

**SENATE STANDING COMMITTEE ON  
RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
Inquiry into the Performance of Australian Maritime Safety Authority**

Answers to questions taken on notice at the Committee hearing on 25 September 2019

*Question (3 of 9):*

**Senator Patrick:**

Can you provide the committee on notice with the weekly briefings that mention *Ten Sixty Six* from the time of the incident through to the Senate Inquiry and any directions or commentary passed back from the Board?

**Answer:**

Excerpts relating to the *Ten Sixty Six* from the routine weekly AMSA Board updates are at Attachment A.

Excerpts of all reports relating to Ten Sixty Six from the Chief Executive Officer report items provided for scheduled Board meetings is at Attachment B.

The matter was the subject of a Federal Court challenge to use the national law emergency suspension power and the Board was briefed on at the February 2015 Board meeting (Attachment C).

The Board was briefed on National System Operating arrangements including issues with delegates at the April 2015 Board meeting. The Dolphin Dive matter was specifically referenced in this discussion (Attachment D).

No directions were made by the Board specific to the *Ten Sixty Six* matter.

## Extracts from weekly Board reports

### **10-14 NOVEMBER 2014:**

- **Domestic commercial vessel fatality:** AMSA (WA) and Department of Transport (WA) involved in the police investigation of a man's drowning in Western Australia from a domestic commercial vessel. As a precautionary measure, the delegate in WA issued a direction notice to the operator of the domestic commercial vessel for additional crewing measures to be in place for a period of 90 days from 7 November 2014.

### **24-28 NOVEMBER 2014:**

- **Death from a domestic commercial vessel:** media enquiries continued into the investigation of a man's drowning in WA, with media attention focussed on AMSA's suspension of the owner's certificate of operation.

### **5-11 JUNE 2017:**

- **Mills Inquiry:** coronial concluded on 8 June. The Coroner will deliver findings in due course but summarised the likely outcome as accidental death from immersion as a result of being lost overboard on the return trip from Rottnest Island. No adverse findings are expected, but AMSA is likely to be asked to make suggestions for the Coroner to consider in relation to ensuring headcounts are required and conducted on board passenger vessels.
- **Mills coronial inquest:** there has been wide state media coverage of the coronial inquest into the death of Mr Damien Mills in Western Australia in 2014. Mr Mills died after being lost overboard during a corporate cruise on the vessel *Dolphin Dive*. Media coverage has included quotes from AMSA's evidence to the inquest.

### **18 JUNE to 1 JULY 2018:**

- **Ten Sixty Six Fatality:** ministerial briefing is being prepared in response to a request from the Deputy Prime Minister for information about questions raised in correspondence from Senator Linda Reynolds on behalf of the Mills family. This relates to the Western Australian Coroner's findings following the death of Damien Mills in 2014 on the charter boat Ten Sixty Six. Senator Reynolds also raised the matter in Senate Estimates. AMSA is preparing detailed responses to 13 other questions relating to livestock vessels, domestic commercial vessel incidents and fatalities.

### **26 NOVEMBER to DECEMBER 2018**

- **Coronial Inquest into the Death of Mr Damien Mills:**
  - (i) Minister received a letter from Western Australian Senator, Linda Reynolds, about the coronial inquest into the death of Mr Mills - asking that AMSA

reconsider the recommendations of the WA Police relating to the master of the vessel *Ten Sixty Six*.

- (ii) AMSA will attend a public hearing of the Senate Standing Committee on Rural and Regional Affairs and Transport to consider AMSA's implementation of headcounts and other safety measures, following the coronial findings in the death of Mr Damien Mills. The Committee is also interested in the decision not to prosecute in this case.

### **3-9 DECEMBER 2018**

- **Coronial Inquest into the Death of Mr Damien Mills:** AMSA provided a draft response to the letter from Western Australian Senator Linda Reynolds, about the coronial inquest into the death of Mr Mills.
- AMSA also attended a public hearing of the Senate Standing Committee on Rural and Regional Affairs and Transport to consider AMSA's implementation of headcounts and other safety measures, following the coronial findings into the death of Mr Damien Mills. A number of questions were taken on notice about prosecutions, breaches, correspondence between AMSA and the Director of Public Prosecutions, and whether the owners/operators at the time of the incident had any current commercial operations.

### **14-20 JANUARY 2019**

- **Senate Hearing – Ten Sixty Six** (death of Mr Damien Mills): AMSA responded to the Senate Rural and Regional Affairs and Transport Committee who sought a summary of discussions AMSA held with the Commonwealth Director of Public Prosecutions. The Committee will review the response in February.

### **18-24 FEBRUARY 2019**

- **Senate Estimates:** on 18 February AMSA attended the Additional Estimates Hearing. Key questions raised by the Committee related to regionalisation, and the charter vessel *Ten Sixty Six*. Committee requested documents held by AMSA on the matter.
- **Senate Committee Inquiry into Ten Sixty Six:** the Senate Committee announced a new inquiry into AMSA in relation to the *Ten Sixty Six*. AMSA will make a submission by 29 March 2019.

Excerpts from CEO Reports for AMSA Board meetings relating to *Ten Sixty Six* (November 2014 – February 2019):

<i>Board Meeting</i>	<i>Summary of matter</i>	<i>Description of orders sought</i>	<i>Present position</i>	<i>Case status</i>
<b>February 2015 – 211<sup>th</sup> Board Meeting</b>	<p><i>Applicant: Dolphin Dive Centre Fremantle Pty Ltd.</i></p> <p><i>The Applicant operates a charter boat and scuba diver training business utilising 3 domestic commercial vessels. Following inspection of one of those vessels, systemic failings in safety systems were identified that the National Regulator believed endangered human life. As a consequence, the National Regulator suspended the Applicant's certificate of operation; issued a direction for out of water hull surveys of all vessels and issued a notice requiring the Applicant to show cause why its certificate of operation should not be revoked (the Decisions).</i></p>	<p>The Applicant is seeking judicial review of the Decisions in accordance with the <i>Administrative Decisions (Judicial Review) Act 1977</i>.</p>	<p>On 24 December 2014, the Applicant applied for and was granted an injunction staying the operation of the suspension and show cause decisions pending the commencement of the application for judicial review. The direction decision was revoked by the National Regulator prior to this hearing and was not further addressed.</p> <p><i>The parties are currently considering dismissing the matter by consent, given that the suspension has since been revoked and the show cause notice has been withdrawn in favour of other regulatory action. The matter is listed for hearing on 10 February 2015.</i></p>	<b>Matter ongoing.</b>
<b>April 2015 – 212th Board Meeting</b>	<p><i>Applicant: Dolphin Dive Centre Fremantle Pty Ltd.</i></p> <p><i>The Applicant operates a charter boat and scuba diver training business utilising 3 domestic commercial vessels. Following</i></p>	<p>The Applicant is seeking judicial review of the Decisions in accordance with the <i>Administrative Decisions (Judicial Review) Act 1977</i>.</p>	<p>On 24 December 2014, the Applicant applied for and was granted an injunction staying the operation of the suspension and show cause decisions pending the commencement of the application for judicial review. The</p>	<b>Matter dismissed by consent.</b>

<b>Board Meeting</b>	<b>Summary of matter</b>	<b>Description of orders sought</b>	<b>Present position</b>	<b>Case status</b>
	<p><i>inspection of one of those vessels, systemic failings in safety systems were identified that the National Regulator believed endangered human life. As a consequence, the National Regulator suspended the Applicant's certificate of operation; issued a direction for out of water hull surveys of all vessels and issued a notice requiring the Applicant to show cause why its certificate of operation should not be revoked (the Decisions).</i></p>		<p>direction decision was revoked by the National Regulator prior to this hearing and was not further addressed.</p> <p><i>The parties are currently considering dismissing the matter by consent, given that the suspension has since been revoked and the show cause notice has been withdrawn in favour of other regulatory action. The matter is listed for hearing on 10 February 2015.</i></p> <p><b>The matter was dismissed by consent on 10 February 2015.</b></p>	

**CEO Reports - Coronial inquiries (Legal) - listing matters that may result in a Coronial inquiry that may interest AMSA:**

<b>Meeting</b>	<b>Inquiry</b>	<b>Circumstances</b>	<b>Status</b>
February 2016 – 217 <sup>th</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	
April 2016 – 218 <sup>th</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	
June 2016 – 219 <sup>th</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	
August 2016 – 220 <sup>th</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	
September 2016 – 221 <sup>st</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	
December 2016 – 222 <sup>nd</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	<b>Matter set down for 6-9 June 2017</b>
February 2017 – 223 <sup>rd</sup> Board	Inquiry into the death of Damien Mills	Investigation into this death is	<b>Matter set down for 6-9 June 2017</b>

Meeting	Inquiry	Circumstances	Status
meeting		continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	
April 2017 – 224 <sup>th</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	<b>AMSA has been granted leave to appear at the inquest, which is set down for 6-9 June 2017, and will provide a statement in the matter.</b>
June 2017 – 225 <sup>th</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	<b>AMSA has been granted leave to appear at the inquest, which is set down for 6-9 June 2017, and will provide a statement in the matter.</b>
August 2017 – 226 <sup>th</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	<b>AMSA provided evidence to the inquest that was held on 6-9 June 2017. Waiting on Coroner's findings.</b>
September 2017 – 227 <sup>th</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	AMSA provided evidence to the inquest that was held on 6-9 June 2017. Waiting on Coroner's findings.
December 2017 – 228 <sup>th</sup> Board meeting	Inquiry into the death of Damien Mills	Investigation into this death is continuing. It is possible that Mr Mills was lost overboard from a commercial vessel operated by Dolphin Dive In November 2014	<b>Coroner has handed down findings. No recommendations for AMSA but an understanding that AMSA would be making safety improvements, with a focus on changes in relation to mandatory headcounts and wearing of PFDs.</b>

## CEO Reports – Media Coverage for the period November 2014 – January 2015:

### November 2014--January 2015 media coverage¶

- 114. → AMSA media coverage reached a cumulative audience of more than 122 million in 3,054 media clips between November 2014 and the end of January 2015. The media activity report for this period can be seen at **Attachment A**.¶
- 115. → The highest volume of coverage by a local single outlet was provided by Lloyd's List.¶
- 116. → The highest cumulative audience (8.1 million) was reached by coverage provided by The Daily Telegraph.¶
- 117. → Media outlets based in Queensland provided the highest volume of coverage (447) due to clips related to the Great Barrier Reef.¶
- 118. → 110 media enquiries were received, with key issues being:¶
  - (a) → follow-up action regarding the domestic commercial vessel involved in man-overboard fatality near Perth, WA;¶
  - (b) → man-overboard from cruise ship *Sun Princess*;¶
  - (c) → *Thor Commander* incident in the Great Barrier Reef;¶
  - (d) → plane crash during Sydney to Hobart yacht race;¶
  - (e) → helicopter crash in far North Queensland;¶
  - (f) → new shipping routes;¶
  - (g) → Maritime 2014; and¶
  - (h) → [banning of ships from Australian ports due to regulatory violations](#).¶



## **BOARD – FOR OFFICIAL USE ONLY**

Paper No. 2015–211–6

### **FEDERAL COURT CHALLENGE TO USE THE NATIONAL LAW EMERGENCY SUSPENSION POWER**

#### **PURPOSE**

1. The purpose of this paper is to advise the Board about a recent Federal Court matter that arose from the suspension of a National Law Certificate of Operation.

#### **BACKGROUND**

2. The National Law contains a range of powers, including the power to suspend certificates. In most circumstances these powers cannot be exercised unless the certificate holder has been afforded natural justice through a 'show cause' process. However, in some limited circumstances the suspension power must be exercised, and is exercisable, whether or not the certificate holder has been afforded natural justice. Provisions of the National Law that do not require 'show cause' are sections 41(2) (for Certificates of Survey), 51(2) (for Certificates of Operation) and 63(2) (for Certificates of Competence).
3. The power to suspend a certificate must be exercised if the National Regulator is satisfied that the suspension is necessary for the purpose of:
  - (a) protecting human life; or
  - (b) securing the safe navigation of vessels; or
  - (c) dealing with an emergency involving a serious threat to the environment.
4. The first exercise of one of these powers occurred on 13 November 2014, when a National Law delegate in Western Australia suspended a Certificate of Operation for the purpose of protecting human life.
5. The National Law delegate exercised the emergency suspension power in relation to a charter vessel operator because a number of safety issues gave rise to the likelihood of a threat to human life. These included incomplete implementation of the safety management system, doubt about the serviceability of firefighting and lifesaving equipment, changes in log book entries and lack of clarity about compliance with passenger number limitations. The certificate holder applied to the Federal Court for a judicial review of that decision. The Federal Court granted a 'stay' of the decision on 24 December 2014, which in effect meant the suspension of the Certificate was temporarily 'lifted'.
6. In granting the stay, the Federal Court did not make a final decision as to the lawfulness of the delegate's decision. Rather, it exercised the Court's discretion, based on a balancing of various competing factors, to temporarily 'lift' the suspension until the substance of the application for review could be considered by the Court.

In doing so the Court did not find that the regulatory actions were incorrect or inappropriate – identifying that ‘there were clearly challenges in the arguments that are advanced by [the Applicant]’ – and set the review of regulatory decision down for hearing on 10-11 February 2015, noting that [the Applicant] would be ‘under the microscope by AMSA’ until then.

7. The original decision maker revoked the suspension decision on 23 January 2015 because all matters of concern that caused the original decision to be made had been rectified and, by consent between the parties, the Federal Court matter was then dismissed.
8. All decisions made by the National Regulator, its delegates and Marine Safety Inspectors are potentially subject to judicial and/or merits review, among other avenues of accountability. Given the size of the domestic commercial vessel fleet and the number of domestic seafarers, and as jurisdictional delegates become more aware of the powers available under the National Law, it is likely that decisions impacting on operators’ and seafarers’ ability to operate and work freely will increase.
9. When a decision results in a business being unable to continue to trade or an individual being unable to continue to make a living, the probabilities of judicial or merits review of the decision are high.
10. If a decision that affects the ability of an operator to trade has been made without affording the person natural justice the Court can reasonably be expected to scrutinize the circumstances, very closely. Decisions, under the National Law, to suspend a certificate for the purpose of protecting human life, securing the safe navigation of vessels or dealing with an emergency involving a serious threat to the environment, fall squarely within this class of decision.
11. The National Regulator and its delegates and Marine Safety Inspectors must be meticulously careful in the exercise of these kinds of powers. In the current case, to assist the operator the delegate could have expressed in more detail the reasoning behind the emergency suspension, including actions that could be considered by the operator to address the National Regulator’s concerns about the operation.
12. As a result of this case, the National Regulator has prepared a ‘Guidance Note’ to assist delegates to exercise suspension powers, and to highlight some of the steps that should be taken to increase the probabilities of making, and being able to demonstrate the making of, the correct and preferable decision at the time.

## **FINANCIAL/IT IMPLICATIONS**

13. AMSA engaged the Australian Government Solicitor to represent the National Regulator in court proceedings, and also agreed to pay part of the Applicant’s costs to avoid the need to have the Court make an order in this regard.

## **RECOMMENDATION**

14. It is recommended that the Board note the paper.

**Approved by:**

18 February 2015

**JOHN FLADUN**  
General Manager  
Domestic Vessel Division

**Author:** Clinton McKenzie

<b>FINANCIAL/IT IMPLICATIONS</b>	<b>CONSIDERED BY GM CSD</b>	<b>N/A</b>
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## BOARD – FOR OFFICIAL USE ONLY

Paper No. 2015–212–5

### REVIEW OF NATIONAL SYSTEM OPERATIONAL ARRANGEMENTS

#### PURPOSE

1. The purpose of this paper is to advise the Board of the operational deficiencies with the current National System model; potential remedies; and the risks in pursuing some of those remedies prior to transition to the new AMSA service delivery model.

#### BACKGROUND

2. In November 2013 the Transport and Infrastructure Ministerial Council (TIC) agreed to a review of the service delivery arrangements for the National System for Domestic Commercial Vessel Safety (the National System). This decision was based on preliminary observations that the National System was not fully delivering the expected outcomes of the reform – consistent service delivery; consistent application and interpretation of the rules; and a consistent approach to compliance and enforcement around the country.
3. In order to ensure support from the Deputy Prime Minister on AMSA's concerns about the operational model for the National System, AMSA prepared a briefing for the Minister in March 2014. This briefing, amongst other things, highlighted flaws in the current model, in particular the limited control AMSA has over key aspects of the system such as its delegates and sub-delegates and appointed marine safety inspectors.
4. In 2014 AMSA, with the assistance of consultants Protiviti and Mr Geoff Gorrie, PSM (as independent reviewer), and in collaboration with jurisdictional maritime agencies, undertook a comprehensive review of the service delivery arrangements under the model established by the Inter-Governmental Agreement (IGA). The review outcomes and recommendations were reported to TIC in November 2014, and consequently TIC agreed the key recommendation that AMSA transition to becoming the service delivery agent (in place of the States/NT) for domestic maritime safety by July 2017, with full implementation of the new model by July 2019. It now appears more likely that AMSA will need to fully assume service delivery (and have a national fee in place) by mid-2017 not 2019. This is because a number of jurisdictions (NSW, WA and NT) have indicated a desire to transfer services earlier, whilst South Australia has stipulated it will have transferred all services to AMSA by July 2017. This is relevant to this paper because it means that AMSA will need to operate under the current deficient model for two, not for four years.
5. In January 2015 AMSA created and filled the position of 'National Operations Manager' within the Domestic Vessel Division. Given the high profile Dolphin Dive matter in late 2014 it was considered timely to have this new manager undertake an 'operational review' of 2014, with a particular focus on the effectiveness of how AMSA and its delegates and sub-delegates have operated and on areas for improvement. This review is currently well underway and its outcomes will be reported to the Board.

## ARRANGEMENTS AND DEFICIENCIES

### General

6. The IGA reflects a series of compromises negotiated with jurisdictions to obtain final agreement. These compromises led to design elements of the National System which undermine AMSA's capacity to deliver the fundamental objectives of the reform and threaten to jeopardise both the short and longer term benefits of a single system. The design features also mean that it is difficult for AMSA to effectively manage and discharge its functions.
7. Under the current National System, AMSA is reliant on the cooperation and financial support (approx. \$4.2m per annum) of the jurisdictions. The system dictates that AMSA is reliant on its delegates, sub-delegates and appointed maritime safety inspectors to perform many of the functions of the National Regulator. These officers are employed by the State/NT governments and AMSA has no managerial control and little oversight over them. Many of these officers have worked under previous State/NT arrangements and rules and continue to demonstrate a 'cultural' preference and disposition for the previous 'ways of doing things'. Despite significant training efforts by AMSA both in the lead up to commencement and since, consistency in the application and interpretation of the rules, regulatory decisions, the issuing of certificates and compliance and enforcement actions remains problematic.

### Delegation arrangements

8. The National Law gives AMSA the power to delegate its functions and powers to officers of a Commonwealth or State/NT government agency (section 11, Schedule1). Delegates and sub-delegates are subject to any directions of the National Regulator. These directions are contained in the instrument of delegation. The issue of directing delegates and sub-delegates was contested by jurisdictions when developing the National Law, but represented one of AMSA's few wins in the negotiations. One of the design flaws in the delegation arrangements is that the National Law stipulates that the National Regulator must not delegate a power or function without the agreement of the State/NT. In the lead up to commencement this caused AMSA considerable difficulty – a number of jurisdictions used this as a bargaining point for particular allowances. For example, Queensland was not prepared to accept the draft initial delegations unless AMSA provided assistance and resources to Marine Safety Queensland to process their initial batches of applications for certificates of operations. More importantly, the condition on delegating powers and functions means that States/NT are in a superior negotiating position when it comes to the nature and extent of the delegation.
9. The delegation arrangements are made through an instrument of delegation to the primary delegate (provided the State agrees). The primary delegate is normally the director general/chief executive of the transport department in the State/NT. Each delegate (there are only seven – one in each jurisdiction) has the power to delegate certain powers specified in the instrument, such as the power to issue certificates, subject to directions in the instrument of delegation. The primary delegate's instrument of delegation contains a standard form for sub-delegation to other officers in the agency. Any directions included in the delegation to the primary delegate also apply to the sub-delegate.
10. The power delegated to each primary delegate includes the power to appoint maritime safety inspectors (MSIs) within their agency. There is a standard form of MSI appointment.

11. There is no legal imperative for the National Regulator to delegate (and provide for the sub-delegation of) powers and functions. The system could operate with marine safety officials acting merely as administrators, collecting information and making recommendations to 'central office' AMSA delegates. However, neither the policy intent nor the funding arrangements in the IGA contemplates such an alternate arrangement. In the IGA and National Law negotiations most jurisdictions were highly protective of an ongoing and controlling role for their staff and shunned the exercise of powers and functions by 'central office' AMSA delegates. This is reflected in the IGA.

### Directions to delegates

12. There are both general and specific directions contained in the delegations to primary delegates (which are then applicable to sub-delegates).
13. General directions include:
  - (a) having regard to the National Regulator policies either given to the delegate or contained in documents, such as the 'Delegate's Handbook' and the 'Compliance and Enforcement Manual';
  - (b) the primary delegate must cooperate in any investigation into the sub-delegate's fitness and competency and give the National Regulator any information about the exercise of powers that the National Regulator might need for an external audit;
  - (c) the primary delegate must provide the National Regulator a copy of any sub-delegation instrument or any revocation of the sub-delegation within seven days; and
  - (d) the delegate must revoke a sub-delegation if after consultation the National Regulator tells the primary delegate that the sub-delegate is no longer considered fit or competent to perform the role.
14. Specific directions include:
  - (a) the delegate must give access to electronic information held or send information on request about the exercise of powers;
  - (b) the exercise of the 'emergency suspension powers' requires a report by the delegate as to the circumstances that led to the exercise of the power within two days after the suspension; and
  - (c) in exercising the delegated power to appoint an MSI, the delegate must have the requisite satisfaction that the appointee has the necessary qualifications and experience, and that they have completed the appropriate National Regulator training prior to appointment.
15. There are varying degrees of compliance by delegates/sub-delegates with directions requiring the provision of information. This impacts the temporal accuracy of information in the national data management system. A specific example here are marine incident reports where AMSA is only provided with a portion of the reports received by the States and constantly needs to pursue details about incidents.
16. There have been instances in which instruments of delegation and MSI appointments do not reflect known changes in officeholders or appointees.

17. In one instance it is suspected that a delegate either did not action the revocation of a sub-delegation and MSI appointment or did not provide a copy of the revocation (as is required by the direction), despite being informed by the National Regulator that the sub-delegate/MSI was no longer considered a fit or competent person to hold those offices.
18. In the same matter AMSA's efforts to have a particular MSI investigated for alleged improper conduct was met with outrage, substantial resistance and threats of 'walking away' from the National System. Requests to be provided with a full suite documentary evidence led only to partial disclosure of documents. Subsequent interest in the matter by the Australian Federal Police will probably see the marine agency concerned being served with a warrant to produce the relevant documents.
19. Enforcing compliance with directions given to delegates and sub-delegates is challenging. A number of jurisdictions characterise AMSA's directions power as an unwarranted intrusion on their 'sovereignty'. Given AMSA's current reliance on the States to provide funding, accept delegations, and undertake the bulk of service delivery and compliance work, AMSA has been reluctant to assume a forceful approach to compliance. In perspective, this involves a balance between ensuring an effective operating environment for the current National System and the possibility of one or more jurisdictions withdrawing from the system before AMSA is ready to take full control, or a serious deterioration in relations during the delicate negotiations towards a new service delivery and funding model.

### Sub-delegates

20. There are approximately 160 State/NT staff undertaking work on domestic commercial vessel safety matters across the jurisdictions. Of these, some 77 'positions' have been sub-delegated powers, whilst 22 individually named officers have also been delegated powers. Of the 160 officers not sub-delegated powers and functions, these staff undertake administrative and assistance roles to those sub-delegates who actually exercise the formal powers and functions.
21. Achieving consistent decisions and transactional approaches across 77 'State owned' sub-delegates is immensely difficult. Often sub-delegates attempt to transfer difficult decisions onto AMSA as National Regulator. In effect sub-delegates occasionally refuse to make a decision on matters, for example the issuing of a certificate, and inform the applicant to 'seek an internal review' by AMSA. This moves the work load from the sub-delegate to the central office. Jurisdictions have been reminded on several occasions to refrain from this, and there is evidence that this has had some impact.

### Marine safety inspectors

22. There are two types of marine safety inspectors (MSIs) – those directly appointed as such by the primary delegates or the AMSA CEO and all members of the Federal, State and NT police forces who are automatically appointed under the National Law by virtue of their police membership.
23. There are currently 356 appointed MSIs, coming from the State/NT marine agencies, Fisheries in Queensland and NSW, some Parks and Wild Life officers in Queensland and a number of Great Barrier Reef Marine Park Authority officers.

24. It is difficult to tell how many Federal and State/NT police officers there are across Australia (there could be thousands). Each of them is automatically an MSI. However, we do know that most police officers will not exercise compliance and enforcement powers unless they have been trained by AMSA. At this stage, some 220 police officers have received this training.
25. Experience tells us that there are very few problems with police MSIs. They invariably seek and follow advice from AMSA before exercising powers and are not influenced by 'political' or regional pressures. Unfortunately, the same cannot be said of appointed MSIs, especially those from the marine agencies who have shown a vulnerability to be swayed by local influences. A number of MSIs have raised concerns with AMSA that they have been restricted in the exercise of their National Law powers by their employer. In some cases this has extended to breach reports not being passed to AMSA and notices being 'lifted' where this might not have been the preferable or appropriate action.
26. In addition, marine agency MSI's retain a historical empathy for how compliance and enforcement was managed under previous State arrangements. This is sometimes at odds with AMSA's published compliance and enforcement manual. The diagrams at **Attachment 1** demonstrate the variations in approaches across some jurisdictions with compliance and enforcement actions.

### Sub-delegate and MSI training

27. There has been both initial and ongoing training of sub-delegates in the National Law and National System. Training through attendance at 'National Regulator Delegate Information Sessions' is a prerequisite for appointment of a sub-delegate. These sessions have been delivered face to face and in some cases by teleconference to remotely located sub-delegates. It has become evident that the 90 minute briefing sessions are inadequate, and further work is required to provide delegates with the requisite knowledge to properly administer and fulfil the National Regulator's obligations and make correct and appropriate decisions.
28. AMSA delivered initial training to some 410 appointed MSIs and 220 police officers, and refresher training has been delivered to around 300 MSIs in 2014. This refresher training is ongoing and so far has been provided to an additional 107 MSIs including police officers in 2015.
29. AMSA has received a number of requests from police in NSW and Queensland to deliver training specific to the needs of police. This training has been scheduled and should result in a further 40 officers receiving initial training before the end of the financial year.
30. Training is resource intensive and requires a considerable time commitment. An increase in training effort is planned, especially for police MSIs, given the potential need to rely on them for compliance and enforcement activities under the new service delivery model.

## POTENTIAL REMEDIES

### Ultimate solution

31. It is believed that the new service delivery and funding model will ultimately rectify most if not all the deficiencies in the current operating model. Once AMSA is the true National Regulator and 'owns' the National System and receives its funding from industry rather than the States/NT, it will not be encumbered by the design flaws of the current model and the dictates of the jurisdictions. The National Regulator will have direct management and control over its functions and powers under the new model.
32. However, in the meantime, there are a number of options AMSA could pursue to improve operational aspects of the current model (a number of which will be highly unpalatable to some jurisdictions).

### Interim solutions

33. AMSA proposes undertaking more sub-delegate and MSI training in 2015.
34. **A greater domestic vessel regional presence.** At the start of the National System, a number of 'liaison officers' were placed in the regions to assist sub-delegates, MSIs and industry with the new arrangements. This set up worked well. Over time some of these officers have left AMSA, and some have been diverted to other key projects, such as the roll out of safety management systems and the new Part D qualification requirements and processes. In the lead up to the new service delivery model AMSA is looking to build a domestic vessel regional capacity. This will involve the establishment of 'regional officers' – 'go to' officers – in each State. This has been factored in to staffing numbers for the new model and the estimated \$20m it will cost to run the whole new system. This resource will assist MSIs and (while we still have them) sub-delegates in properly discharging National Law powers and functions.
35. AMSA will take further steps to tighten up delegation arrangements and instruments and encourage jurisdictions to maintain and provide better records.
36. AMSA could start a program of auditing the actions of delegates, sub-delegates and appointed MSIs against a set of standard published expectations and compliance with directions. However, this may be seen by some jurisdictions as a radical and intrusive manoeuvre.
37. AMSA will also remind jurisdictions (again) that directions contained in delegations and sub-delegations are binding.

### Risks with interim remedial action

38. Any proposed remedial action will need to be managed delicately with the jurisdictions. Any demands or dictation, forceful or otherwise, by AMSA on jurisdictions will be seen by some as a threat to their 'sovereignty' and has the potential to jeopardise ongoing relations and negotiations on the new service delivery and funding model.

## PROPOSED WAY FORWARD

39. Whilst the current IGA remains operative, and ahead of the full transition to the new service delivery and funding model, the expectation is that arrangements and relations between the National Regulator and its jurisdictional delegates will continue to be 'cooperative'.

- 40. As a precursor to the proposed remedial actions listed above, it is proposed to use the next Maritime Agencies Forum meeting in June as a workshop to table, discuss and attempt to resolve, as far as possible, the present operational deficiencies identified in this paper including the outcomes from the operational review of the Dolphin Dive matter.
- 41. The outcomes of this exercise will be reported back to the Board.

**FINANCIAL/IT IMPLICATIONS**

- 42. The remedial actions identified in this paper, especially those relating to additional training of MSIs and sub-delegates and potential audits will have resource implications; however, additional resources can be accommodated within the current Domestic Vessel Division funding envelope.

**RECOMMENDATION**

- 43. It is recommended that the Board:
  - (a) note the design flaws and operational deficiencies of the current National System;
  - (b) consider the potential interim remedial options; and
  - (c) agree the proposed plan to address, as far as possible, the identified National System operational deficiencies.

**Approved by:**

8 April 2015

**JOHN FLADUN**  
 General Manager  
 Domestic Vessel Division

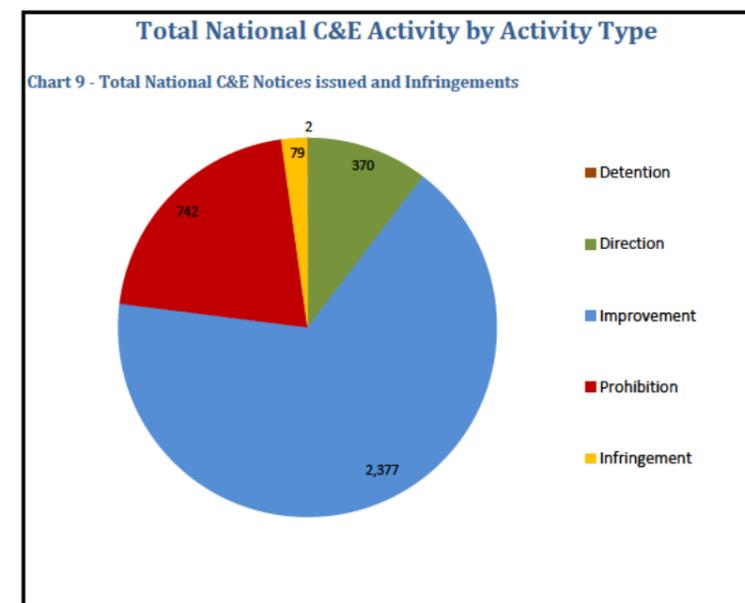
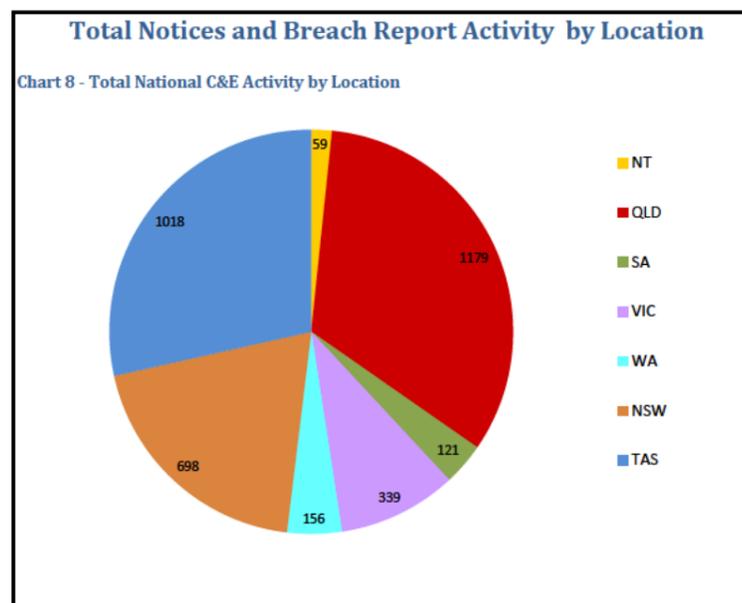
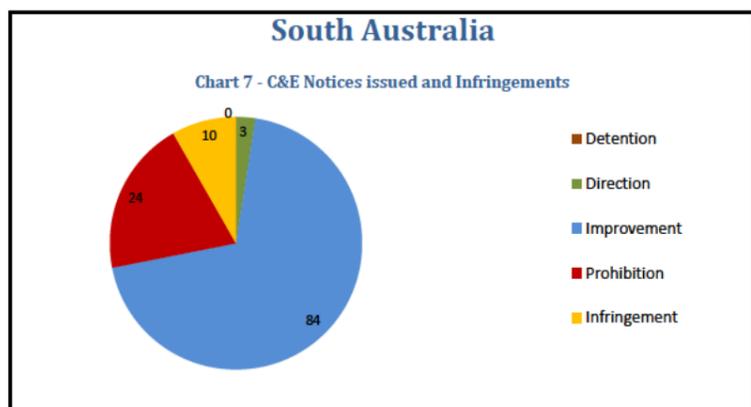
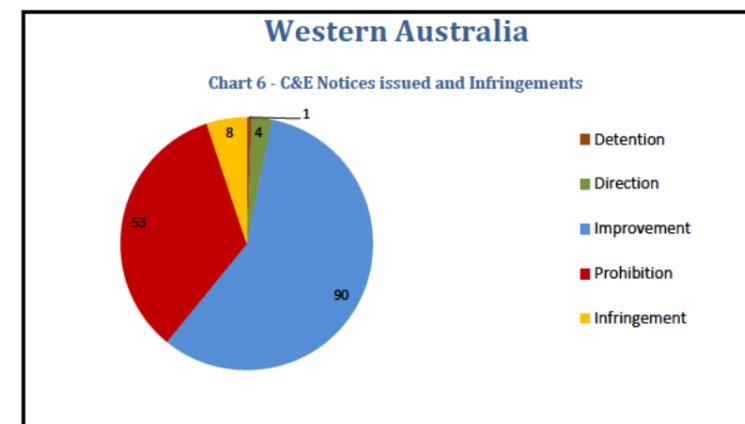
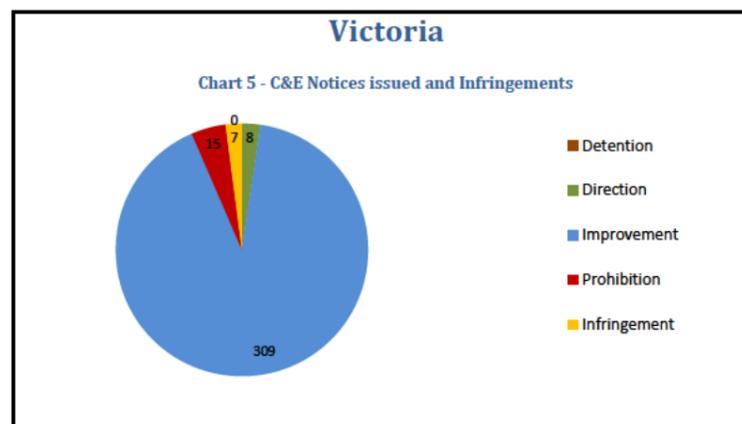
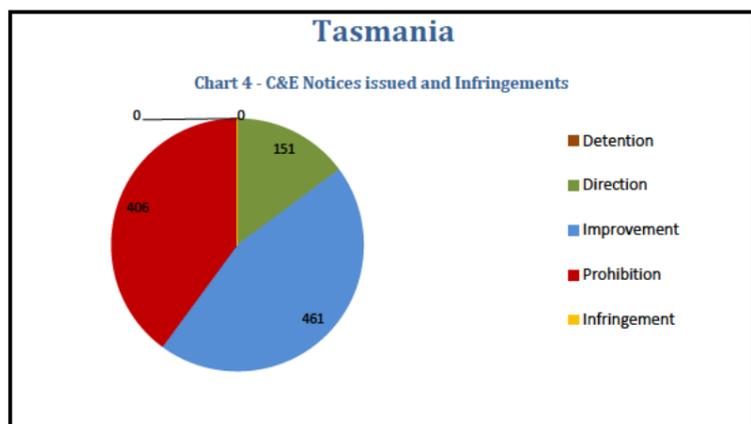
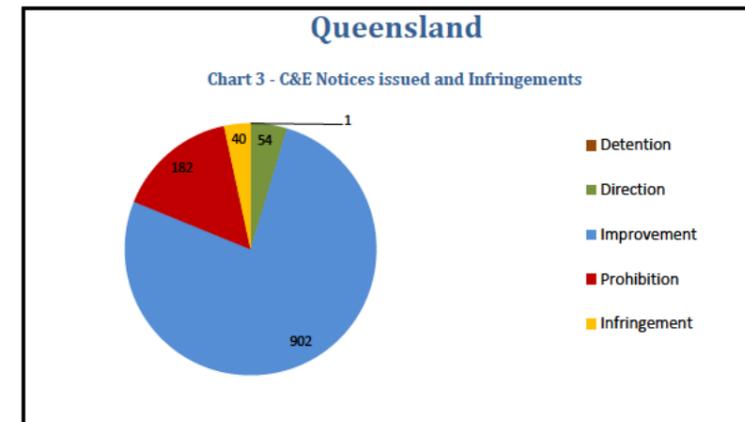
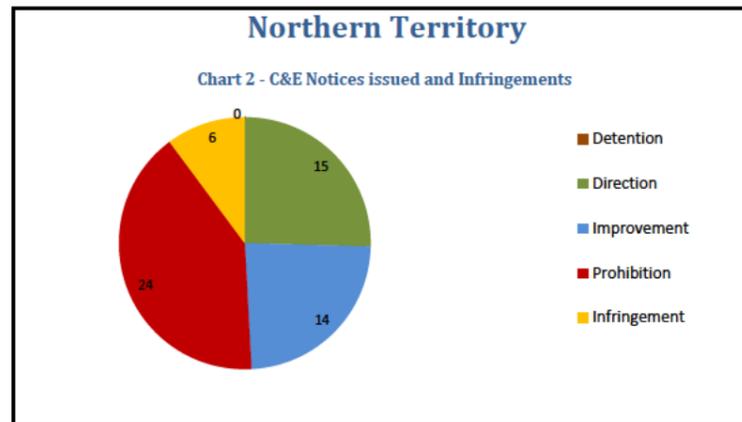
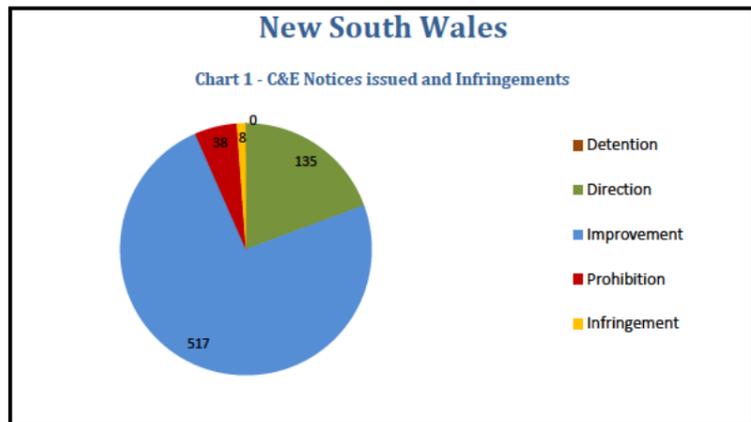
**Authors:**

Brian Hemming, Clinton McKenzie, John Fladun

FINANCIAL/IT IMPLICATIONS	NOT CONSIDERED BY GM CSD	N/A
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SENSITIVE - FOR OFFICIAL USE ONLY  
**C&E Activity (1 July 2013 - 28 Feb 2015)**

National Statistics



- Notes:**
- 1 Chart figures reflect information extracted from the National Data Management System ('NDMS') and information received directly from State/ Territory marine safety agencies from 1 July 2013 up to 28 Feb 2015.
  - 2 Tasmania and New South Wales chart figures include data provided on request directly from the Location.
  - 3 Chart figures do not include draft notices in the NDMS.
  - 4 Significant growth in C & E Activity since April 2014 shown with Notices in WA, Infringements in QLD, and the first two Detention notices issued (WA & QLD).
  - 5 In addition to the above activity by location, 1x Infringement was issued to an operator in ACT