



Australian Government

Australian Government response to the
Senate Rural and Regional Affairs and Transport Legislation
Committee report:

Performance of the Australian Maritime Safety Authority

MAY 2021

PREAMBLE

On 17 June 2020, the report of the Senate Rural and Regional Affairs and Transport Legislation Committee's (the Committee) Inquiry into the 'Performance of the Australian Maritime Safety Authority' (AMSA) was tabled in Parliament.

The Committee's Inquiry was established to review the performance and operations of the Australian Maritime Safety Authority (AMSA), with a particular focus on the tragic death of Mr Damien Mills in October 2014, who attended a function aboard the charter vessel *Ten-Sixty-Six*, operated by the Dolphin Dive Centre Fremantle.

The report considered a range of maritime safety measures such as headcounts, examined the investigation and scope for prosecution in relation to the death of Mr Mills, and ultimately considered a range of areas for future review and reform.

In addition to making recommendations for changes in relation to enforcement powers under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law), and for an independent review of the legislative framework established under that Act, the report also highlighted potential areas for reform, such as:

- considering changes to grandfathered arrangements for certain older vessels, such as for survey and crewing;
- further action on safety concerns identified in past coronial inquiries, such as vessel stability, electrical safety, or the alignment of regulatory frameworks for marine safety and work health and safety;
- ongoing improvement in the collection, analysis and dissemination of data relating to maritime safety by AMSA;
- ensuring AMSA's activities and resourcing are efficient, and that regulatory burden for industry is reduced where appropriate;
- several other potential improvements to the National Law, such as adding or clarifying definitions, and resolving unproclaimed provisions.

AUSTRALIAN GOVERNMENT RESPONSE

The Australian Government welcomes the Committee's report, and commends the work of all Senators in pursuing timely improvements to maritime safety outcomes. The Government extends its thanks to all those individuals and organisations that made constructive contributions to the Committee's Inquiry.

The Government acknowledges that the death of Mr Damien Mills in 2014 was a tragedy. The Government sincerely extends its sympathies to Mr Mills' family and friends. The Committee's efforts continue to help the Government and AMSA to reduce the risk of a similar tragedy occurring again in Australia.

The Government joins the Committee in commending AMSA's actions to improve passenger safety on Australian commercial vessels, which were implemented through changes to *Marine Order 504 (Certificates of operation and operation requirements — national law) 2018*. The Government acknowledges that it took time to get these changes right so that they are effective and practical. The passenger safety changes implemented by AMSA in early 2020 take a holistic approach to passenger safety and follow extensive industry and public consultation to deal with the complex and diverse needs of our commercial vessel sector.

The Government further acknowledges and supports AMSA's efforts to establish a truly National System for Domestic Commercial Vessel Safety (national system) since service delivery responsibility transferred from the states and territories to AMSA in 2018. In that time, AMSA has brought together seven disparate regulatory regimes, and has introduced measures to improve safety culture and safety outcomes nationally.

The Government recognises the importance of ensuring that vessels are safe. People working or travelling as passengers on domestic commercial vessels should have confidence that these vessels meet safety standards that will ensure they return home safely from their voyages. The Government is committed to ensuring the national system delivers safety outcomes for the diverse range of maritime businesses across Australia, including commercial transport, tourism, fishing and charter boating operations. These are important industries, particularly for our regional and coastal communities.

The Government supports continuous improvement of the national system to support the safe design, construction, equipping, operation and crewing of these vessels. The Government also recognises the challenges in achieving appropriate safety regulation settings across the diverse sectors that make up Australia's 22,000 domestic commercial vessels. These sectors comprise vastly different operations, ranging from an individual fisher working in a tinnie to a corporation running a fleet of passenger ferries; they may operate on a calm inland lake or in the open ocean. As a result, safety requirements for these diverse operations are broad, spanning vessel design, construction, equipping, operation and crewing, and can change over time, such as to respond to new technology or shifts in the fleet's composition. This means that safety regulation needs to balance national consistency with the need for flexibility, including across different industry sectors and operation types, if it is to remain practical and reflect industry diversity.

Consequently, the Government supports AMSA in continuing to carefully consider and work with industry to ensure safety requirements are balanced with the costs of compliance across its spectrum of regulated businesses. The Government recognises that maritime safety regulation requires flexibility, and should be practical for all industry sectors to implement.

The Government **supports all of the Committee’s recommendations, and intends to pursue a suite of improvements to the national system and National Law, informed by an independent review as recommended by the Committee.** As set out in this response, specific aspects of each recommendation require further consideration based on the best available data and evidence, and consultation, to ensure implementation arrangements improve safety and can be actioned by industry. Consultation with Australia’s maritime industries and with state and territory governments will be important in this process.

The Government notes that any changes to safety requirements need to work as part of the whole system of domestic commercial vessel safety. In responding to other matters explored in the Committee’s report, as well as in related reports and inquiries such as the Productivity Commission’s Inquiry into National Transport Regulatory Reform, the Government intends to pursue a range of operational, legislative, and strategic actions to improve maritime safety.

Recommendation 1

The committee recommends that amendments be made to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* in regards to the penalties imposed on an operator of a vessel for acting in a reckless or negligent manner, regardless of intent. In particular, the committee recommends that consideration should be given to situations where the operator of a vessel has been found to be acting in a negligent or reckless manner which has the potential to result in the loss of life.

Recommendation 2

The committee recommends that general safety duties offences relating to domestic commercial vessels, contained within the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, be augmented by a more serious offence and subsequent penalty in cases where a breach of the general safety duties leads to a loss of life.

Recommendation 3

The committee recommends that the limitation period for bringing non-custodial charges under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* be extended from 12 months to two years.

Recommendations 1-3 relate to ensuring that penalties, general safety duties offence and limitation periods for bringing non-custodial charges in the National Law are appropriate. The Government **supports these recommendations and intends to consider whether the suite of compliance tools available to AMSA under the National Law is appropriate through the review recommended by the Committee.**

Fundamentally, the National Law should encourage behaviour that leads to the safe operation of vessels. In practice, the level of penalties and offences and the timeframe for bringing charges needs to effectively deter unsafe behaviour and ensure AMSA has the appropriate regulatory tools to address non-compliance by operators. Where breaches of safety obligations are identified, an appropriate sanction or punishment should apply to the person or people responsible for that breach.

The Government intends, as part of the independent review noted below, to undertake a comprehensive assessment of the compliance tools available under the National Law including offences, penalties and limitation periods, to ensure these provisions work to support the safe operation of vessels. Any proposed amendments will be developed with due

consideration of relevant guidance such as the Australian Government *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* and will ensure consistency with comparable safety regulatory regimes. Other significant considerations may include past coronial findings, learnings from previous incidents or prosecutions, stakeholder feedback, and AMSA's experience as the national regulator for domestic commercial vessel safety. Outcomes of the independent review called for at **Recommendation 4** will also be a key consideration.

Before any potential legislative amendments are progressed, stakeholder consultation including with Australia's maritime industries and state and territory maritime safety agencies will also be important.

Recommendation 4

The committee recommends that the Australian Government commission an independent review of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* and any associated legislative instruments (such as Marine Orders). The review should consider whether the laws remain fit for purpose and whether they improve marine safety on domestic commercial vessels without being overly burdensome or complex.

Recommendation 4 calls for an independent review of the legislative framework to ensure it is fit-for-purpose. The Government **supports this recommendation and intends to commence a review in the first half of 2021.**

Australia's legislative framework for maritime safety is regularly reviewed and updated to ensure it remains fit for purpose as part of the normal business of Government, for example as part of AMSA's Annual Regulatory Program reviewing Marine Orders and standards. This practice will continue. However, the Government recognises the potential benefits that independent reviews may provide, such as impartial, expert analysis and advice.

The Government intends that the scope of the independent review will include consideration of matters raised in the Committee's report, such as the appropriateness of legislated penalty and offence provisions (in line with **Recommendations 1-3**) and whether grandfathered safety requirements are appropriate. The Government also intends for the review to consider issues raised in related reports and inquiries.

Timing of the review will account for the phasing of other actions in response to this and related inquiries, as well as the Government's commitment to review all costs and charges for the national system.

The Government is also conscious of the significant impact that the COVID-19 pandemic is having on parts of the domestic commercial vessel sector, which may affect the ability some individuals to contribute to the review. The impacts of the pandemic on businesses operating domestic commercial vessels may also alter the composition of the fleet, and associated safety priorities and regulatory service arrangements.

LABOR SENATORS' ADDITIONAL COMMENTS – AMENDED AND ADDITIONAL RECOMMENDATIONS

Recommendation 1

The committee recommends that amendments be made to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* in regards to the penalties imposed on an owner of a vessel for acting in a reckless or negligent manner, regardless of intent. In particular, the committee recommends that consideration should be given to situations where the owner of a vessel has been found to be acting in a negligent or reckless manner which has the potential to result in the loss of life.

Labor Senators' **Recommendation 1** proposes an amendment to the first recommendation of the Committee's report in line with the very strong views of Labor Senators that this recommendation should refer to the 'owner' of a vessel, rather than the operator. Labor Senator's Additional Comments highlight that 'operator' is not a defined term under the National Law, whereas 'owner' is defined.

In line with the Government's response to Recommendations 1-3 of the Committee's report, the Government **supports this recommendation and intends to consider whether the suite of compliance tools available to AMSA under the National Law is appropriate through the Committee's recommended review.**

As previously set out, the Government intends to assess the suite of compliance tools available under the National Law to ensure these provisions support AMSA's implementation of the national system and promote safe behaviour by vessel operators, and to commission an independent review of the legislative framework to ensure it is fit-for-purpose. The government also intends to assess the broader issues raised by the Committee's report, and matters raised in related inquiries such as by the Productivity Commission. The Government expects that this broader work will include consideration of whether the suite of definitions under the National Law are fit for purpose, including in their interaction with existing or potential offence provisions. Ultimately, the National Law should encourage behaviour that leads to the safe operation of vessels.

Recommendation 2

The committee recommends that [the] Australian Maritime Safety Authority amend *Marine Order 503 (Certificates of survey – national law) 2018* in order to phase out grandfathered survey requirements and to ensure that all domestic commercial vessels comply with modern safety standards as soon as possible.

Recommendation 3

The committee recommends that [the] Australian Maritime Safety Authority amend *Marine Order 504 (Certificates of operation and operation requirements – national law) 2018* as soon as possible in order to cease grandfathered crewing arrangements.

Labor Senators' **Recommendations 2 and 3** relate to ceasing grandfathered arrangements for the surveying of vessels to ensure they are seaworthy, and of crewing arrangements. The Government **supports these recommendations and intends for the Committee's recommended review to examine whether grandfathered safety requirements, including for surveying and crewing of domestic commercial vessels, are appropriate.**

The Government considers that people working or travelling as passengers on domestic commercial vessels should have confidence that these vessels meet safety standards that will ensure they return home safely from their voyages. Where evidence suggests that an aspect of existing safety requirements may be insufficient to manage a potential safety risk, that requirement should be subject to further examination to determine what action, if any, is necessary to ensure safety standards meet community expectations.

The Government recognises that the grandfathering of a standard may not inherently make it unsafe; however, this may also change over time, and re-examination of grandfathered arrangements from time to time is appropriate.

The Government considers that any potential change to grandfathering arrangements should be driven by the best available data and evidence, such as from safety incidents or inspection results, identification of risks, or because of changes in technology. Expected data improvements over the medium to long term are expected to inform regular updates to safety priorities, including supporting investigation and consultation on new areas of focus, or revisiting matters of past concern with new information.

The Government also recognises the importance of engaging with industry in that process to ensure any potential changes to grandfathered arrangements being considered do not impose unreasonably sudden or significant costs or burden on industry. In addition to being evidence-based, any change to grandfathered arrangements should consider the expected safety benefit or mitigation of a safety risk as well as the potential cost and burden for industry. For at least the short term, the impact of COVID on industry will also be an important consideration.

The Government therefore supports AMSA, in consultation with the Department of Infrastructure, Transport, Regional Development and Communications, taking a risk-based approach to investigating specific aspects of grandfathered arrangements, informed by the best available data and evidence, to consider whether these arrangements remain fit-for-purpose. Subject to examination of data and risks, it may be appropriate to make changes only to certain aspects of grandfathered survey or crewing arrangements for certain vessels, rather than a blanket removal of all grandfathering arrangements.