

**ANSWERS TO QUESTIONS ON NOTICE**

**Senator Rex Patrick asked:**

**Senator PATRICK:** These are prosecutions for other matters, but I'm really talking about the things that we've explored today—section 16 and some of the other breaches—where you have found that actually it's almost impossible to reach the burden, such that conduct can continue unabated. Maybe there need to be some recommendations back to us, which we can then take to our colleagues in the parliament.

**Mr Kinley:** As I referred to in my opening statement, there's a section of uncommenced amendments in the national law act, which were intended to basically align it with the harmonised work health safety laws, with commensurate offences and prosecutions under that.

**Senator PATRICK:** I would just ask that you have a look at your recommendations and look to expand them based on what you've learnt out of all of this.

**Mr Kinley:** We'd be happy to do that.

**Answer:**

AMSA's submission referred to proposed amendments to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* and the following expands further on that matter. While in caretaker period AMSA is unable to provide further recommendations that would go to policy issues around the operation of the Act.

The current Act imposes a number of duties on masters of domestic commercial vessels. The main duty is imposed by s.16(1) of Schedule 1 of the Act:

- (1) The master of a domestic commercial vessel must, so far as reasonably practicable, ensure the safety of:
  - (a) the vessel; and
  - (b) marine safety equipment that relates to the vessel; and
  - (c) the operation of the vessel.

Offences relating to contraventions of this section are in s.18, with the most serious being where the master *intends* his act or omission to be a safety risk:

- (1) A person commits an offence if:
  - (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 16(1) or 17(1) or (2); and
  - (c) the person intends the act or omission to be a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: Imprisonment for 2 years or 1,800 penalty units, or both.

By contrast, the uncommenced amendments to the Act referred to in our submission align the Act with work health and safety laws, including by substantially increasing the penalties for offences that do not require proof of intent. For example, the amendments will change s.18 so that an act or omission that exposes an individual to a risk of death (or serious injury or illness) will be an offence if the master doing that act or making that omission was *reckless* as to the risk. That offence attracts a possible 5 year jail penalty (as well as a \$300,000 or \$600,000 fine, depending on the master's role in the vessel operator's organisation).

These amendments are contained in *Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012* No. 122, 2012. The amendments replace s.18 entirely. Section 18(1) would be replaced with:

18 Offences relating to contraventions of section 16 or 17

- (1) A person commits an offence if:
- (a) the person does an act, or omits to do an act, without reasonable excuse; and
  - (b) the act or omission contravenes section 16(1) or 17(1) or (2); and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and
  - (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both; or
- (c) if the offence is committed by a body corporate—\$3,000,000.

The amendments will also impose a \$150,000 penalty for acts or omissions that contravene s.16 that were not reckless but nonetheless expose an individual to a risk of death or serious injury or illness. The penalty for an act or omission that contravenes s.16 without creating a risk of harm will be \$50,000.

These amendments enter into force on “*a single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the first day there are in force in each State laws of the State that the Minister is satisfied correspond substantially to Part 2 of the [Commonwealth] Work Health and Safety Act 2011.*” AMSA's understanding is that the States of Victoria and Western Australia have yet to pass those corresponding laws.