



Dr Jane Thomson  
Committee Secretary  
Standing Committee on Rural and Regional Affairs and Transport  
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Dear Dr Thomson

### **Right of reply - Maritime Union of Australia submission**

Thank you for your letter of 15 May 2019, offering AMSA a right of reply in relation to matters raised in the submission of the Maritime Union of Australia (MUA) to the Committee's current inquiry into the Performance of the Australian Maritime Safety Authority (AMSA).

While most of the recommendations in the MUA submission are relevant to AMSA and its operations, they raise matters of Australian Government policy. Accordingly, we have provided some general commentary on the themes raised in the submission for consideration by the Committee.

In relation to Table 3 and Appendix 4 of the MUA submission, your letter notes that this includes information from 'personal correspondence' from AMSA. The data appears to be compiled from a range of sources, including data developed by AMSA some time ago. It would be appreciated if the Committee could note that AMSA has since revised its reporting to more accurately capture operational incident data and distinguish that information from other incidents such as illness or dive-related accidents.

The MUA submission discusses the composition and membership of the AMSA Board. The AMSA Board is a governance board and the Minister appoints Board members based on their ability to make a contribution to the governance of the organisation. Any recommendations about the composition of the Board are a matter for the Government.

Thank you for the opportunity to respond to the MUA submission. I understand and agree that the Committee publish a copy of AMSA's response on the Inquiry website.

Yours sincerely

**MICK KINLEY**

12 June 2019



**Australian Government**

**Australian Maritime Safety Authority**

**Australian Maritime Safety Authority**  
**Right of Reply - Maritime Union of Australia submission**

**Senate Standing Committee on Rural and Regional Affairs  
and Transport - Inquiry into the Performance of the  
Australian Maritime Safety Authority**

**12 June 2019**

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## Response

The Australian Maritime Safety Authority (AMSA) thanks the Committee for the opportunity to respond to the Maritime Union of Australia's (MUA) submission to the senate inquiry into the performance of AMSA.

The submission is wide-ranging and covers a number of issues that are beyond the remit of AMSA. Broad policy issues, including the policy of the Navigation Act 2012 (the Navigation Act) and the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (the National Law), are matters for the Department of Infrastructure, Transport, Cities and Regional Development.

We have limited our response to only matters for which AMSA has direct responsibility and fall broadly under:

- Workplace health and safety
- The National System
- Investigations into fatalities
- Data and reporting
- Stakeholder engagement

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## Workplace health and safety

The submission raises a number of concerns around workplace health and safety (WHS) in the maritime sector.

An object of the National Law is that it form part of a cooperative scheme between the Commonwealth and the states and the Northern Territory that provides a single national framework for ensuring the safe operation, design, construction and equipping of domestic commercial vessels – this is a different (but related) responsibility to that placed on WHS regulators.

The National Law provides that where there is a conflict between a requirement of the National Law, and a requirement of a state or territory WHS law, the latter will prevail to the extent of any inconsistency. Further, if a person is convicted for conduct that is an offence under a state or territory WHS law they cannot be convicted for an offence constituted by the same conduct under the National Law and vice versa.

The National Law plays its part by providing for development and application of consistent national standards related to safe operations (including qualifications and crewing), design, construction and equipment on these vessels. The National Law also includes general safety duties that require, among other things, that a vessel is operated safely and has a safety management system. These requirements are designed to operate concurrently with the requirements under the model WHS Act. We acknowledge that some operators focus only on fulfilling their general safety duties under the National Law and are largely unaware of the broader obligations they hold under WHS legislation, despite the model WHS legislation defining vessels as workplaces.

While education about WHS obligations is a matter for the relevant WHS authorities, AMSA is providing a range of educational activities targeted to the domestic commercial vessel industry through workshops and publications explaining the broad general safety duties imposed by the National Law, including the requirement to have a safety management system. AMSA notes that Model Codes of Practice or guidance on WHS laws and the applicability of the WHS laws to the sector and the WHS risks that need to be managed would sit under the WHS regime (including stevedoring). If the model WHS laws went down this path, AMSA would support and offer guidance on how a duty holder can meet their general safety duties.

AMSA has memoranda of understanding (MoUs) with state and territory WHS authorities that set out the guidelines under which AMSA and the respective WHS regulator will respond to maritime workplace incidents on domestic commercial vessels and wharves. These MoUs also provide guidance on working together to maximise educational and compliance activities directed towards enhancing maritime safety.

As a general statement, AMSA acknowledges that the interaction between the National Law and state and territory WHS laws does result in some operators being confused as to AMSA's role in enforcing WHS requirements on domestic commercial vessels. We will continue to explore opportunities to ensure that stakeholders understand AMSA's role, including working with other bodies, including Safe Work Australia, to ensure that the maritime industry is subject to appropriate and consistently applied WHS requirements.

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## The National System

The establishment of the National System and centralisation of maritime safety regulation was a significant reform, and we acknowledge that the adjustment has been challenging for some stakeholders. AMSA also acknowledges that the National System is imperfect and can be further improved to enhance safety outcomes.

To establish a single national jurisdiction a basic principle of the National System was - and remains - the consistent application of, and compliance with, one single set of safety standards for domestic commercial vessels – subject to the preservation of grandfathered arrangements for existing vessels.

The MUA submission suggests that safety standards have degraded since the National Law came into effect. On the contrary, AMSA has taken clear and significant steps to lift standards across the industry - despite the challenges inherited through grandfathering arrangements. For example, the mandatory use of Emergency Position Indicating Radio Beacons (EPIRBs) and transitional requirements for vessels to have to have contemporary safety equipment.

AMSA recognises that the regulatory environment is complex and we are working to streamline requirements to make it clearer for industry. The Government's Deregulation Agenda sets out a commitment to improving the quality of regulation, including minimising the regulatory compliance burden on the community. It established the Regulatory Burden Measurement framework (for calculating the compliance costs of proposed regulatory changes) and the Regulator Performance framework (to minimise the impact of regulators on those they regulate while still delivering the vital role they perform). AMSA, like other Australian Government agencies and regulators, is required to comply with these frameworks.

Meeting these obligations has required AMSA to apply a risk-based approach to regulation and compliance. We have achieved significant net reductions in regulatory compliance costs for industry. Importantly, while meeting the Government's requirements, AMSA has continued to meet its core statutory obligations to maritime safety and marine environment protection.

### Exemptions and flexible arrangements

The diverse nature of the domestic commercial vessel fleet, and the need to ensure the smooth transfer of responsibility from state and territory marine safety agencies meant AMSA had to take a flexible approach. The exemption power in section 143 of the National Law provides legislative power to AMSA to provide for flexibility in some instances. AMSA can only exercise this power if satisfied that doing so will not jeopardise the safety of a vessel or a person on a vessel.

General exemptions that apply to a class of person or vessel can only be issued by AMSA's Chief Executive Officer and are generally subject to strict eligibility criteria and conditions being met. [These exemptions are publicly available on the AMSA website.](#)

Vessel owners generally have to apply to access these exemptions, with approvals issued for a specific vessel being subject to additional conditions.

'Specific exemptions' granted to a specific vessel or group of common vessels contain vessel and operator specific information, including commercially valuable information, and therefore are not considered appropriate for publication on the AMSA website. In addition to strict internal protocols, [AMSA's policy on issuing specific exemptions is available on AMSA's website.](#)

AMSA monitors areas of the National Law, including marine orders, where exemptions are frequently sought and identifies the reasons for these applications for exemptions so that we can work with relevant sectors of industry to identify an effective means of compliance without the need for a specific exemption.

### Marine Order 504 and operational safety requirements

*Marine Order 504 (Certificates of operation and operation requirements – national law) 2018* (Marine Order 504) sets out operational safety requirements for domestic commercial vessels. Among other things, it covers crewing (including determining the appropriate number of crew and their competencies and qualifications); and identifying and providing additional on-board inductions and training.

Importantly, Marine Order 504 applies long-standing concepts of minimum and appropriate crewing applied by states and territories and approved by the Council of Australian Governments (COAG) over many years – through Parts D and E of the National Standard for Commercial Vessels (NSCV). These arrangements were developed in light of the diverse nature of the domestic commercial vessel industry, and balance the need for prescriptiveness (minimum crewing) with the need for operators to assess whether additional or more experienced crew are needed for their particular operation.

Since 2013, AMSA has used Marine Order 504 as a transitional pathway to compliance with the operational requirements in NSCV Part E - initially by requiring new vessels and passenger vessels to comply with Part E - but allowing other vessels to continue under grandfathered operational safety requirements.

In 2018, Marine Order 504 was revised with all operational requirements in NSCV Part E incorporated to create a 'one stop shop' for operational safety requirements. From 1 July 2018, all domestic commercial vessels must comply with contemporary operational safety standards (other than crewing for grandfathered vessels). There is also an increased focus on documenting assessment of appropriate crewing - having regard to a comprehensive range of factors. This places greater responsibility on the owner to maintain an appropriate level of crewing that fits the unique operations and risks of the vessel.

'Minimum crewing' also replaced the NSCV Part E concept of 'core complement'. A vessel may only operate with the number and qualification level of crew specified in the 'minimum crewing' table in Marine Order 504 where this is supported by a documented appropriate crewing assessment. Our engagement with industry and state/territory marine safety agencies indicated that 'core complement' had proved confusing, arbitrary and poorly calibrated to the large proportion of small vessels in the commercial vessel fleet. It was a perverse incentive to owners of existing vessels not to make changes to their ageing vessels that would cause them to lose access to grandfathered crewing arrangements.

The challenge is to establish an even playing field and strike a balance that promotes safety for all sectors without making requirements overly complex for simple operations, and vice versa. We do understand that there is a desire for more prescriptive requirements for some sectors, particularly larger vessels, passenger vessels and fishing vessels.

As highlighted at the inquiry hearing in April 2019, AMSA has undertaken a further review of the operational requirements in Marine Order 504, with a specific focus on arrangements used to account for passengers, minimising the risk of passengers falling overboard, and increasing their chance of survival if passengers go overboard. During this review, we have focussed on the passenger vessel industry – that is, vessels carrying more than 12 passengers. We intend to commence public consultation on possible changes shortly.

### Marine Order 505 and qualifications requirements

AMSA has listened carefully to the concerns of our stakeholders that find the qualifications framework is complex and the structure of the legislation, regulations and standards is difficult to understand. AMSA agrees it is complex. The current qualifications framework consists of:

- *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*
- Marine Order 505 (Certificates of competency – national law) (Marine Order 505)

- National Standard for Commercial Vessels Part D – Crew competencies
- National Regulator Endorsements Approval 2014
- 23 qualifications-related exemptions.

There is a need to provide a single source of policy on qualifications. There is also scope to update the qualifications framework for lower grade certificates, streamline certificates of competency, and revise the valid duration of some certificates of competency to reduce the regulatory burden and complexity on industry.

AMSA has reviewed Marine Order 505 and established an Industry Reference Group (IRG), of which the MUA is a member, to support this review. The IRG met three times. AMSA considers it is now time to consult the wider industry and seafarers directly to obtain their views on Marine Order 505. We intend to consult in the second half of 2019.

AMSA's proposed consultation on the marine orders is consistent with the policy statement by the Deputy Prime Minister on the National System for Domestic Commercial Vessel Safety<sup>1</sup>. Specifically, that AMSA engage with industry on a range of important matters including:

- the most efficient and effective ways to deliver services to industry
- opportunities to reduce costs to industry without compromising safety and
- ways to reduce administrative burden so industry can get on with the job.

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## Investigations into maritime fatalities

Any fatality that occurs in the maritime sector is a tragedy.

AMSA considers all serious incidents and fatalities reported to it. In some cases it is more appropriate for state and territory police or WHS agencies to lead investigations and recommend prosecutions. This is determined through a cooperative approach on a 'case by case' basis. This is particularly important because the National Law expressly prevents prosecution for the same conduct under both the National Law and state/NT laws. AMSA has MoUs with state and territory WHS agencies that set out guidelines under which AMSA and the respective WHS regulator will respond to maritime incidents. These MoUs also provide guidance on working collaboratively to maximise educational and compliance activities directed towards enhancing maritime safety.

AMSA also actively participates in the coronial processes to better understand the events and factors that contributed to an incident and, where possible, take steps to prevent these events from reoccurring. We may provide written submissions, make senior officers available to appear, answer requests for advice or documents, respond to reports, and act upon coronial recommendations.

To date, AMSA has participated in and assisted the conduct of coronial investigations and inquests in several jurisdictions arising out of the deaths of 17 persons since July 2013.

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<sup>1</sup> Deputy Prime Minister on arrangements from 1 July 2018 for the National System for Domestic Commercial Vessel Safety <https://www.infrastructure.gov.au/maritime/safety/nsdcvs.aspx>

Incidents over the past decade illustrate problems with some of the historical vessel standards, and survey and crewing arrangements, which have been grandfathered under the national system. A number of state and territory coroners have recommended the removal of some or all grandfathering arrangements, to address problems with the standards of grandfathered vessels. AMSA intends to work collaboratively with government and industry to look at options for improving the standards and safety outcomes for grandfathered vessels.

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## Data and reporting

AMSA recognises and supports the principle of transparency. We acknowledge that capture of maritime incident data and reporting can be improved. This limitation is, in part, a result of the inconsistencies in the way data was collected across different jurisdictions before the National System commenced.

Since assuming full responsibility for service delivery of the National System from 1 July 2018, our visibility of the size, demographics and unique issues associated with the domestic commercial fleet is continuing to improve. Over time, domestic vessel data will expand and improve and we will be in a better position to disseminate data, where there is a public good in doing so.

In relation to the MUA's particular interest in incident reporting, each month [AMSA compiles and publishes a summary of the serious marine incidents \(related to domestic commercial vessels\) on our website](#). We are also investing in data analysis to learn from and produce better metrics around this data.

AMSA would also welcome the opportunity to work with Safe Work Australia, research organisations and other peak bodies, including the MUA, to enhance reporting of marine incidents in the sector.

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## Stakeholder engagement

Stakeholder engagement is a crucial part of AMSA's regulatory development processes. We use a number of different forums and mechanisms to consult and engage our stakeholders, including:

- open public consultation process
- advisory committees
- industry led committees
- temporary working groups established for a specific topic or proposal
- an established regionally-based liaison officer network; and
- direct engagement with individual stakeholders.

AMSA welcomes the MUA's participation in these processes, including its membership of a number of key committees, and looks forward to continuing to work in a positive way with the MUA to improve maritime safety in Australia.

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