dilute the regulations for stevedoring safety, immediately after a painstaking multi-agency effort to improve them. AMSA has cited a lack of 'head of powers' for occupational health and safety under the Navigation Act as rationale for their actions. Considering the reality of overlapping jurisdictions, this is exceedingly unconstructive approach. More coordination is needed with other Australian WHS agencies, and an acceptance of the overlapping responsibilities that do exist.

AMSA's lack of regard for the new *Model Code of Practice: Managing Risks in Stevedoring* is further evidenced on the AMSA website for Marine Order 32. No less than 15 separate other documents of 'Related information' are referenced, including the ILO Code of Practice Safety and Health in Ports 2005. There is no reference to the new Australian *Model Code of Practice: Managing Risks in Stevedoring*, which AMSA helped develop.<sup>50</sup>

**Recommendation 14:** AMSA must bring the *Model Code of Practice: Managing Risks in Stevedoring* to the status of Regulation under Marine Orders to repair the damage it has done to the regulatory framework for stevedoring safety. In the meantime, AMSA must also add the Code as 'Related Information' on its Marine Order 32 website.

### **Offshore Safety, GOMO and the Shipboard Code of Practice**

The Guide to Offshore Marine Operations is used across many sections of the offshore oil and gas industry internationally. Unfortunately, it is not compliant with Australian safety law in a number of areas, especially rights for HSRs, consultation, the hierarchy of controls of risk, and even how risk is defined. AMSA attempted to incorporate the GOMO into Marine Orders in 2015, and the MUA, supported by the AMOU, made a strong and comprehensive submission opposing this. It was not incorporated.

AMSA chaired a two+ year process under the Seacare Authority to revise existing Australian safety Codes of Practice under the OHS(MI) Act, which included the Australian Offshore Support Vessel Code of Safe Working Practice and the Code of Safe Working Practice for Australian Seafarers. The OHS(MI) Act is the safety legislation for larger Australian vessels which tend to be RAVs rather than DCVs (although this is changing as we have outlined). In 2018 when it became clear that the deadline for sending a revised Code to the Minister would not be met by the AMSA-led process, the Seacare Authority brought in Safe Work Australia experts with experience drafting safety Codes of Practice to finalise the document in line with other Australian safety Codes of Practice. Seafarers working on offshore vessels

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<sup>50</sup> Marine Order 32: <https://www.amsa.gov.au/about/regulations-and-standards-vessels/marine-order-32-cargo-handling-equipment>

were deeply involved in the consultation process and the Safe Work Australia experts were responsive to their views and concerns.

The resulting *Code of Practice: Health and Safety in Shipboard Work, including Offshore Support Vessels* is useful and practical, and reflects both Australian WHS law and current practices on larger Australian vessels. However, when the final document was brought to the Seacare Authority for approval, AMSA responded to offshore industry pressure to oppose it. Instead, the offshore industry and AMSA sought to have the GOMO be the main reference for offshore vessels. Despite this opposition, the revised Code of Practice was approved by the Seacare Authority in March 2018, approved by the Minister of Jobs and Small Business on 22<sup>nd</sup> August 2018 and came into effect in January 2019. AMSA have not made the new Code available on their website, despite the fact that they are the safety inspectorate under the OHS(MI) Act.

AMSA's prioritisation of the GOMO above Australian safety Codes of Practice, is an unfortunate example of them prioritising commercial self-interest and international standards before Australian WHS law.

**Recommendation 15:** That the Committee inquire into what work AMSA has done to promote the new *Code of Practice: Health and Safety in Shipboard Work, including Offshore Support Vessels*, and recommend that AMSA make the Code available on its website and distribute it to seafarers and operators during inspections of relevant vessels.

### **Marine Order 31 (vessel surveys and certification)**

AMSA has declared the intention to incorporate the existing survey and certification requirements for government vessels (currently in Marine Order 62) into Marine Order 31, in the first quarter of 2019. Included in this review of MO31 should also be a revision of the requirement to have safety management systems. At present, Regulated Australian Vessels that are fishing vessels are excluded from the requirement to have a safety management system in compliance with the International Safety Management (ISM) Code. This requirement would only cover a few very large and complex vessels that voyage overseas, and which should have an SMS in place. AMSA's reasoning in excluding this class of vessels from the requirement to have an SMS should be examined.

**Recommendation 16:** That the Committee examine why AMSA has excluded fishing vessels that are RAVs from the requirement to have a safety management system. That the Committee recommend to the Australian Government that AMSA amend Marine Order 31 to require Regulated Australian Vessels that are fishing vessels to have in place a safety management system in accordance with the ISM Code and the ISM Guidelines.

## 12. Deregulation of Domestic vessel crewing standards

‘Crewing’ refers to the minimum number of crew for a vessel under the National Law and the Certificates of Competency they are required to hold. The equivalent term under the Navigation Act and IMO conventions is ‘manning’ and addressed in Section 16.

The Certificates of Operation issued by AMSA under Marine Order 504 do not list the minimum crew or appropriate crew for the vessel. An owner can obtain a Certificate of Operation by simply declaring that they have a Safety Management System (SMS) in place which evaluates the ‘appropriate crew’, but most vessel SMSs are not viewed by AMSA, a delegate, or an accredited surveyor. AMSA does not require vessel operators to consult with crew on the SMS. There is every incentive for vessel operators to reduce crew numbers due to commercial pressures, and no checks in place to balance this incentive. Reduced crew numbers increases crew fatigue and reduces the ability to respond in the case of serious incidents. ‘Minimum crew’ is included in MO504, but the requirements are woefully inadequate. For example:

- A vessel of 34m with engine power <750kW could have a minimum crew of 2 – but if the Master has both a Deck and Engineering Certificate of Competency (dual qualified), then the second crew member may be uncertificated, without any qualification at all.
- A vessel 54m in length could have a minimum crew of 3, with only 2 certificated crew on board, while a vessel 79m in length has a minimum crew of 4, with 3 certified crew that can be reduced to 2 certificated crew if the engineer is dual certified.<sup>51</sup>

Marine Order 504 also allows operators to employ crew that are ‘uncertificated’, so long as they meet their general safety duties under the National Law. The minimum crew competency under the National Law is the General Purpose Hand, which is a very minimal level of qualification that can be achieved in 4-8 days (Section 13). Uncertificated crew do not even have this level of training, or indeed any recognised safety training, apart from what they have received on the job. Crew members may be uncertified so long as they are not carrying out the duties and functions of a Certificate of Competency (CoC) holder. The duties and functions of a CoC holder are not defined, and some operators use uncertified crew as watchkeepers, which has not been specifically prohibited by AMSA. Crew can work to the outer limits of the EEZ (200nm) without any kind of formal training in shipboard safety, occupational health and safety or passenger emergency management. There are currently no minimum crew numbers for DCVs over 80m in the minimum manning table in MO 504, effectively allowing operators to crew these vessels as they wish.

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<sup>51</sup> Marine Order 504, Schedule 1, 6 (4)

AMSA has in force a list of general exemptions<sup>52</sup> from the National Law and the Regulations under the National Law. For various classes of seafarers, vessels and operations AMSA can and does issue specific exemptions for specific vessels, seafarers and operations based on an application. The processes to issue exemptions for vessels, classes of vessels or operations are frequently not transparent, not subject to internal checks and balances and issued in response to political or commercial pressure rather than objective risk analysis. One example is exemption 13/13A Marine Safety (Wildlife or other sightseeing) Exemption 2017. This exemption allows passenger vessels to be operated by uncertificated crew.<sup>53</sup> Exemption 13A is unpublished so not available to reference.

The standing document '*National Regulator Endorsements Approval 2014*'<sup>54</sup> increases the limitations of near coastal certificate of competencies, allowing seafarers to work on larger or more powerful vessels. The application of this instrument is not transparent and expands the reach of MO 505 without oversight or consultation.

AMSA is in the process of reviewing Marine Order 505 (Certificates of Competency). The main rationale from AMSA for reviewing the marine order is to incorporate exemptions, the endorsement approvals and NSCV Part D into a single document. The "policy settings"<sup>55</sup> being used to frame this review are inappropriate from a safety regulation point of view. The review should instead focus on the safety, training and operational challenges facing the industry and then consider how best to address them. A proper review must also involve bringing domestic qualifications in line with appropriate aspects of international standards, and allow for a clear system of career progression, allowing for a mobile, well trained and experienced workforce that can easily transition between the RAV fleet and the DCV fleet. Having two separate streams of qualifications perpetuate the convoluted maritime system in Australia and does nothing to reduce the regulatory burden faced by both crew and vessel owners.

Marine Order 51 (Fishing Vessels) applies to Australian fishing vessels on an international voyage. There are specific qualification and training requirements set out for the duties of the skipper, the officer in charge of a navigational watch, chief engineer or second engineer. Persons are also permitted to perform duties and functions if in possession of a medical certificate. However, no certificates are issued under this Marine Order, and instead fishing vessels on international voyages are being manned with near coastal crew with no training

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<sup>52</sup> Exemptions: <https://www.amsa.gov.au/about/regulations-and-standards/national-law-act-exemptions-marine-orders>

<sup>53</sup> Exemption 13: <https://www.amsa.gov.au/about/regulations-and-standards/exemption-13-marine-safety-wildlife-or-other-sightseeing-2017>

<sup>54</sup> Endorsements Approval: <https://www.amsa.gov.au/qualifications-training/domestic-qualifications/national-regulator-endorsements-approval-2014>

<sup>55</sup> Near Coastal qualifications review, Marine Order 505 (Certificates of Competency – national law) and NSCV PART D -Crew competencies, Policy Settings, Major Review 2018.

on fishing vessel stability. STCW F, an international convention on the standards of training for persons working on fishing vessels is not being considered by AMSA and is not included in their regulatory plan. This lack of a proactive approach to fishing vessel qualifications could impact on the safety of these vessels, as well as impede their access to international ports, including New Zealand, which is in the process of ratifying STCW F.<sup>56</sup>

**Recommendation 17:** That the Committee recommend to the Australian Government that minimum crewing of DCVs under the National Law Act must also be established for the normal operation of all commercially operated vessels in writing by AMSA and reviewed periodically. Minimum crewing should be included on the vessel's certificate of operation, and a copy displayed in a location of the vessel where it can be readily seen by the crew and any passengers, as well as be included in the crew's familiarisation training.

**Recommendation 18:** That the Committee recommend to the Australian Government that any exemptions issued by AMSA should only be issued after an appropriate risk assessment and vessel inspection, subject to the approval of two or more managers, and published on AMSA's website.

**Recommendation 19:** That the Committee request from AMSA a copy of Exemption 13A and investigate the safety analysis that supports the issue of this exemption and other specific exemptions that have been issued by AMSA in its role as the national regulator.

### 13. Inadequate qualifications for Domestic vessels

Section 10 described how the default standard for seafarer certification and VET qualifications on Australian vessels has become the National Law DCV jurisdiction. Before 2013, the default standard for seafarer qualifications was the Navigation Act (RAV) jurisdiction, which is based on internationally recognised standards of the IMO maritime Conventions (see also Appendix 1 for details).

The transition from the Navigation Act jurisdiction to the National Law Act jurisdiction in Australia, accompanied as it is by a largely self-regulated system of vessel crewing put in place by AMSA (Section 12), is contrary to all international best practice and lessons from shipping industry regulatory failure across both the developed and developing world.

Qualifications under the National Law are not compliant with the international standards set by the International Maritime Organisation (IMO) which are codified into Australian Law by the Navigation Act 2012. The requirements for a seafarer to gain a Certificate of Competency (CoC) include, to varying degrees, an amount of seetime, a task book, a VET qualification, a number of short courses, and either a practical assessment or one on one

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<sup>56</sup> New Zealand treaties: <https://www.treaties.mfat.govt.nz/search/details/p/14/2220>



oral exam. The lower standards are particularly evident in DCV CoCs with regards to standards of watchkeeping, vessel stability, a lack of short, specialised, additional courses that crew must complete to sail on particular types of vessels, including passenger vessels and oil tankers. The Master <24m CoC allows people with limited training to operate up to 200nm off shore. If the same person also holds an MED 3, MO 504 also allows them to act in the place of the engineer, often with no other certified crew on board.

The rapid lowering of certification and VET qualification standards by AMSA is a danger to ships and seafarers, is a danger to cargoes and passengers, it is a danger to the marine environment and to ports, and is not in the national interest. It will inevitably lead to a catastrophic event that will further damage Australia's international maritime reputation. It is difficult and expensive for seafarers to progress their careers through the current systems, operators and training organisations are then required to run parallel courses, and there is inflexibility in crewing during industry down turns.

We urge the Committee to find that the fundamental principle for certification and qualifications of seafarers working on ships in Australian waters be adoption of the internationally recognised standards of the Navigation Act, drawn from the core IMO Conventions, with limited exceptions for certain types or classes of ships, for certain types of ship operations and for the geographic operation of certain ships.

Australia cannot rebuild a viable, commercial and sustainable shipping industry if its ship and seafarer safety legislation and regulatory system is undermining the very skills base and the requirements of ships to be crewed by internationally (STCW) certificated seafarers, required for a revitalised shipping industry.

The significant increase in the number of ships now crewed by seafarers trained only to the lower standards in the National Law Act, or with no certified seafarers in some occupational streams on board, is entirely incompatible with the policy intentions of governments and parties committed to rebuilding the Australian shipping industry and to rebuild the Australian maritime skills base.

This is clearly evident from the results of the MIAL Seafaring Skills Census Report 2018. That report found, based on the views of maritime organisations that employ internationally certified seafarers on board ships and ashore, that an additional 560 internationally certified and qualified seafarers will be required (under current shipping policy settings) in the next 5 years to 2023, an 11.6% increase.

This will be unattainable if the degradation of standards is not arrested and the Navigation Act standards that underpin the skills base required by the Australian maritime industry do not once again become the default standards for ships in the cargo sector (dry, liquid and gas), passenger sector, offshore oil and gas sector, towage sector, dredging sector, and for a

vast array of other ships such as bunkering, salvage, towing, dredging and research and survey.

Section 10 of this submission outlined the urgent need to amend the Navigation Act and significantly expand its coverage. Recommendations 8 and 9 cover a review and a new coverage model for the Navigation Act 2012, which is essential to improving the qualification framework for seafarers. Greater transparency is also needed (Recommendation 12, to publish lists of DCVs and RAVs).

The seafarer qualifications framework must also be simplified and streamlined into a quality and progressive system that increases safety and complies with our international obligations, both with the IMO and with Australia's Trans – Tasman Mutual Recognition Arrangement (TTRMA) with New Zealand.

### **Ratings qualifications**

Ships' crew and seafarers' qualifications are divided into three categories: deck officers (masters and mates), engineers (responsible for the engines and other machinery) and ratings (responsible for work on deck). Prior to 2013, there was widespread acceptance that the Integrated Rating qualification was the preeminent and base level qualification for Ratings occupations on ships across all sectors of the industry – cargo ships, offshore oil and gas ships, towage ships, dredging ships etc, regardless of the geographical area of operation of a ship (with only minor, industrially negotiated exceptions approved by industrial tribunals). The entire industrial relations framework for the industry was founded on this custom and practice as can be seen from an examination of the shipping industry's Modern Awards.<sup>57</sup>

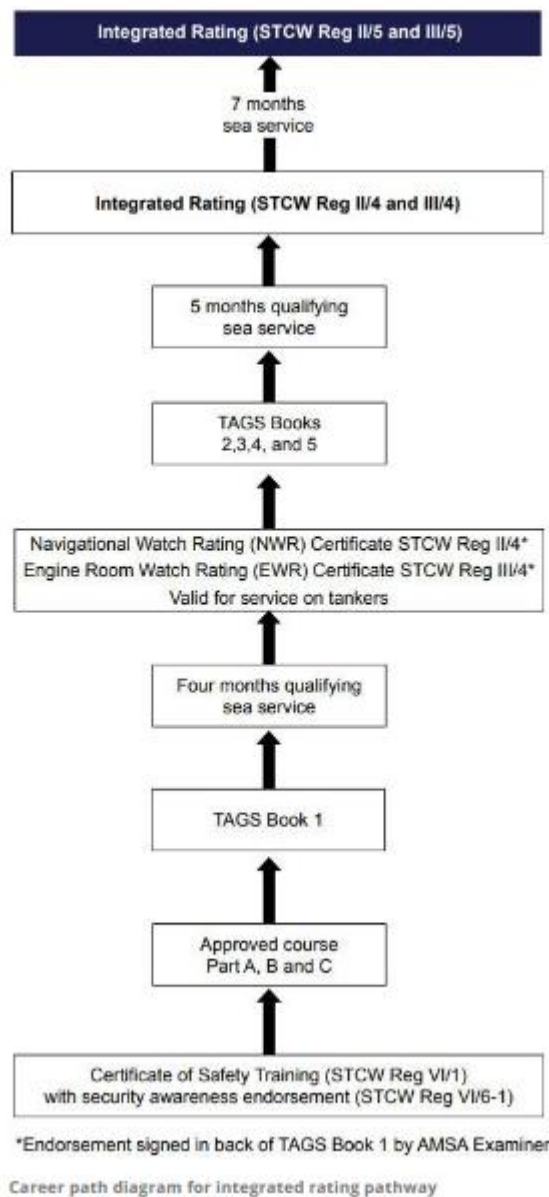
The Integrated Rating (IR) is a qualification under the Navigation Act 2012 which is unique to Australia and New Zealand. It involves training on both work in the engine room and on deck of vessels over 24m. The nature of the work is complicated, risky and requires skills, training and experience in operations and safety. It combines the international qualifications under IMO STCW Convention of Able Seaman Deck and Able Seaman Engine. Significant training and seetime is required (Figure 7). IRs are required on RAVs under the Navigation Act (with a growing number of exceptions outlined in Section 16).

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<sup>57</sup> See for example the classification structure in Clause 13 of the *Seagoing Industry Award 2010* which specifies only occupations associated with AMSA seafarer certificates for RAVs listed in MO2 70-73, [https://www.fwc.gov.au/documents/documents/modern\\_awards/pdf/ma000122.pdf](https://www.fwc.gov.au/documents/documents/modern_awards/pdf/ma000122.pdf)

**Figure 7:** Integrated Rating training components and seetime requirements.

### 1. Integrated rating pathway



Source: <https://www.amsa.gov.au/qualifications-training/international-qualifications/career-path-ratings>

However, for DCVs under the National Law, AMSA MO505 (Certificates of competency-national law) 2013 provides for only one Ratings certificate, General Purpose Hand (GPH), where the competencies are specified in the National Standard for Commercial Vessels (NSCV) Part D (Crew competencies). NSCV Part D requires a GPH to have completed a General Purpose Hand course at VET Certificate 1 level. The NSCV were designed for small fishing vessels, launches, small aquaculture vessels, small marine tourism vessels, inshore ferries and the like.

The GPH was historically a NSW qualification, suited to the significant number of inshore vessels operating in that state. Very few industry sectors have embraced the GPH

qualification, yet instead of trying to improve that, MO 504 allows uncertificated crew as a part of vessel's minimum crew (Section 12). The result is that many seafarers working as 'deckhands' do not even have even the GPH level of training.

The Certificate I in Maritime Operations (General Purpose Hand Near Coastal) (MAR10318) contains just 8 Units of Competency and requires no sea time experience. In addition, the safety standards (the Shipboard Safety Skill Set – formerly known as the Elements of Shipboard Safety (ESS)) in the GPH qualification do not match the safety standards required for the STCW Convention, known as the Certificate of Safety Training (COST). It does not require a task book, and can be completed in 5 days,<sup>58</sup> including sea survival and fire prevention. The GPH CoC is totally unsuited to offshore oil and gas industry support vessels or small trading ships voyaging up to 200nm offshore. Yet Section 10 showed how already 40% of the Major Australian Trading Fleet are DCVs, and are permitted to operate with GPHs or uncertified crew, and more could follow. This situation is totally unsatisfactory and a danger to ships, passengers and more particularly to seafarers.

The historic role of the GPH qualification is reflected in the relevant industrial Awards, and it is only included in the Towage Award and Ports Harbours and Enclosed Waters Vessels Award.

The MUA is particularly concerned with either uncertified deckhands or General Purpose Hands acting as deck and engine ratings on large vessels or those operating on long voyages or far offshore. There is currently no provision, either in Marine Orders or VET qualification for ratings occupations between the lower level GPH Certificate Level 1 and the high level Integrated Rating Certificate Level III qualification, a situation which is especially inappropriate for the crewing of:

- Towage ships
- Dredging ships
- Offshore oil and gas sector support ships like anchor handlers and supply ships
- Wind turbine installation and support ships
- Smaller cargo ships like MPPs
- Project cargo ships
- Larger fishing ships
- Transshipment vessels and barges
- Bunkering ships
- Pearling ships
- Expedition cruise/passenger ships
- A range of government ships like the Cape size Border Force ships

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<sup>58</sup>Example of a GPH course: <https://www.seaschool.com.au/commercial-certificate-courses/gph-deckhand>

Neither AMSA nor Australian Industry Standards<sup>59</sup> have taken timely or appropriate steps to rectify this serious problem in the certification and VET qualifications structure for Ratings, notwithstanding repeated representations from the MUA and concerns by many employers.

At the date of this submission, and nearly 6 years after the National Law Act came into effect, there is still no finalised proposal in the MAR Maritime Training Package Project being managed by Australian Industry Standards to develop qualifications reflecting the full spectrum of seafarer skills and attributes required for the range of seafarer roles on a raft of ship types, particularly those that AMSA actions have now defaulted into the National Law/DCV jurisdiction, including many ships in the offshore oil and gas industry, ships in the intra-state cargo shipping sector, especially ships servicing remote and regional and island communities, ships involved in the expedition cruise sector, marine tourism ships, ships engaged in bulk cargo transshipment activity, in inshore bunkering and other marine support services, in dredging, in fishing, in pearling or in aquaculture.

The one possible exception is towage where preparatory work is underway within Australian Industry Standards to develop a Skills Set tailored for ratings on towage ships. Even this is unsatisfactory as there is no base VET qualification e.g. a VET Certificate Level II encompassing for example the Deck or Engine watchkeeping certificate, for towage ships, on which to add-on specialist or tailored competencies packaged as a Skill Set. Skills Sets should not replace core VET qualifications which are required for workforce mobility and career advancement. Rather, they should reflect the actual competencies required for productive performance of the skills required to operate particular classes or types of ships under the conditions of operation of the ship type and in the geographical area the ship will operate in.

Some work is also scheduled for roll on/roll off and passenger ship operations.

The MUA nevertheless understands that sometime in 2019-20 the General Purpose Hand-Near Coastal qualification is to be reviewed by Australian Industry Standards in relation to its application to harbour ferries, marine tourism ships, pearling and fishing ships. We do not know why the review is limited to these types of ships. This is unsatisfactory and Australian Industry Standards does not have a consensus from affected stakeholder to proceed with a review under the proposed narrow terms of reference.

This work is not reflected at all in the current review of DCV qualifications in Marine Order 505 that AMSA is conducting. We cannot understand why the two organisations responsible

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<sup>59</sup> Australian Industry Standards is the Skills Service Organisation (skills council) for the transport and logistics industry.

for seafarer training and qualifications, AIS and AMSA, appear to carry out their work without reference to each other.

**Recommendation 20:** That the Committee recommend to the Australian Government that a full and transparent review of the seafarer qualification framework and associated VET certificates and units of competency be carried out. Domestic and international seafarer qualifications must be streamlined in order to have STCW standards of competence integrated at all levels in order to have a qualification system that allows all seafarers to develop their career and training in a straightforward process. Incorporating the higher standards of STCW, at an appropriate level, into the units of competency of the VET certificates will increase the overall standards of Australian seafarers, reduce the complexity of the system and reduce overall training costs. It is also recommended that all personnel working on any type of vessel must have health and safety training specific to work on vessels, as well as STCW-compliant survival and fire prevention training.

**Recommendation 21:** That the Committee recommend to the Australian Government that AMSA suspend its current MO505 review process and not bring in a revised Marine Order until other review processes have settled a more effective and durable safety regulatory system for Australian ships. The review needs to focus on the way that the coming into force of the National Law Act has rapidly degraded standards of ship safety, cargo integrity, passenger safety, occupational health and safety, crew certification and associated VET qualifications, particularly relative to the much higher and internationally recognised standards given effect by the Navigation Act (which implements Australia's obligations to conform with IMO Conventions (like the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Convention).

## 14. Workforce development

The MUA proposes that the Committee recommend that a multi stakeholder maritime workforce development task force that is fully funded, to build on the work of the previous Maritime Workforce Development Forum undertaken in the period 2011 to 2013 up until release of the Maritime Workforce Development Strategy in May 2013, be established.

We propose that AMSA be a key stakeholder involved in the workforce development task force. This is critical to ensuring that qualifications specified in Marine Orders are aligned with training and industry needs, and that there is a robust system for ensuring quality. Achieving a coherent plan for maritime workforce development should facilitate AMSA's role in revising and administering Marine Orders.

An initial priority of the task force will be to once again undertake an audit of current and future maritime workforce capabilities and skill needs, though stakeholders may be willing to use the MIAL Seafaring Skills Census Report 2018 as the current audit.

The MUA has made detailed proposals for the focus of this task force in our submission: *A Plan to save the Australian Shipping and Maritime Industries: Good for the economy, employment, the environment and national security*.<sup>60</sup> We are happy to provide this on request.

The MUA submits that in the Ratings stream, there should be:

- A comprehensive hierarchy of Rating VET qualifications from Certificate Level I (entry level) to Certificate Level IV, that caters for the full range of ship types, ship operating features and geographical operation of ships, that provides a base VET qualification for each seafarer certificate level in MO505 (once it is reformed) and MO73, integrated across both the DCV and RAV system, and which meets the requirements of the STCW and other relevant IMO Conventions; and
- That these core VET qualifications be supplemented by a comprehensive package of Skill Sets that provide the skills, competencies and experience required by ship owners, operators and employers (guided by the standards set by international maritime forums, which invariably exceed the minimum requirements of the regulator) for the various types and classes of ship and their operational requirements:
  - We note that Australian Industry Standards proposes to develop Skill Sets for global maritime distress and safety systems, oil chemical tanker cargo, liquified gas tanker, oil tanker cargo, and gas and low flashpoint fuels. This initiative confirms the importance of the MUA framework and is strongly supported.<sup>61</sup>

**Recommendation 22:** That the Committee recommend to the Australian Government that it:

\*Establish a multi stakeholder maritime workforce development task force that is fully funded to build on the work of the previous Maritime Workforce Development Forum undertaken in the period 2011 to 2013 up until release of the Maritime Workforce Development Strategy in May 2013, and that inter alia, the Task Force:

^ Undertake a review of current and future maritime workforce capabilities and skill needs having regard to the MIAL Seafaring Skills Census Report 2018, taking account of industry skill requirements, especially in management of cargoes, emerging technologies that could impact on job roles and skill requirement including the opportunities for better integration of commercial maritime skills and qualifications with those required for Navy, Border Force and other government ship operations; and

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<sup>60</sup> Maritime Union of Australia, *A Plan to save the Australian Shipping and Maritime Industries: Good for the economy, employment, the environment and national security*, Submission to the Inquiry into the policy, regulatory, taxation, administrative and funding priorities for Australian shipping, Senate Rural and Regional Affairs and Transport References Committee, 5 March 2019, page 100-111.

<sup>61</sup> AIS, *Maritime Skills Forecast 2018*, P31, [https://www.australianindustrystandards.org.au/wp-content/uploads/2018/12/Maritime-Skills-Forecast-2018-Final\\_v2.pdf](https://www.australianindustrystandards.org.au/wp-content/uploads/2018/12/Maritime-Skills-Forecast-2018-Final_v2.pdf)

^ Review how onboard maritime skills and qualifications can be integrated into onshore roles to help achieve better labour mobility, workforce flexibility and career paths for all occupational groupings in the shipping industry.

^ Review the core competencies that currently underpin seafarer qualifications to ensure that the competencies reflect required industry skills and not just the safety aspects required by the regulator.

^ Conduct a review of training providers approved to deliver seafarer qualifications to identify offerings, trends in enrolments and completion rates, location of offerings and their pricing principles.

\* Propose that the AISC authorise and fund Australian Industry Standards to abandon its current approach to reviewing the Maritime Training Package affecting the Ratings stream, and to arrange a high level conference, to be independently facilitated, comprising owner/operators and employer representatives with an interest in the Navigation Act and STCW standards, the MUA representing Ratings, AMSA and METL as the only group training organisation in the industry to prepare a new national framework of Ratings qualifications and Skill Sets, including a timetable, not exceeding 18 months, for implementation of a new Ratings qualifications framework, and that AISC adequately fund curriculum development and approval of the necessary changes to the Training Package to meet such a timeframe.

\* Work with the States/NT to fully fund a limited number of approved RTOs, subject to quality, innovation in delivery methods and cost conditions, to deliver the new Ratings qualifications and Skill Sets over a 10 year forward program as an essential part of the overall revitalisation of the Australian shipping industry.

## 15. Inadequate training for domestic seafaring qualifications

An audit of course length by the Australian Skills Quality Authority (AQSA) found that maritime training organizations were among the worst-performing Australian training organisations. Out of 422 courses surveyed in 2015, four entry-level DCV courses were in the top seven of 'unduly short' courses.<sup>62</sup>

- Certificate II - Coxswain Grade 1 Near Coastal: 75% of courses offered at 14 RTOs were less than half the duration recommended by the Australian Qualifications Framework volume of learning. 1,795 people were enrolled in this course across Australia.
- Certificate III – Master up to 24m Near Coastal (previously Master 5): 100% of courses offered at 8 RTOs were less than half the duration recommended by the Australian Qualifications Framework volume of learning. 646 people were enrolled in this course across Australia.

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<sup>62</sup> Australian Skills Quality Authority, *A review of issues relating to unduly short training*, June 2017, p.160/



- Certificate II – MED Grade 3 Near Coastal and Certificate III – MED Grade 2 Near Coastal had similarly short courses.<sup>63</sup>

AQSA reports that ‘the impact of unduly short training is far-reaching, with significant consequences for learners, employers, RTOs, the community more broadly, and governments’. For industries ‘the increasing numbers of workers who are not competent in the qualifications they hold perpetuates real skills shortage and impacts on productivity’. They say it can impact on work health and safety and create a ‘unsustainable race to the bottom’ for RTOs.<sup>64</sup>

These RTOs have the right to issue 60-day interim qualification certificates which allow holders to work immediately, before AMSA has checked to ensure that seetime and other requirements have been met.

This result raises additional concerns about the recent transfer by AMSA of many assessments from state Departments of Transport to RTOs (often for-profit). AMSA has deemed 7 qualifications to be ‘low complexity’ and outsourced the assessment of these qualifications to RTOs through an ‘Assessment Instrument of Australian Maritime Practical Assessment (AMPA)’. This removes the 3<sup>rd</sup>-party check that previously assured quality in the system and is particularly concerning given the findings of the AQSA audit. All four qualifications found to be ‘unduly short’ by AQSA also have their assessments outsourced to the same RTOs delivering these unduly short courses.<sup>65</sup>

We believe the ‘low complexity’ label that has been assigned to these seven qualifications is totally inappropriate. Six of the qualifications allow operations up to 200nm offshore, operations in which complex navigational, mechanical and weather challenges are inevitable and external assistance is simply not available. Two of the qualifications are ‘master’ qualifications meaning that this person could have overall responsibility for a vessel and the lives of all the persons working on board, their passengers, and other vessels they may encounter. These qualifications are:

- General purpose hand near coastal
- Coxswain grade 2 near coastal
- Coxswain grade 1 near coastal
- Master less than 24 metres near coastal
- Master (inland waters)
- Marine engine driver grade 3 near coastal
- Marine engine driver grade 2 near coastal

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<sup>63</sup> Australian Skills Quality Authority, *A review of issues relating to unduly short training*, June 2017, p. 160.

<sup>64</sup> Australian Skills Quality Authority, *A review of issues relating to unduly short training*, June 2017, p. 104.

<sup>65</sup> The list of RTOs who are allowed to assess qualifications is given here:

<https://www.amsa.gov.au/qualifications-training/training-organisations-and-courses/final-assessors-low-complexity>

**Recommendation 23:** That the Committee recommend to the Australian Government that it implement a national system for testing and issuing marine qualifications through an independent public agency such as AMSA that is separate from RTOs. In the short term, the application of the 'low-complexity' designation to DCV qualifications should be removed.

## 16. Erosion of minimum safe manning documents for RAVs

Regulated Australian Vessels are required by law to have Minimum Safe Manning Documents (MSMD) when proceeding on an international voyage.<sup>66</sup> The purpose of these manning documents is to ensure that the vessel is safely, efficiently and effectively manned at sea, and to ensure that the vessels management is not tempted to reduce crew to unsafe levels to reduce manning costs. Manning documents are also required to be displayed where the crew can see them, so the crew can ascertain for themselves if the ship is manned correctly, and if they are sailing on a safe vessel.

The MSMD is a vital part of the safe operation of a vessel, however there are several ways in which this is being undermined.

The provisions of the National Law allow for any Australian vessel which is not proceeding on an international voyage to be regulated as a Domestic Commercial Vessel, regardless of size, or numbers of passengers, or type of cargo. These vessels are not required to have a MSMD, and instead are required to self assess the number of crew on board and the qualifications they require. This assessment is not required to be displayed. To compound this issue, vessels may gain certification as RAVs for a short period - for example to proceed to dry dock overseas, and surrender these certificates on return to Australia. AMSA refuses to provide a public list of RAVs and DCVs. It is entirely possible that even the crew sailing on a vessel may not even know if the vessel is a RAV or a DCV.

Marine Order 21 (Safety and Emergency Arrangements 2016) further undermines the integrity of the Minimum Safe Manning Document, by allowing RAVs under 3000GT to sail within the EEZ with crew qualified under the National Law, with a written determination from AMSA.<sup>67</sup> The standards of qualification and training are quite different under the two separate laws, with particular notice to the Master <24m CoC and the General Purpose Hand. These manning determinations replace trained ratings with years of experience and knowledge with crew with 'no primary certificate required.' The risks associated with this are very high. Integrated Ratings are trained in assisting with the navigational watch as well

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<sup>66</sup> SOLAS requires all vessels on an international voyage to have an MSMD. The Navigation Act 2012 Chapter 2, Part 4, Division 2 says AMSA *may* issue MSMDs. So it is not a legal requirement for domestic voyages. AMSA's policy is that RAVs should have a MSMD, subject to the exemptions outlined in this section. If a vessel does have a MSMD, they need to comply with it and display it.

<sup>67</sup> Marine Order 21(Safety and Emergency arrangements) 2016 Section 10

as the many hazards of working on the deck and in the engine room, including snap back zones, rigging and lifting, the use of cranes, rigging gangways, working at heights, working in confined spaces, using chemicals etc. There is no publicly available information on how many RAVs are operating with Near Coastal Manning determinations from AMSA. In January 2018 the MUA requested copies of MSMDs issued since 2013 from AMSA under the FOI Act, and are still waiting.

AMSA has also issued a determination that states that RAVs operating within port limits are not required to have a MSMD<sup>68</sup>. According to Marine Order 21 vessels must have in place a determination from AMSA to crew vessels with near coastal crew. AMSA has given contradictory information which will affect the safety of the vessels involved, as well as potentially causing insurance issues with in the event of a claim.

AMSA's process of issuing MSMDs is also fraught with problems as it appears AMSA takes a non-prescriptive approach to the issue of MSMDs, undermining the very purpose of these documents. First, AMSA asks the company to suggest appropriate manning for their vessel. AMSA then assesses the company's proposal based on a desktop assessment looking at compliance with basic requirements of work and rest hours, as well as complying with IMO Resolution A. 1047 (27) Principles of minimum safe manning. There is no vessel inspection, or review of the vessel's SMS. The final approval of the MSMD is from a single manager, with no input from stakeholders, including unions or safety representatives sought by AMSA during this process. There is no process for appeal or review available for appropriate stakeholders.

An example of this is the new Toll vessel 'Tasmanian Achiever II.' The MSMD for the new vessel has one less crew member than the previous vessel, 'Tasmanian Achiever', despite the new vessel being larger and more complex. The MUA does not believe that this level of manning is safe or complies with the regulations, and has sent a FOI request to AMSA regarding the Manning documents and the decision making process behind the reduction of crew on the MSMD.

AMSA has also decided to use MSMDs effectively as Navigation Act exemptions. Some MSMDs for RAVs are issued with near coastal qualifications or lower Navigation Act qualifications than required by the Navigation Act Regulations. Fishing vessels that are RAVs may have been issued MSMDs with near coastal qualifications that are inappropriate for international voyages.

Marine Order 51 (Fishing Vessels) 1989 states that a person is qualified for the purposes of the Navigation Act to:

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<sup>68</sup> Determination – vessels less than 500 gross tonnage operating within designated port limits.  
<https://www.amsa.gov.au/file/2443/download?token=Y2L1nFII>

“perform duties and functions in relation to a fishing vessel if the person:  
d) in any other case, produces evidence of knowledge and experience to the satisfaction of the Manager, Ship Operations and Qualifications and appropriate to the duties to be undertaken”

As no Certificates of Competency are issued presently under MO 51, and the manager, Ship Operations and Qualifications is a position that no longer exists, either the MSMDs issued for RAVs that are fishing vessels are incorrect, or the responsible delegate for issuing MSMDs is effectively using MSMDs to assert an equivalence between near coastal certificates of competency and MO 51 fishing specific competence. Importantly, the MO 51 syllabus includes sections on fishing vessel stability and international regulations which are not included in the near coastal qualification syllabus.

**Recommendation 24:** That the Committee ensures that the current Inquiry includes a consideration of the arrangements for issuing Minimum Safe Manning Documents (MSMDs) for RAVs under the Navigation Act. We ask the Committee to recommend to the Australian Government that a new transparent procedure that provides for stakeholder participation in determining minimum safe manning, and the operational and crew qualifications conditions to be included in MSMDs. AMSA marine surveyors or inspectors with practical experience of the vessel should also be consulted.

**Recommendation 25:** That the Committee recommend to the Australian Government that the Navigation Act be amended to ensure that every Regulated Australian Vessel 'must' be issued a Minimum Safe Manning Document by the national regulator with a maximum validity of 5 years (Navigation Act 2012 Chapter 2, Part 4, Division 2).

**Recommendation 26:** That the Committee recommend to the Australian Government that Marine Order 21 be amended to ensure that all Regulated Australian Vessels must be crewed with seafarers with qualifications under the Navigation Act. Currently MO21 (Section 10) allows for AMSA to make a determination in writing that RAVs under 3000GT may carry seafarers with DCV certificates issued under Marine Order 505. These certificates are designed for Domestic Commercial Vessels and are of a far lower standard than the STCW compliant certificates issued under the Navigation Act. AMSA has issued these determinations for the entire crew of a vessel, significantly lowering the standard of safety and training.

## 17. Loss of independent verification of vessel standards

The role of a marine surveyor to issue vessel certificates has been outsourced, with AMSA surveyors playing a reduced role in certifying vessels. AMSA accredited surveyors are employed by the vessel owner and take on the bulk of the physical inspection of a vessel for a Certificate of Survey for a DCV. However there appear to be no systematic inspection of the vessel's operation or Safety Management System before AMSA issues a Certificate of

Operation. In most cases, the vessel owner must simply declare that there is a Safety Management System in place when applying. It also appears that there are no provisions in place to prevent an AMSA Accredited Surveyor from surveying a vessel in which they have a commercial interest. It seems possible, and perhaps likely, that a surveyor could write a survey report for their own vessel.<sup>69</sup>

## 18. Lack of integration with Australian WHS legislation and agencies

The state WHS acts (which are now mostly harmonised) apply on most vessels now regulated by AMSA.<sup>70</sup> It is a case of concurrent jurisdiction – for most Domestic vessels *both* the National Law and the WHS Act applies. This occurs because of the provision of the National Law Act that it applies to the exclusion of State or Territory Law *except* for laws that deal with workplace health and safety (s.6(2)(b)(xxi)).

This situation has been the case for many years. AMSA does have MOUs with state and Territory WHS agencies to coordinate activity. However, the MUA regularly finds a remarkable lack of knowledge by AMSA officials about the WHS Act and Australian WHS systems, and a similar lack of knowledge about the concurrent jurisdiction by state WHS agencies. More worryingly, there is no fact sheet or reference on the AMSA website that we could find to clarify to vessel operators that the WHS Act applies to them.

AMSA's safety documents that are designed for use by vessel operators in designing safety systems do not contain any reference to the WHS Act, and undermine key aspects of the WHS Act. For example, the document 'Risk management in the National System' (12 pages) advises operators to use the hierarchy of controls of risk to reduce risk to 'acceptable' levels (page 7). However, the safety duty in the model WHS Act is "A duty imposed on a person to ensure health and safety requires the person *to eliminate risks to health and safety so far as is reasonably practicable*, and if it is not reasonably practicable to do so, to minimise the risks so far as is reasonably practicable" (s.17).<sup>71</sup> This is a much stronger duty than to reduce risk to an 'acceptable' level.

The AMSA document 'Practical Guidance for the Development of Safety Management Systems' (2018, 64 pages) does not include the hierarchy of controls of risk at all. Neither documents mentions the WHS Act. Neither document requires consultation with crew on safety management, which is a cornerstone of the WHS system.

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<sup>69</sup> National Law - Marine Surveyors Accreditation Guidance Manual 2014

<sup>70</sup> Vessels undertaking longer voyages, and which tend to be longer vessels, come under the OHS(MI) Act. While the OHS(MI) Act is older, it is broadly similar to the WHS Act, and it has been the intention of government to bring the OHS(MI) Act into the national WHS Act jurisdiction.

<sup>71</sup> See also Safe Work Australia, HOW TO DETERMINE WHAT IS REASONABLY PRACTICABLE TO MEET A HEALTH AND SAFETY DUTY, May 2013.

Some phrases from WHS legislation have been adopted into MO 504, but in our view the Marine Order does not comply with key aspects of the WHS Act, particularly consultation. Much better knowledge of WHS systems and coordination with other WHS agencies is urgently required.

AMSA does seem to be aware of some of these problems, but does not seem to be taking sufficient steps to address them. In a submission to the 2018 Independent review of the Model WHS laws in April 2018, AMSA wrote:

AMSA has also become aware that many sectors of the domestic commercial vessel industry are unaware of the application of WHS legislation to their vessels as workplaces.

AMSA considers that the WHS laws should be consistently applied to domestic commercial vessels that are workplaces.

[...]

In particular, the Codes of Practice are considered to form practical guidance for those smaller operations who may not have the wherewithal or resourcing to properly identify the actions they should take to ensure compliance. Given the number of small to medium business enterprises in the Australian economy, the codes are seen to represent a worthwhile bridging mechanism between legislation and practical 'on the ground' implementation.

The Australian DCV industry is very divergent in the nature and size of its operations. Many enterprises are small with few resources and limited management /administration capability. Further, it is apparent that many operators are largely unaware of the obligations they hold under WHS legislation, despite the model WHS legislation defining vessels as workplaces. The absence of any industry-specific WHS Codes may be contributing to this situation.

AMSA considers that development of WHS Codes for the maritime sector would provide explicit acknowledgement of applicability of WHS laws to the sector and the WHS risks that need to be managed in the sector.<sup>72</sup>

AMSA's acknowledgement of the issue is a promising development.

AMSA is not a Member of Safe Work Australia. AMSA has MOUs with many organisations including state and Territory WHS regulators, but we could not find one with Safe Work Australia.

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<sup>72</sup> AMSA, Submission Safe Work Australia Review of Model WHS Legislation, 13 April 2018, p.2 and 3.

The experience of the MUA's South Australian branch is illustrative of the problem. In 2013, the branch undertook to train all maritime industry HSRs in the provisions of the new WHS Act. The branch invited both AMSA and Safework SA to attend each of the series of workshops held to ensure all HSRs across the state were able to attend. Different officials from each organisation attended each workshop, and in virtually every case, these officials were neither aware of the issue of concurrent jurisdiction on vessels, or of the MOU between Safe Work SA and AMSA. This was early on during new legislation, so perhaps was not surprising, and the branch hoped that the situation would improve from there. However, when a similar workshop was held in September 2018 with a senior Safe Work SA manager in the transport sector, again, the manager had no awareness of the MOU and delegates had to find it for him on the internet.

In early 2019, the MUA SA branch began discussions with Canada Steamship Lines to ensure that their South Australian transshipment operations had properly trained and elected HSR structures. The company management claimed that they were covered under the DCV Act, and not under the WHS Act. The company had been operating with these vessels in South Australia for approximately ten years. In 2012, there was a fatality on board the same barge (*Spencer Gulf*) when crew were employed by a subcontractor, Inco Ships, and in 2016 Inco Ships was fined \$200,000 under the WHS Act for failing to provide a safe system of work as well as failing to provide adequate information, instruction, supervision and training.<sup>73</sup> Again, the MUA had to find the MOU and provide it to the company in order to prove to the operator that they were indeed covered by the WHS Act.

Another example of the discrepancy between AMSA and Safe Work Australia is the difference between the guidelines provided by AMSA<sup>74</sup> and Safe Work Australia for managing fatigue.<sup>75</sup> To give but one example, AMSA say that 'Risk of fatigue increases' when people work more than 60 hours per week. Safe Work Australia advise to 'Avoid long working hours (more than 50 hours per week).'<sup>76</sup>

AMSA's stated policy in its Regulatory Plan is to put responsibility on the regulated community, who bear the responsibility for the risk.<sup>77</sup> This is at odds with expectation of workers to have a safe environment to work in, passengers to have a safe experience when they go on a vessel, and masters who expect owners to manage safety effectively. Tragically,

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<sup>73</sup> Jordanna Schriever, Inco Ships Pty Ltd fined \$200,000 over the death of deck mechanic Aries Nemiada at Whyalla in 2012, *The Advertiser*, July 13, 2016, <https://www.adelaidenow.com.au/news/south-australia/inco-ships-pty-ltd-fined-200000-over-the-death-of-deck-mechanic-aries-nemiada-at-whyalla-in-2012/news-story/e83c9604d04b985df6905d32a17474eb>

<sup>74</sup> AMSA, Managing crew fatigue, <https://www.amsa.gov.au/vessels-operators/domestic-commercial-vessels/managing-crew-fatigue>

<sup>75</sup> Safe Work Australia, 2013, Guidelines for Managing the risk of fatigue at work, <https://www.safeworkaustralia.gov.au/doc/guide-managing-risk-fatigue-work>.

<sup>76</sup> Safe Work Australia, 2013, Guidelines for Managing the risk of fatigue at work, p.18.

<sup>77</sup> AMSA, 'Statement of Regulatory Approach', October 2018,

the actual risk is rarely borne by vessel owners, but by the crew they hire to operate the vessels, or the passengers on board. Even with the best intentions of small operations, lack of effective training and crewing exacerbates incidents. Small operators in particular cannot compete when no regulation training is the default situation, and effectively penalises vessels if they choose to adhere to a higher standard of regulation.

A recent independent best practice review of workplace health and safety in the Northern Territory recommended that NT WorkSafe and AMSA should work together to ensure that a larger number of inspectors exercising functions under both the Marine Safety (Domestic Commercial Vessel) National Law Act and the Occupational Health and Safety (Maritime Industry) Act (OHSMI) are located in the Northern Territory.<sup>78</sup> This is a good start but a greater understanding of the concurrent jurisdiction of these maritime safety laws and the WHS act are needed.

**Recommendation 27:** That the Committee recommend to the Australian Government that a Safety Code of Practice for the Domestic Commercial Vessel industry be developed, in line with the current *Code of Practice: Health and Safety in Shipboard Work, including Offshore Support Vessels*, which has been developed for larger vessels more likely to be RAVs. Such a Code can give practical and flexible guidance to seafarers in the industry, with specific chapters to address the diverse sectors of the industry.

**Recommendation 28:** That the Committee recommend to the Australian Government that AMSA should become a member of Safe Work Australia. At a minimum, it must develop an MOU with Safe Work Australia, and make every effort to align its safety reporting and analysis with Safe Work Australia standards.

**Recommendation 29:** That the Committee recommend to the Australian Government that the Domestic Commercial Vessel industry be declared a 'national priority industry' for preventative action, and that AMSA should work with Safe Work Australia and maritime unions to develop a strategy to reduce fatalities and injuries in the Domestic Commercial Vessel industry.

**Recommendation 30:** That the Committee recommend to the Australian Government that all AMSA employees undertake a training program about the WHS Act and how it functions.

**Recommendation 31:** That the Committee recommend to the Australian Government that AMSA produce a fact sheet for vessel operators to ensure that they are aware that they are also covered under the WHS Act, and also update safety guidance documents to refer to the fact that vessels are also covered by the WHS Act (or in some cases the OHS(MI) Act).

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<sup>78</sup> Tim Lyons, Best Practice review of workplace health and safety in the Northern Territory, pg 6  
[https://justice.nt.gov.au/\\_\\_data/assets/pdf\\_file/0004/664213/Best-Practice-Review-of-WHS-in-the-NT-Final-Report-opt.pdf](https://justice.nt.gov.au/__data/assets/pdf_file/0004/664213/Best-Practice-Review-of-WHS-in-the-NT-Final-Report-opt.pdf)



## 19. Lack of regulatory enforcement action

AMSA seems unwilling – or unable to prosecute vessel owners, masters or crew under the National Law. Since the National Law came into effect in 2013, the state maritime safety authorities have sent breach reports to AMSA for referral to the Commonwealth Director of Public Prosecutions.

Table 5 shows the charges placed under the laws that AMSA has responsibility for since 1 July 2013. A summary, or simple offence, is tried by a magistrate in the Local or District Court. Examples of summary offences include less serious cases of fraud and some drug offences. An indictable offence is a serious criminal offence that is usually heard in a higher court, such as the County, District or Supreme Court. Indictable offences require a trial by judge and jury. Examples of Commonwealth indictable offences include major drug importation cases, terrorism offences and fraud cases where the sum of money involved is large.

**Table 5:** Charges placed under the various maritime safety acts.

Financial year	Number of charges placed under the Marine Safety (DCV) National Law Act	Number of charges placed under the Navigation Act	Number of charges under the Protection of the Sea (Prevention of Pollution from Ships) Act 1983	Number of defendants dealt with referred by AMSA
<b>2013/2014</b>	nil reported	nil reported	nil reported	nil reported
<b>2014/2015</b>	Nil reported	Nil reported	9 summary	8 summary
<b>2015/2016</b>	4 summary	nil reported	3 summary	6 summary
<b>2016/2017</b>	13 summary	2 indictable	2 summary	6 summary
<b>2017/2018</b>	8 summary	nil reported	10 summary	6 summary

Source: DPP Annual reports

In total, 25 charges have been laid under the provisions of the National Law. Some of these include:

- *Spirit of 1770* fire, QLD May 2016, 46 people on board total, no fatalities. 2 charges laid on the Master of the vessel and dropped on 4<sup>th</sup> Dec 2018.<sup>79</sup>
- *She's Awesome* with serious injuries to passenger. Charges were successfully laid against both the owner and Master in NSW.<sup>80</sup>

<sup>79</sup>ABC news report on the sinking of *Spirit of 1770*: <https://www.abc.net.au/news/2016-05-12/passenger-recounts-rescue-burning-sinkin-catamaran-1770/7407354>

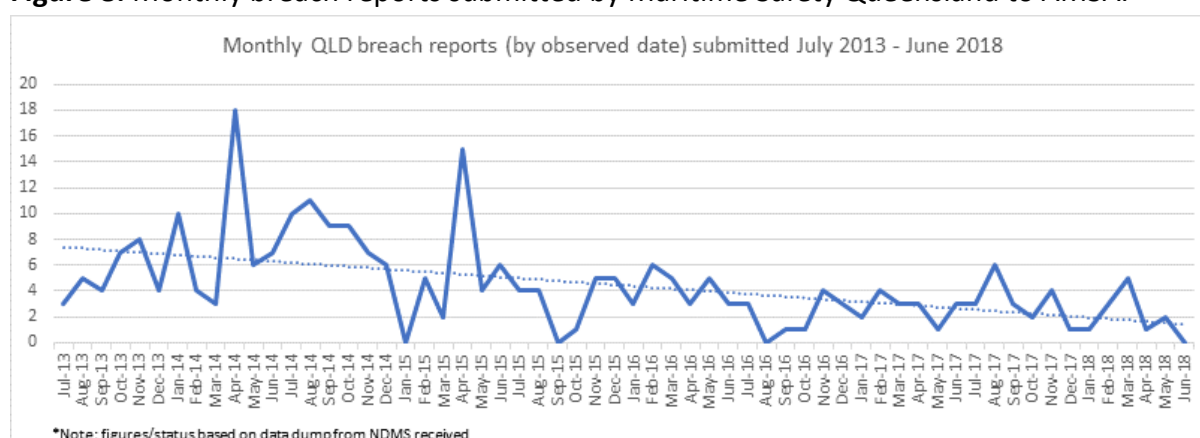
<sup>80</sup>AMSA media release: <https://www.amsa.gov.au/news-community/news-and-media-releases/joint-media-release-newcastle-speed-boat-operation-fined>.

- *MV Voyager* incident in Queensland, where the master was convicted on 2 charges, operator convicted on 5 charges.<sup>81</sup>

Unfortunately, there is no record of any other charges referred to the DPP by AMSA, and most of the state maritime authorities have not kept records of breach reports. When requested to share this information, the state authorities referred to AMSA as the 'owner' of this information.

Maritime Safety Queensland did, however, feel confident in sharing some data on breach reports which were sent to AMSA while it was acting as the delegate of the National Regulator (Figure 8).

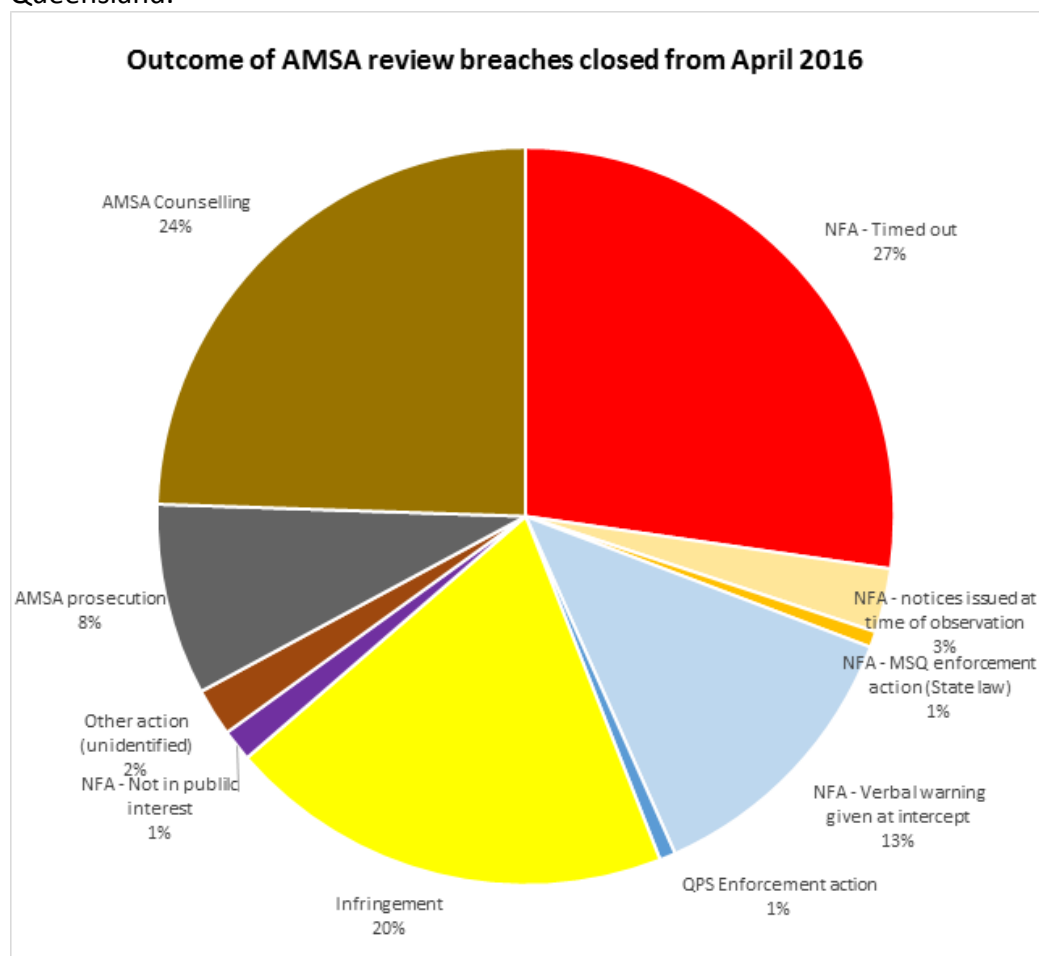
**Figure 8:** Monthly breach reports submitted by Maritime Safety Queensland to AMSA.



Source: Maritime Safety Queensland, personal correspondence 13 March 2019

<sup>81</sup>AMSA medial release: <https://www.amsa.gov.au/news-community/news-and-media-releases/gold-coast-skipper-convicted-maritime-offences>

**Figure 9:** Outcome of breaches of the National Law submitted to AMSA by Maritime Safety Queensland.



Source: Maritime Safety Queensland, personal correspondence 13 March 2019

The data provided by MSQ shows a significant number of breach reports were sent to AMSA, and while some resulted in infringement notices, a few in prosecutions and some in “AMSA counselling”, more than a quarter were ‘timed out’ (Figure 9).

In addition, it is known that no charges were laid under the National Law regarding the death of Mr Bradshaw in the NT, however NT Worksafe did successfully prosecute the owners of Barge Express.

This data, while only provided by one state, begs the following questions:

- How many breach reports were forwarded to AMSA while the states were acting as delegates of the National Regulator?
- How many briefs were forwarded to the DPP for prosecution during this time?
- What does “AMSA Counselling” entail?
- What was the length of time between the states sending breach reports and AMSA taking any action?
- How many breach reports “timed out” and no action was taken?

- Is there problem in the drafting of the legislation and regulations where it is impossible for charges to be successfully prosecuted, as alluded to in the coroner's report in to the death of Mr Bradshaw:

"65. The lawyer for AMSA went further and suggested that there was no offence committed due to a strict reading of the wording of Marine Order 23 (applicable because of the "grandfathering clauses"). I invited AMSA to expand on that suggestion in further written submissions. However, they did not expand that point and I am assuming AMSA realised that Marine Order 23 does not and cannot modify the requirements to have a safe means of access and egress."

Some incidents where it would be expected for incident and investigation reports to be made public and potentially charges to be successfully laid include:

- The fire on board *Spirit of Seventeen Seventy*<sup>82</sup>
- The death of Mr Mills on *Ten Sixty Six*<sup>83</sup>
- The death of Daniel Bradshaw on *Sammy Express*<sup>84</sup>
- The death of Ryan Donoghue on *Newfish 1*<sup>85</sup>
- The collision between a small vessel and *Jane Virgo*<sup>86</sup>
- The death of Tim Macpherson on *Maeve Ann*<sup>87</sup>
- The death of Paul McVeigh on *Moonraker*<sup>88</sup>

Because of the lack of publicly available data into maritime incidents, it is impossible to determine what action should be taken, if any. However, the Australian public should be satisfied that if a marine incident occurs, the party responsible should be held to account.

**Recommendation 32:** An urgent, independent investigation be carried out into the enforcement actions taken by AMSA as a response to serious marine incidents and breach reports since 1<sup>st</sup> July 2013. This should include an assessment of AMSA's internal legal advice and briefs presented to the DPP. The adequacy of the safety duties under the National Law should also be assessed. There must be more transparent reporting of enforcement actions going forward.

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<sup>82</sup> Media article on 1770: <https://www.gladstoneobserver.com.au/news/possible-class-action-for-1770-and-agnes-water/3392846/>

<sup>83</sup> See Appendix 5 for links to coroner's report

<sup>84</sup> See Appendix 5 for links to coroner's report

<sup>85</sup> See Appendix 5 for links to coroner's report

<sup>86</sup> Jane Virgo Collision: <https://www.ntnews.com.au/news/northern-territory/mv-jane-virgo-crew-were-not-aware-of-the-collision-which-destroyed-an-8m-boat/news-story/770f2e13c1266681e3ab1fd01e00f445>

<sup>87</sup> Media article on Tim Macpherson: <https://www.theherald.com.au/story/4876500/call-for-inquest-into-tim-macphersons-death/>

<sup>88</sup> Media article on Paul McVeigh: <https://www.theage.com.au/national/victoria/torie-mackinnon-to-avoid-jail-over-deadly-boating-accident-during-dolphin-swim-20151023-gkguh4.html>

## 20. Governance and Consultation

### AMSA Board

The AMSA board is responsible for deciding the objectives, strategies and policies to be followed by AMSA, and ensuring that the functions of AMSA are performed in a proper, efficient and effective manner. The board is appointed by the Minister for Infrastructure and Transport under the Australian Maritime Authority Act.

It must be recognised that decisions made by AMSA on vessel crewing, qualifications, and many other matters have a direct impact on commercial operating costs by vessel operators. Every effort must be made to ensure that there is no conflict between the commercial interests of the members of the board and the regulatory function of AMSA, and that there is seen to be no conflict.

Seafarers of the different occupational groups must also be represented on the board, in consultation with their unions. Someone with expertise in the operation of the WHS Act and the role of Safe Work Australia and the state regulators should also be included. In our view this is much more important than including someone from NOPSEMA. While NOPSEMA is a relevant agency with which AMSA has practical interaction with, NOPSEMA should not be seen as a model to follow when it comes to Work Health and Safety. A recent Senate inquiry into the 'Work health and safety of workers in the offshore petroleum industry' found that NOPSEMA "was not regarded as a fully effective or engaged regulator by workforce stakeholders in the offshore petroleum industry," and that this "perception had a detrimental effect on work health and safety (WHS) outcomes, with workers not feeling adequately supported by the regulator."<sup>89</sup>

The AMSA board presently consists of:

- Chair: Stuart Richey: Managing Director of Richey Fishing Company and Richey Services
- Deputy Chair: Jennifer Clark: Board Member of a wide range of government and private boards, with a work background as an investment banker.
- Mick Kinley: AMSA CEO and Marine Engineer
- Dr Russell Reichelt: Chairman and Chief Executive of the Great Barrier Reef Marine Park Authority and a Non-Executive Director of the Great Barrier Reef Foundation Limited.
- Jane Cutler: previously Chief Executive Officer of the National Offshore Petroleum Safety and Environment Management Authority, Perth.
- Anthony Briggs: founder and former Managing Director of Coral Princess Cruises

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<sup>89</sup> Senate Education and Employment References Committee, Report into Work health and safety of workers in the offshore petroleum industry, April 2018, p.33.

- Dr Rosalie Balkin: former Director of Legal Affairs and External Relations at the International Maritime Organization (IMO) (London), Secretary of IMO's Legal Committee and for a time IMO's Assistant Secretary-General.
- Peter Toohey: Chief Engineer, Brisbane Tugs with Svitzer Australia, federal councilor, Australian Institute of Marine and Power Engineers.
- Dr. Rachel Bacon (ex-officio): Deputy Secretary responsible for Regions and Territories in the Department of Infrastructure, Regional Development and Cities.

**Recommendation 33:** That the committee recommend to the government that it review the composition of the AMSA board. The Australian Maritime Authority Act, Section 13 should be amended to ensure that at least two of the board members of AMSA are representatives of seafarer employees, nominated in consultation with seafarer unions.

### **Consultation with the MUA**

AMSA has a markedly different approach to consultation than other government agencies that the MUA deals with. In our view the level of consultation carried out by AMSA has deteriorated in recent years, and AMSA seeks to avoid engaging with the MUA where possible.

We have outlined the critical role of Marine Order 504. In our view this was brought in hastily. The consultation opened on 17 April. We were not contacted in the usual way about this consultation, and became aware of it only by chance on the AMSA website, very close to the due date of 9 May. We sought an extension to consider the material and make a submission, which we were granted, until COB on Wednesday 16 May, 2018. Due to illness, the appropriate official was not able to review and approve the submission, so it was not sent to AMSA until the morning of 17 May. However, on 10 May, AMSA published an article on its website saying that the decision had already been made.<sup>90</sup>

For many years, the MUA sat on AMSA's Advisory Council, which includes various members of industry and meets twice per year. Sometime in 2017 the MUA stopped receiving invitations to this body. We thought perhaps the body had been discontinued, until we discovered to our surprise, that it was still meeting, but without any participants representing the maritime workforce. The MUA was able to meet with Gary Prosser and Mick Kinley on 20 June 2018 and express our concerns about the provisions of Marine Order 504 and other aspects of DCV regulation. At this meeting we were assured that this was merely an oversight and that every intention was to continue inviting the MUA to attend these meetings. We were aware from the minutes of the previous meeting, which had been supplied on our request, that the next meeting would take place on 18 December 2018. On

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<sup>90</sup> AMSA press release on Mo504: <https://www.amsa.gov.au/news-community/news-and-media-releases/appropriate-crewing-your-operation-under-marine-order-504>

11 December we realised that no invitation had been received. On 12 December, Mick Kinley rang about a consultation process involving maritime unions. He was pressed on the matter of the Advisory Council and eventually issued an invitation.

Since the 20 June 2018 meeting with AMSA CEO and Deputy, the MUA has been seeking a role in the DCV Industry Advisory Group. We have followed up with this matter several times. We have only been told that a 'review' is ongoing.

At the Advisory Council meeting on 18 December 2018, we communicated with Mick Kinley that we were happy to engage with the consultation process he proposed, provided it did not result in excluding unions from other advisory forums. Since then we have not heard anything further.

AMSA has been running a well-structured consultation process in relation to Marine Order 505. The MUA has attended two stakeholder meetings, and ensured participation from other maritime industry employers. However, we were dismayed that the considered views of this group appeared to be disregarded, on critical safety matters. For example, there was a proposal from AMSA that MO 505 be amended to allow for only one person to be required to have a first aid certificate on a vessel. Currently all seafarers are required to have a first aid certificate when they revalidate their certificates every five years. The industry reference group recommended that all seafarers be required to have a *valid* first aid certificate at all times, which was particularly pertinent as AMSA was also proposing to extend revalidation to every 10 years. However, the next version of the draft marine order to be sent out knocked back that industry recommendation, despite the firm view of many that it was critical to vessels safety (and see also the examples cited in Sections 7 and 8).

In 2018 the union identified that there were currently vacancies on the AMSA board, and that the last MUA/SUA person to sit on the AMSA board was Pat Geraghty. Recent members from maritime unions have been:

- Martin Byrne (AIMPE), 2 June 2008 - 1 June 2011
- Fred Ross (AMOU), 22 November 2011 - 21 November 2014
- Peter Toohey (AIMPE), July 2015 - June 2018, renominated later in 2018.

The MUA found a qualified person to nominate, and the nomination was made to the Minister through the ACTU. Instead, Peter Toohey was appointed to the board, although he has communicated to an MUA official that he did not seek that nomination and was surprised to be re-nominated.

## 21. Attention to Regulated Australian Vessels

One of the primary functions of AMSA is Flag State Control – ensuring the safety and compliance of Regulated Australian Vessels with Australian and international regulations. AMSA has delegated functions of the flag state to recognised organisations (Ros, also known as classification societies) which undertake certain surveys and certification.<sup>91</sup> The sinking of the *El Faro*, an American Flagged container ship, and the loss of all souls, should have set alarm bells ringing for all flag states that outsource to ROs the safety of their own vessels and crew. The NTSB<sup>92</sup> investigation into the sinking identified some of the contributing factors as:

1. the failure of operating company to maintain an effective safety management system;
2. the failure of the Recognized Organization to uncover or otherwise resolve longstanding deficiencies that adversely affected the safety and seaworthiness; and
3. the failure of the USCG to properly oversee the work conducted by the Recognized Organization on our behalf.<sup>93</sup>

In an interview in September last year, Rear Admiral John P. Nadeau, Assistant Commandant for Prevention Policy, US Coast Guard, states:

“This is a call to action for the entire maritime community. The *El Faro* casualty was the result of poor seamanship compounded by a failure of the safety framework that should have triggered a series of corrective actions that likely would have prevented it. We all can, and must, learn from this tragedy. Seafarers, supporting shoreside personnel, operating companies, Recognized Organizations, and flag states must act with a sense of urgency to ensure a robust, effective safety framework. We should all honestly assess our own safety management and oversight responsibilities and ask ourselves if we’ve truly adopted a safety mindset and seek continuous improvement, or if we’re simply doing the minimum necessary to maintain compliance.”<sup>94</sup>

AMSA’s delegation of some survey and certification responsibility is not necessarily a problem, however, the oversight of these ROs and RAVs is an essential function, that cannot be diluted.

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<sup>91</sup> AMSA provided information on recognised organisations: <https://www.amsa.gov.au/vessels-operators/flag-state-administration/how-flag-state-administration-works-australia>

<sup>92</sup> Investigation report into the sinking of “*El Faro*”  
<https://www.nts.gov/investigations/accidentreports/pages/mar1701.aspx>

<sup>93</sup> Media article on the ‘*El Faro*’: <https://safety4sea.com/cm-uscg-lessons-learned-from-el-faro-tragedy/>

<sup>94</sup> Media article on the ‘*El Faro*’: <https://safety4sea.com/cm-uscg-lessons-learned-from-el-faro-tragedy/>



In June last year, the RAV *MV Tomin* was detained by AMSA as it was suspected to be “unseaworthy, unsafe, and a threat to the marine environment”<sup>95</sup> While the detention of this vessel is an accomplishment for AMSA, it must be ensured that all Australian vessels must be maintained and run to the highest standard. RAVs in particular must achieve the highest standards as they are international ambassadors of the standards expected of vessels and crew when they visit Australia. It cannot be allowed for AMSA’s resources to be focused on domestic commercial vessels at the expense of RAVs.

## 22. Port State Control and international vessels

The MUA consulted with the ITF Australian inspectorate in the preparation of this report due to their knowledge about AMSA’s role with regards to international ships. The ITF is generally satisfied with a high level of cooperation with AMSA Inspectors in most Australian ports. The formation of the Australian Seafarers Welfare Council (ASWC) in compliance with the Maritime Labour Convention has been a very useful platform of tripartite cooperation of Australian industry, government and unions. The work by everyone involved is commended by the ITF and MUA.

The ITF makes the point however that our inspection results, which last included over US\$5 million in backpay for seafarers, repatriation of sick and injured seafarers and general welfare provisions for seafarers are not generally taken into account in AMSA records.

The true state of the MLC compliance on board international ships visiting Australia can only be viewed through a prism which includes AMSA results along with ITF findings.

The workload of AMSA’s Port State Control inspectorate continues to grow, with an ever-increasing number of international vessels visiting Australia. The introduction of MLC standards also means that each inspection is more complex and takes longer. We are concerned that AMSA’s resources have not kept pace with these demands (Section 9).

The proportion of international ships visiting Australia that are inspected by AMSA fell gradually from 90% in 2004 to 61% in 2011, and then improved slowly to 71% in 2015. Since then it has dropped sharply to just under 50% in 2018, along with the number of ships that AMSA has detained (Figure 9).

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<sup>95</sup> AMSA press release on ‘*MV Tomin*’ <https://www.amsa.gov.au/news-community/news-and-media-releases/two-arrested-yamba-and-charged-operating-unseaworthy-and>

**Figure 9:** Port State Control inspections and detentions of individual international ships visiting Australia compared to total ship visits, since 2002.



**Source:** Compiled by the MUA from AMSA, Port State Control Annual reports, 2002-2018.

AMSA detains a ship:

“To ensure that the ship will not sail until it can proceed to sea without presenting a danger to the ship or persons on board, or without presenting an unreasonable threat of harm to the marine environment whether or not such action will affect the scheduled departure of the ship.”<sup>96</sup>

A detained ship may not let them leave port until deficiencies are rectified, which under the MLC includes non – payment of wages to the crew.<sup>97</sup> Vessels which are detained on a repeat basis may be banned from Australia for a period of time. Maintaining the standard of the international ships which regularly come into Australia, and work around the Australian Coast is critical, not only for the safety of the vessel, crew and passengers, but also the high risk of marine pollution, especially in the particularly sensitive sea area (PSSA) of the Great Barrier Reef.

<sup>96</sup> AMSA, Port State Control 2014 Report, p. 19.

<sup>97</sup> AMSA information on Port State Control: <https://www.amsa.gov.au/vessels-operators/port-state-control/after-port-state-control-inspection>

**Recommendation 34:** That the Committee recommend to the Government that it review if the resources for carrying out Port State Control inspections are sufficient to the increasing challenge AMSA faces in regulating international shipping.

## Appendix 1: Difference between the Navigation Act and National Law Act

Australian ship and seafarer safety are currently regulated under two Acts, the *Navigation Act 2012 (Navigation Act)* and the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (National Law Act)*.

The Navigation Act applies the standards of the International Maritime Organisation (IMO) Conventions such as the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended; the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 and by the Protocol of 1997 (MARPOL); the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) as amended, including the 1995 and 2010 Manila Amendments,<sup>98</sup> while the National Law Act applies Australian standards designed by the States/NT and originally only intended for small inshore vessels, essentially operating in coastal waters (3 nautical miles from the territorial sea baseline).<sup>99</sup>

The way the two Acts are now administered by AMSA means that invariably, the default standard of ship safety and seafarer certification/VET qualifications on Australian registered ships is the National Law Act jurisdiction or domestic commercial vessel (DCV) jurisdiction rather than the pre-2012 default standard which was the Navigation Act or regulated Australian vessel (RAV) jurisdiction, which is based on internationally recognised standards of the IMO maritime Conventions.

Details of the different standards of the two Acts are outlined in Table 6.

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<sup>98</sup> These Conventions, and a full list of IMO Conventions can be found at <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx>

<sup>99</sup> A full list of maritime boundary definitions can be found at <http://www.ga.gov.au/scientific-topics/marine/jurisdiction/maritime-boundary-definitions#heading-3>

**Table 6:** Comparison of vessel safety standards under the Navigation Act and under the DCV Act.

<b>Navigation Act 2012</b>	<b>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</b>
<p><b>Survey</b></p> <p>Physical standards of vessels set by Classification Societies, IMO conventions and codes and marine orders. Vessels are issued with a series of internationally recognised certificates and inspected by AMSA surveyors and class surveyors on a regular basis, with inspections occurring every 12 months. Specific IMO codes and Marine Orders apply to the construction and equipment of certain vessels (see MO31 &amp; Nav Act Chapter 3). Passenger vessel Certificates of Survey are only valid for 1 year.</p>	<p>Physical standards of vessels set by the NSCV Part C (National Standard for Commercial Vessels) and recognised organisations (class societies) for vessels over 35m and over. Issued with Certificates of Survey (MO 503) valid for 5 years, with periodic survey frequency based on a risk category.</p>
<p><b>Working Conditions</b></p> <p>The Navigation Act (Chapter 2), Maritime Labour Convention (MLC) and MO11 set out the employment and accommodation standards for seafarers, including the physical accommodation, work agreements, hours of work and rest, regulations regarding the provision of food and water, catering facilities, sanitary facilities, regulations concerning repatriation, exemption from serving on jury, and seafarers not to be wrongfully be left behind.</p>	<p>Maritime Labour Convention does not apply. No regulations for working and living conditions are in the DCV Act. These are in the Nav Act as the environment in which seafarers live and work presents unique challenges.</p>
<p><b>Manning</b></p> <p>The Navigation Act, (Chapter 2, Part 4, Division 2) states that AMSA may make a written determination for a vessel regarding the minimum complement of crew. MO 21 (Safety and Emergency Arrangements, Division 2, Section 9) refers to the Principles of</p>	<p><b>Crewing*</b></p> <p>MO 21 Division 2 applies to DCVs – however unless vessels are not required by SOLAS to have MSMDs, (ie. on an overseas voyage) section 9 does not apply. Marine Order 504, Schedule 1, Section 6, has defined the minimum crew allowed for a specific type of</p>

<p>Minimum Safe Manning (IMO Res A.1047(27)), that the Minimum Safe Manning Document (MSMD) must be kept on board, and a copy must be available in a location such that the seafarer can access it without the need to ask.</p>	<p>vessel, and expects the operator to determine the ‘appropriate crewing’ based on a list of factors that must be considered. The reasoning behind this ‘self determination’ must be kept on board with the vessel’s documentation. There is no requirement for consultation with crew or for checking with surveyors or AMSA. There is no guidance regarding working hours, and ‘uncertified crew’ can be part of not only the ‘minimum’ crew but also the ‘appropriate crew’. Many operators crew their vessels such that ‘uncertified crew’ are standing a navigation watch by themselves.</p>
<p><b>Safety and Emergency Arrangements</b></p> <p>Marine Order 21 incorporates many safety arrangements found in SOLAS (as the minimum international standard). This includes Division 3 – Emergency procedures, including alarm signals, abandon ship signals, emergency drills, training, passenger lists, emergency management plans, emergency instructions for passengers, emergency duties for seafarers, assignment of survival craft. It also includes regulations on the carriage of portable gas detectors.</p>	<p>There are sections of MO21 Division 2 which relate to pilot boarding arrangements and steering drills on board DCVs. For Domestic Commercial Vessels, these procedures should be included in the vessels ‘Safety Management System’ as per the requirements of Marine Order 504, Schedule 1. This is based on the operator’s own risk assessments and tasks on board, and include an emergency plan, briefings for passengers, maintenance schedules. The owner and crew must also receive ‘sufficient’ training in operations and emergency procedures.</p>
<p><b>Operating Standards</b></p> <p>Marine Order 28 (Operation Standards and Procedures) includes the standards of watchkeeping, including recording hours of rest and complying with the Minimum Safe Manning Document. Section 17 specifically states that watchkeepers comply with watchkeeping standards set out in STCW. STCW states the specific duties that a</p>	<p>STCW does not apply to DCVs. There is no requirement in the DCV Act that provides for a navigational lookout, or that watchkeepers maintain the minimum required standard. Even the duties and functions of a ‘deck watchkeeper’ are not defined in NSCV part D, or elsewhere in the National Law. This has resulted in the practice</p>

<p>holder of a Certificate of Competency may perform, including holding a navigational watch, and the fundamental principle that a Navigational watch rating assist the watchkeeper as a lookout at all times, and may only leave the bridge during daylight if they are able to be called to the bridge quickly.</p>	<p>of uncertified crew, particularly on fishing vessels, holding a 'steering watch', under the supervision of the Master – who is asleep nearby.</p> <p>See: collision between FV Mako and Glasgow Express <a href="https://www.atsb.gov.au/publications/investigation_reports/2017/mair/333-mo-2017-007/">https://www.atsb.gov.au/publications/investigation_reports/2017/mair/333-mo-2017-007/</a></p>
<p><b>Specific vessel risks</b></p> <p>Marine Orders 32, 33, 34, 35, 41, 42, 43, 49, 50, 51, 52, 53, 57 and 60 all contain regulations based on minimum international standards and codes for specific types of vessels and cargoes and operations that pose unique risks. Some of these include dangerous cargoes, helicopter operations, securing cargoes, bulk carriers and training vessels.</p>	<p>None of these marine orders apply to Domestic Commercial Vessels.</p>
<p><b>Safety Management</b></p> <p>Marine Order 58 relates to the Safe Management of Vessels and gives effect to the International Safety Management (ISM) Code. It requires companies operating vessels to have has their Safety Management System audited and approved by the regulator, and certificates issued as appropriate.</p>	<p>Marine Order 504 requires vessel owners to sign a declaration that they have a Safety Management System in place before AMSA will issue a Certificate of Operation. The SMS may never be inspected or audited before this is issued.</p>
<p><b>Safety and Skills training</b></p> <p>Navigation Act vessels are required to ensure every person on board, including hospitality crew has basic safety training to the required international standard. This is a week-long course, covering security, personal safety, firefighting, sea survival and first aid. All crew on</p>	<p>Marine Order 504 allows crew to sail as 'uncertificated' this can include all hospitality crew, as well as deck and engine crew. The onus is on the owner to ensure that the crew is provided with "so far as reasonably practicable, such information, instruction,</p>

<p>passenger vessels are also required to obtain certification regarding Crowd Management, Crisis Management and Human Behaviour to ensure they are equipped to manage passengers in the event of an onboard emergency/evacuation. Deck and Engine Crew are also required to gain appropriate certification for the emergency and operational roles they have on board, including operating lifeboats and rescue boats and fast rescue craft, tanker familiarisation for oil and chemical or gas vessels, advanced firefighting, confined space entry, and designated security duties. In addition, a competent and qualified integrated rating who is able to work unsupervised, will have at least 12 months sea time, experience and a Certificate III in Marine Operations.</p>	<p><i>training or supervision to people on board the vessel as is necessary to ensure their safety.”</i> Marine Safety (Domestic Commercial Vessel) National Law, Schedule 1 Part 3, Division 1, Section 12.</p> <p>Completing such courses as the ‘shipboard survival skill set’ and the ‘General Purpose Hand is voluntary, and onboard training is considered sufficient by most owners.</p> <p>Crew then have no approved training on personal safety, practical survival and firefighting training, passenger management, confined space entry etc.</p>
<p><b>Additional provisions</b></p> <p>Under the Navigation Act, there are certain other provisions which are not allowed for in the National Law, including drug and alcohol tests, the Master’s ability to detain crew or passengers, penalties for harming a seafarer, obstructing a vessel, and taking a vessel to sea without charts.</p>	



## Appendix 2: AMSA reporting of DCV fatalities 2016-17

**Table 7:** AMSA reporting of vessel fatalities, 2016-17

1.1.6	Performance criterion	Target	Results	
			2016–17	2015–16
	Improvement in the standard of domestic commercial vessels is demonstrated through:			
1.1.6.1	Decreasing number of fatalities (see analysis of performance)			Not reported
1.1.6.2	Number of domestic seafarers attending education and training activities		2935	Not reported
<b>Rationales:</b> 1.1.6.1 Indicates whether domestic vessel safety is improving or worsening, and prompts further investigation/action. 1.1.6.2 Improvements in the level of training of seafarers and quality of vessels which they operate saves lives.				
<b>Analysis of performance:</b> 1.1.6.1: As this is the first year of AMSA reporting against this measure, there is no data available to indicate a increasing or decreasing trend. There is wide disparity in safety culture and attitudes towards regulation across the domestic vessel industry. Tragically, this is evidenced by 13 domestic vessel-related fatalities over the year. As AMSA assumes full responsibility for the service delivery of the National System for Domestic Commercial Vessel Safety, its aim will be to reduce the number of fatalities over time. AMSA is working closely with partner agencies and authoritative bodies to investigate these incidences. In the process it identifies and actions any required safety campaigns or areas for improvement in the relevant standards.				
Case study: p.20		Source: 2016–20 Corporate Plan: p.19 2016–17 PBS: N/A		RPF KPI: N/A
<b>Footnote:</b> 1.1.6.1 Measure for 2017–18 has been updated to include a proportionate component. Measure is now: 'Fatalities as a percentage of the total size of domestic commercial vessel fleet workforce'. 1.1.6.2 Measure has been deleted for 2017–18.				

**Source:** AMSA Annual Report 2016-17, p.54

“AMSA is working closely with partner agencies and authoritative bodies to investigate these incidences. In the process it identifies and actions any required safety campaigns or areas for improvement in the relevant standards.”

### Appendix 3: AMSA reporting of DCV fatalities 2017-18

**Table 8:** AMSA reporting of DCV fatalities 2017-18

1.1.5	Performance criterion	Target	Results		
			15–16	16–17	17–18
	Improvement in the standard of commercial domestic vessels is demonstrated through:				
	1.1.5.1 Fatalities as a percentage of the total size of the domestic commercial vessel fleet workforce	0%	Not reported	Not reported	0.01% (9 fatalities)
	1.1.5.2 Serious incidents as a percentage of the total number of vessels in the domestic commercial fleet	0%	Not reported	Not reported	0.06% (90 incidents)
<b>Rationales:</b> 1.1.5.1 Indicates whether domestic vessel safety is improving or worsening, and prompts further investigation/action. 1.1.5.2 Indicates whether domestic vessel safety is improving or worsening, and prompts further investigation/action.					
<b>Analysis of performance:</b> 1.1.5.1: Calculations made on the assumption of 27,000 vessels and 66,500 seafarers. There were nine fatalities during the year. 1.1.5.2: Calculations made on 90 incidents reported. Serious incidents include: vessel lost, major vessel damage, person overboard, capsizing, sinking, vessel lost, fire, explosion, serious injury.					
Case study: p.23		Source: 2017–18 Corporate Plan: p.22	RPF KPI: N/A		
<b>Footnote:</b> 1.1.5.1 Measure for 2017–18 was updated to include a proportionate comparative component. For example, if the number of seafarers working in the domestic commercial fleet doubles, then the raw number of fatalities may increase—so the percentage of fatalities against the total number is a better indicator. 1.1.5.2 Introduced as a new measure for 2017–18. Includes a proportionate, comparative component—same rationale as 1.1.5.1 above. General: measures appeared as 1.1.6 in 2016–17 annual performance statements. Previous 1.1.5 measure now at 1.4.1.					

**Source:** AMSA Annual Report 2017-18, p.54.

## Appendix 4: AMSA reporting of DCV fatalities to the MUA

**Table 9:** AMSA reporting of DCV fatalities to the MUA.

Year	Class	State	No of fatalities
2013	1	VIC	1+
	2	SA	1
	3	QLD	1
	3	NT	1
	3	TAS	1
	4	NT	1
	4	TAS	1
2014	1	WA	1+
	3	VIC	1
	3	QLD	1
	4	NSW	1
	4	NSW	1
2015	1	QLD	3*+
	1	NSW	1*+
	2	QLD	1^
	3	SA	1
	3	TAS	1
	3	WA	3
2016	1	QLD	4*+ plus 1*
	3	QLD	7
	3	WA	1
	4	QLD	1
2017	1	NSW	1^+
	2	NSW	1
	2	NT	1
	3	QLD	6

+ Most Class 1 fatalities are passengers except 1 (master)

\*Diving and/or snorkelling related fatalities (passengers)

^ Fatalities due to illness (i.e. heart failures, etc.)

**Source:** Personal correspondence AMSA to the MUA dated 31 May 2018.

## Appendix 5: List of relevant Coroner's inquiries and ATSB reports

Fall from the pilot ladder on the bulk carrier Atlantic Princess, Whyalla, South Australia on 3 July 2013:

[https://www.atsb.gov.au/publications/investigation\\_reports/2013/mair/300-mo-2013-007/](https://www.atsb.gov.au/publications/investigation_reports/2013/mair/300-mo-2013-007/)

Glen Anthony WILSON:

[https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0012/468759/cif-wilson-g-20160524.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0012/468759/cif-wilson-g-20160524.pdf)

Thomas Francis LEVINGE

[https://www.coronerscourt.wa.gov.au/l/inquest\\_into\\_the\\_death\\_of\\_thomas\\_francis\\_levinge.aspx](https://www.coronerscourt.wa.gov.au/l/inquest_into_the_death_of_thomas_francis_levinge.aspx)

Ryan Harry DONOGHUE

[https://justice.nt.gov.au/\\_data/assets/pdf\\_file/0005/281777/D02102013-Donoghue-including-attachment.pdf](https://justice.nt.gov.au/_data/assets/pdf_file/0005/281777/D02102013-Donoghue-including-attachment.pdf)

Ian Graham THOMPSON

[https://www.magistratescourt.tas.gov.au/\\_data/assets/pdf\\_file/0003/405534/Thompson,-Ian-Graham.pdf](https://www.magistratescourt.tas.gov.au/_data/assets/pdf_file/0003/405534/Thompson,-Ian-Graham.pdf)

Leila Michelle TROTT

[https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0010/514477/cif-trott-lm-20170316.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0010/514477/cif-trott-lm-20170316.pdf)

Damien Mark MILLS

[https://www.coronerscourt.wa.gov.au/l/inquest\\_into\\_the\\_death\\_of\\_damien\\_mark\\_mills.aspx](https://www.coronerscourt.wa.gov.au/l/inquest_into_the_death_of_damien_mark_mills.aspx)

Chad Alan FAIRLEY, Mason Laurence CARTER, Murray Allan TURNER

[https://www.coronerscourt.wa.gov.au/l/inquest\\_into\\_the\\_death\\_of\\_chad\\_alan\\_fairley\\_and\\_mason\\_laurence\\_carter\\_and\\_murray\\_allan\\_turner.aspx](https://www.coronerscourt.wa.gov.au/l/inquest_into_the_death_of_chad_alan_fairley_and_mason_laurence_carter_and_murray_allan_turner.aspx)

Andrew KELLY, fatality on board Skandi Pacific, off the Pilbara Coast, Western Australia, 14 July 2015

[https://www.atsb.gov.au/publications/investigation\\_reports/2015/mair/322-mo-2015-005/](https://www.atsb.gov.au/publications/investigation_reports/2015/mair/322-mo-2015-005/)

Daniel Thomas BRADSHAW

[https://justice.nt.gov.au/\\_data/assets/pdf\\_file/0019/482005/D00052017-Daniel-Bradshaw.pdf](https://justice.nt.gov.au/_data/assets/pdf_file/0019/482005/D00052017-Daniel-Bradshaw.pdf)

Luke Anthony MURRAY

[https://www.coronerscourt.wa.gov.au/l/inquest\\_into\\_the\\_death\\_of\\_luke\\_anthony\\_murray.aspx](https://www.coronerscourt.wa.gov.au/l/inquest_into_the_death_of_luke_anthony_murray.aspx)