AIMPE

Australian Institute of Marine and Power Engineers

AMOU

Australian Maritime Officers Union

Joint- Submission

By the ***Nautilus Federation of Australia***
(AMOU & AIMPE)
to the
Independent Inquiry
as to
whether the
Domestic Commercial Vessel National Law
is Fit-for-purpose.

28 March 2022

EXECUTIVE SUMMARY

This submission is made jointly on behalf of the masters and deck officers members of the Australian Maritime Officers Union and the chief engineers and engineer officers members of the Australian Institute of Marine and Power Engineers.

If the primary purpose of the *Marine Safety (Domestic commercial Vessels) National Law Act 2012* (the 'National-Law') is to establish a single national jurisdiction/authority to efficiently and effectively ensure the safety of employees/customers/passengers and the Domestic Commercial Vessels ('DCVs') on which they serve then, for the reasons set out below, we contend that the DCV-National Law and the Regulations subsidiary to it, are NOT fit-for-purpose.

A small part of the blame for this outcome falls to the Australian Maritime Safety Authority (AMSA) because of their reluctance to monitor and enforce that which is mandated in the National Law Act and subordinate Marine Orders. However such blame is mitigated by government having provided AMSA insufficient resources to properly monitor and enforce on the one hand and on the other hand by an understandably 'gun-shy' apprehension by AMSA of the political compromises that were necessary for the States to agree to any national system at all. As a result, compared to its regulation of *Navigation Act 2012*/STCW vessels, AMSA treads far too softly and allows too many operations to not meet current standards including but not limited to politically-necessitated 'grandfathering' of pre-existing substandard operations.

The larger blame lies with the politics of federalism. Too many State jurisdictions previously on widely divergent regulatory paths, brought together to set a new standard that would not be realised unless every State agreed. Many States used their 'veto' power to ensure that the higher standards extant in NSW and Victoria were NOT adopted, resulting in the worst practice States were lifted slightly, but at the cost of reduced safety in the rest of Australia.

STRUCTURAL INCOMPATIBILITY & DEATH RATES

Many problems appear to originate because the *Marine Safety (Domestic commercial Vessels) National Law Act* was written as if the *Navigation Act* and the Convention on Standards of Training Certification & Watchkeeping ('STCW') do not exist. This defect flows into their subsidiary Marine Orders. We consider that the lack of compatibility between the marine orders issued pursuant to the *Navigation Act 2012* and those issued pursuant to the *Marine Safety (Domestic commercial Vessels) National Law Act 2012* make the existing DCV regulatory framework unwieldy and hard for both the industry and the regulator to understand/apply/monitor/enforce, contributing to reduced compliance and inferior safety outcomes. Per capita death rates for vessels under the National Law are many times greater than are considered acceptable for vessels regulated under the *Navigation Act 2012*.

STRUCTURAL INCOMPATIBILITY & QUALIFICATIONS

But for the decision by the owners of Spirit of Tasmania (I & II) and the 4 other ships in the Bass Strait trade in deciding to OPT-out of the DCV-National Law and OPT-in to the *Navigation Act 2012,* all 6 of these major ships would fall under the jurisdiction of the *Marine Safety (Domestic commercial Vessels) National Law Act 2012* whose *Marine Order 505* does not empower/enable use of any engineering qualification higher than Engineer Class 3 (EC3).

Instead AMSA found it necessary to issue Exemption 30 which 'deems' the holder of the higher internationally-recognised qualification to hold a qualification only as EC3, and section 7 of *Marine Order 505* legally enforces that constriction.

Whilst this previous 'bandaid' solution expressed in Exemption 30 will shortly be absorbed into the revised text of Schedule 2 of *Marine Order 505*, this is still an inferior and sub-optimal outcome as it does not enable the more-advanced Engineer Class 2 (EC2) and Engineer Class 1 (EC1) permitted-duties set out in Marine Order 72, and the STCW Convention, to be used when serving on a DCV.

The incongruous result is that an Australian EC1 holder can carry out their full potential on any vessel of any size/power anywhere in the world…….except in Australia's EEZ.

ABANDONMENT OF SOVEREIGNTY

Whilst Australia's *National Law* was written to regulate Australia's DOMESTIC shipping, the Act contains no provision which requires an owner who wishes to engage in Australia's DOMESTIC Commercial Vessel industry to register their vessel under the Australian Flag and therefore be subject to Australian Law. There can be no level-playing-field if a foreign owner can bring a foreign-registered vessel to Australia and continually engage in business in Australia's DOMESTIC Commercial Vessel industry including:-

- Bunker barge operations;
- Harbour towage operations;
- Tug-barge haulage operations;
- Passenger ferry operations;
- Vehicular ferry operations;

without complying with the National Law or any other Australian TAX, Employment, OH&S or other laws.

This has already destroyed Australia's domestic merchant-shipping, and now foreign ships engage long term in Australia's oil and gas industry and no longer employ the full Australian crew as they did in the past. The next step will be to engage zero Australians and not even bother to operate the vessel from an Australian port or through an Australian vessel-management company.

This lack of Australian-asserted-sovereignty in our claimed EEZ will make it much easier for China to move its vessels into Australia's claimed EEZ to exploit resources the same way they bulldozed into the much smaller claimed EEZs of the Philippines and other SEAsian nations.

MONITORING AND ENFORCEMENT OF OPERATIONAL LIMITS

Many conditions required by Marine Order 504 are not required to be produced to AMSA to gain issue of a 'Certificate-of-Operation' nor are they monitored or enforced.

Conditions or limitations on the operating area of a vessel, stipulated having regard to the particular operational risks for which a 'Certificate-of-Operation' was granted, are not monitored in practice and are therefore incapable of enforcement without AMSA being resourced similar to the US Coast Guard for inspection/enforcement in open waters.

MONITORING AND ENFORCEMENT OF TRAINING REQUISITES

Many conditions required by Marine Order 505 as requisites for training, testing and issue of Certificates of Competency under the National Law are insufficiently monitored or enforced.

World-wide best practice maritime training involves a combination of formal college training about the skills to be acquired plus, necessarily, a period of sea-service performing tasks relevant to the Certificate of Competency aspired to. This sea-service must be evidenced to AMSA's satisfaction.

A practice has grown whereby AMSA will accept any statement of sea-service so long as it is on company-letterhead, yet a number of employers have ceased recording the days of sea-service of their employees and no record of whether they performed tasks/duties understudying for a different Certificate of Competency.

It is hard to see how it is possible for the employer to warrant/certify to AMSA the credibility of sea-service when the lack of employer-records means the employee can make whatever claims he/she likes and it is likely the company will sign off on what may be confected claims.

Significantly, AMSA's regulations under the *Navigation Act 2012* include at Section 40 of Marine Order 70 a penal-requirement that the Owner must keep records of the days of each employee's sea service and the capacity/functions in which that sea service was performed and must provide such record to an employee upon request.

However, neither the existing nor the revised Marine Order 505 contain any such requirement.

Without such mandatory requirement the entire training and certification structure of the National Law is put at risk.

DETAIL OF SUBMISSION

Further detail on the above summary is as follows:-

1. INFERIOR SAFETY OUTCOMES

1.1 FATALITIES

The failure of safety-regulation under the Domestic Commercial Vessels 'National Law' is evident from the unsafe incidents/accidents/fatalities of the DCV sector compared per-capita to the statistics from vessels/seafarers regulated under the Navigation Act 2012 and the STCW Convention[1].

Evidence of this failure to produce the required safety outcome is found on page 5 of the paper entitled '**Stopping the Race to the Bottom on Maritime Safety in Australia'** which was submitted to the 8th June 2021 Meeting of AMSA's National Safety Committee by the Maritime Union of Australia (MUA) which records as follows:

> "…The five-year average rate of fatalities on DCVs is 8 fatalities per 100,000 workers, which is comparable to many recognised hazardous industries such as construction (2.3 fatalities per 100,000 workers), agriculture, forestry and fishing (13.9 per 100,000 workers), transport, postal and warehousing (7.5 per 100,000 workers). These industries have been made priorities for targeted safety strategies and action over a number of years.
> No similar safety initiatives have been taken with the DCV fleet and the way in which AMSA reports these statistics makes such comparisons difficult.

Domestic Commercial Vessel fatalities reported by AMSA over the past five years.			
	DCV seafarer fatalities	Fatality rate per 100,000 at 66,000 seafarers	Fatalities per 100,000 workers in Australia (5-year average)
2015	5	7.6	
2016	10	15.2	
2017	8	12.1	
2018	1	1.5	
2019	3	4.5	
Five year average		**8.18**	**1.5**

Source: AMSA, Domestic Commercial Vessel Annual Incident Report, January-December 2019, p.14-15. It includes 'fatalities associated with the operation of the vessel,' which probably excludes deaths from heart attacks and diseases (this is not specified). Unfortunately this document does not include the number of workers on DCVs, so the number of seafarers is from AMSA, Annual Report 2019-20, p.iii. Fatalities across Australian workplaces from Safe Work Australia, Work-related Traumatic Injury Fatalities, Australia 2019. Fatality rate calculated as (5 / 66,000) x 100,000 = 7.6 DCV deaths per 100,000 workers.

> There have been 63 fatalities on DCVs since 1 July 2013, but unfortunately the Productivity Commission dismiss this number as 'low' without making any attempt to compare it to the small number of workers in the industry. For this reason, the standard Safe Work Australia method for measuring fatality rates is per 100,000 workers – yet neither the Productivity Commission or AMSA use this method. The PC also say '20 per cent of all reported fatalities are associated with heart attack or unknown illness,' as if that makes them impossible to control, yet under the National Law only passenger vessels are required to carry Automatic Defibrillation Devices (AEDs) – a regulatory decision.
>
> In the more prescriptive *Navigation Act* and *Occupational Health and Safety (Maritime Industry) Act* jurisdictions, there has been one fatality since 2013 and a total of 6 fatalities in the past 28 years. This includes workers in hazardous industries such as offshore oil and gas, carriage of bulk cargo, tankers, roll on and roll off vessels…"

That the regulatory standards AMSA sets for the vessels under the National Law are so inferior so as to cost such greater loss of life, compared per capita to vessels it regulates under the *Navigation Act 2012*, demonstrates the National Law regime is inadequate and should be unacceptable to all Australians. AMSA can do better for those Australians who work under the *Navigation Act 2012*, so why should it not do better for those who work under the National Law as well?

[1] STCW is the IMO's Convention on *Standards of Training Certification and Watchkeeping*, 1978, as amended.

1.2 2008 REQUEST FOR A NATIONAL LAW AS MEANS TO RAISE STANDARDS

In 2008, AIMPE and the MUA were concerned with the glaring disparity in accidents/fatalities between Australian vessels operating to STCW standards under the Navigation Act 1912 on the one hand and Australian State-regulated vessels on the other. However we were concerned that the then step being taken of replacing the enforceable regulation known as the Uniform Shipping Laws Code ('USL Code') with an 'advisory' and unenforceable 'Standard' to be called the 'National Standard for Commercial Vessels' was a retrograde step which would reduce safety standards throughout much of Australia.

On 16 April 2008 we prepared a joint Briefing Paper entitled 'MUA-AIMPE PROPOSAL FOR A MOVE TO NATIONAL VESSEL SAFETY REGULATION FOR COMMERCIAL VESSELS' (see Annexure 1) and jointly met with all State/Territory Ministers (with responsibility for commercial vessel safety regulation) to request that around Australia the unevenness in the State-Territory safety-regulation of employees on commercial vessels should be resolved by creating a single National maritime jurisdiction applying the highest standard currently prevailing amongst them.
A key element of our concern was that the standards of that safety-regulation varied widely between the States, with NSW and Victoria administering and delivering a higher standard and Queensland delivering the lowest. We did not want to take all States down to the lowest common denominator, rather, we wanted to bring Queensland up to the standards of NSW and Victoria.
AIMPE was so concerned that we raised this issue with NSW Minister Joe Tripodi, who was adamant that he would not allow the NSW standards to fall and on 2 May 2008 he sent us a letter to that effect (see Annexure 2).

On 2 May 2008 we prepared another joint Briefing Paper entitled 'AIMPE-MUA OPPOSE ADOPTION OF PART 'D' & 'A' OF THE NATIONAL STANDARD FOR COMMERCIAL VESSELS' (see Annexure 3) in which we further expressed the overview of our concerns as follows:-

> **"…The Safety Issues: OVERVIEW.**
> More than 12 years ago Vessel operators complained that the Uniform Shipping Laws Code ["USL Code"] was not being consistently applied by each of the State maritime authorities.
>
> Instead of inquiring why some States were unwilling to uniformly apply the USL Code the State maritime authorities formed a drafting-group under the name "National Marine Safety Committee" to write a Regulation that they would be prepared to apply consistently.
>
> After 11 years, costing tax-payers over $2 Million per year since 2005 and about $1.1 Million per year before that, NMSC have produced the so-called 'National Standard for Commercial Vessels' ["NSCV"] which is flawed in that:-
>
> - It is a vague document, incapable of enforcement as a regulation;
> - Even before it is concluded some State maritime authorities declare they will still NOT apply it consistently.
> - It provides an inadequate regulatory framework to assure the safe construction or operability of a commercial vessel;
> - It provides an inadequate regulatory framework to assure a commercial vessel is a safe workplace;
> - It does not address the OH&S rights of workers on commercial vessels to be required to be provided by their employer with minimum safety-training/certification before they work on a commercial vessel;
> - It reduces the existing USL Code levels of required safety training/certification; reduces safety standards for employees on commercial vessels and adopts the de-regulatory model which is now under investigation in Queensland for it's role in unacceptable incidents/injuries/deaths. That will place our members at risk Australia-wide…"

In relation to NSCV Part 'A' setting out safety obligations under this unenforceable 'Standard' our 2008 joint paper submitted that:-

> "…Consistent with safety standards for workers on shore, employees on commercial vessels should be entitled to:
>
> - a regulatory framework that will ensure a safely constructed and maintained vessel and provide for regulatory intervention and enforcement; and
> - a regulatory framework that will ensure a safe system of work involving enforceable OH&S provisions capable of enforcement.
>
> That the NSCV Part 'A' does not deliver either of these is a safety issue for our members…"

Unfortunately, the National Law was not able to be mandated at the level of NSW and Victoria. Instead the political trade-offs between the Commonwealth and each of the States inevitably led to the adoption of the lowest common denominator safety standards……essentially those of Queensland.
The National Law abandoned the more prescriptive regulatory regimes of NSW and Victoria and adopted a version of Queensland's de-regulatory model in which all responsibility is laid at the door of the owner of the vessel to determine the safe or "appropriate" crewing of the commercial vessel based on the owner's own "Risk Assessment" which is not required to be submitted to the Regulator for approval or scrutiny or advice/monitoring of any kind.

An example of Queensland's poor safety regime under the *Transport Operations Marine Safety Act (Qld)* was in 2006 I wrote to Stradbroke Ferries and to MSQ asking them to investigate a safety concern over the company's Risk Assessment in support of a reduction in the crewing of the vessel LAKARMA, but neither would act. The Regulator (MSQ) neither conducted a desktop audit nor conducted the open investigation I had asked for. Some 4 months later, after the reduced crewing was implemented, a man lost his leg on the same vessel. Of course MSQ did not blame itself for its inaction. MSQ simply threw the book at the company insisting that the safety breach should have been apparent for all to see from the outset.

The political Federal/State compromises led to the lowest-common-denominator safety regime of Queensland being largely imported into the new National System and we believe that the general-safety-obligation is a laissez-faire method of safety regulation which gives inadequate oversight/guidance to owners until there is an incident/death after which it harshly punishes Owner & Master saying (with 20-20 hindsight) that the safety defects should have been evident and that commercial considerations are irrelevant to the decision to operate the vessel.

Consequently we believe that under the National Law the regulatory regime is insufficient to ensure the safety of the vessels/passengers and employees.

1.3 LIVING & WORKING CONDITIONS

Australia is a significant contributor to and participant in the functioning of the International Labour Organisation ('ILO') and is a signatory to the *Maritime Labour Convention* ('MLC'). Australia gives effect to the MLC through Marine Order 11 (Living and working conditions on vessels) 2015 but the only Australian vessels to which those standards are applied are the 4 Australian-registered gas carriers that carry LNG to Japan and those few DCVs which, like the 6 in Victoria to Tasmania trade, have Opted-in to the jurisdiction of the *Navigation Act 2012*.

Some 99% of Australian vessels, by virtue of being classed as DCVs by the DCV-National-Law, are **not** protected by any of the minimum requirements of the MLC in relation to seafarer work and rest hours, the provision of food and drinking water on board, the health of seafarers, accommodation (including noise-levels) for seafarers on vessels and repatriation of seafarers to their home.

It is a poor regulatory model which enables Australia to negotiate within ILO and IMO world-wide standards and the enact a National Law that does not apply those standards on Australia's domestic vessels.

2. STRUCTURAL DEFICIENCIES

Structural deficiencies are evident in the DCV-National-Law including:

2.1 AUSTRALIAN SOVEREIGNTY

Australia claims sovereignty over our 'EEZ' waters beyond the 12mile limit out to 200 nautical miles from our shores and the shores of our territories. Yet Australia does not have legislation that requires vessels continuously operating in our EEZ exploiting it's resources (e.g. fish, oil, gas, tourism or ferry services) to actually REGISTER under the FLAG of Australia.

Because no Federal or State legislation asserts a sovereign requirement for such vessels to be Australian-registered, the laws of Australia do not apply.

A vessel registered in China carries the flag of China and obeys the laws of China, not Australia. So cannot be compelled to abide by Australian TAX, Employment, OH&S or other laws.

Australia's *Navigation Act 2012* nominally has some application to foreign ships in Australian waters, at least whilst they are berthed in an Australian port. But this Act applies only in part to a foreign-flagged vessel working in Australia; less than 10% of its provisions have any application at all and most of the provisions that can be required of an Australian-owned vessel can not be enforced against the foreign vessel even if it continuously does business in Australia's EEZ.
On the other hand Australia's *National Law* was written to regulate Australia's DOMESTIC shipping, perhaps in the fond expectation that any issues with foreign powers or foreign shipping would be adequately dealt with by the *Navigation Act 2012* ?

However, the *Marine Safety (Domestic commercial Vessels) National Law Act 2012* does <u>not</u> have any provision which requires an owner who wishes to engage in Australia's DOMESTIC Commercial Vessel industry to register their vessel under the Australian Flag and therefore under Australian Law.

As a consequence a foreign owner can bring a foreign-registered vessel to Australia and continually engage in business in Australia's DOMESTIC Commercial Vessel industry including:-

- Bunker barge operations;
- Harbour towage operations;
- Tug-barge haulage operations;
- Passenger ferry operations;
- Vehicular ferry operations;

without complying with the National Law (or any other Australian Law).

2.2 LEGISLATIVE INCONSISTENCY

The *Marine Safety (Domestic commercial Vessels) National Law Act 2012* was drafted at the same time that the *Navigation Act 2012* was drafted to replace the *Navigation Act 1912*. But each is written as if it were the only piece of maritime legislation in Australia.

Neither acknowledges the existence of the other.

Neither has been written to be consistent with and work harmoniously with the other.
A defined term in one is not necessarily compatible with the same defined term in the other.
This minimises compatibility or interoperability between the two.

Such structural blindness creates an enormous challenge giving AMSA the impossible task of bridging these differences to somehow try to provide the single national maritime jurisdiction that COAG sought to create.

Obligations on certificate-holders are unclear and inconsistent and the appeals process should AMSA find fault with their competency is not clear nor is it in the same terms.

Both Acts should be replaced by a single legislative instrument, that deals with all sizes and types of vessels registered in Australia, having regard to the appropriate standards of training/experience and certification for the Master and Chief Engineer according to a sliding scale of size, total propulsion-power and operational hazard.

This single Act should deal with the entire range of qualifications from Marine Engine Driver 3, 2 and 1 to Engineer Class 3, and Engineer WatchKeeper, Engineer Class 2 and Engineer Class 1.

The obligations on certificate holders and the mechanisms to find fault with their competency and if necessary suspend/revoke their certificate should be common principles across all certificates. Further, the means to Appeal such action against a certificate should be dealt with in a common appeals process.

2.3 INTERNATIONAL & DOMESTIC VESSELS IN SAME WATERS OPERATE ON DIFFERENT STANDARDS

Marine Notice 2021/07 issued by AMSA 30 Nov 2021 asserts that safe navigation will only be assured if all the participants (both international and domestic) in Australian waters have the same high standard of training, navigational practices, and supporting safety management systems.

But the standards referred to in that Marine Notice are those of STCW, which sets out detailed procedures and responsibilities for the operation of vessels in relation to both a Navigational Watch and an Engineering Watch.

However, these STCW requirements do not apply to Domestic Commercial Vessels.
In fact under the National Law it is not even clear how a safe navigational (or engineering) watch is to be maintained, and who is responsible for that Watch.

Is this not an operational/safety disconnect between the two systems?

Surely the only answer must be to work towards incorporating (perhaps a simplified expression of) STCW operational/safety standards into the standards set by Marine Order 504 and 505?

2.4 ARBITRARY EXCLUSION FROM HIGHER STANDARDS

The "international-voyage" parameter chosen to identify and separate DCVs from the higher STCW-safety-standard is based on legal technicality not safety result: it is poorly chosen.

Whether a vessel undertakes a voyage around the entire coast of Australia, the equivalent of 3 around-the-world voyages, is treated as if it is less hazardous than a voyage to New Zealand or New Guinea.

Currently a given vessel must apply the STCW-safety-standard as prescribed in the *Navigation Act 2012* if it undertakes a 3 day voyage to New Zealand but the DCV-National Law permits that same vessel to undertake a voyage out to 200NM/EEZ but laterally anywhere along the 60,000km of Australia's coast applying inferior training/certification/watchkeeping/safety standards.
This makes no sense from the point of view of effective safety regulation.

A given vessel has fixed characteristics of sea-keeping/stability, size, propulsion and steering systems, cargo-systems and emergency equipment, and will require of its Master and Chief Engineer the same high levels of training/experience and certification to save the vessel/lives from storm/engine-failure/fire, no matter which particular piece of ocean the emergency occurs, and no matter the artificial parameters currently setting a DCV aside from the standards of the STCW / *Navigation Act 2012*.

Australia needs a comprehensive safety regulatory regime that, for a given vessel, should require the higher standards of training/experience and certification for its Master and Chief Engineer in all these situations.

2.5 DEEMS AS DCV's VESSELS WHICH SHOULD BE UNDER STCW STANDARDS

2.5.1 LARGE DOMESTIC TRADING MERCHANT SHIPS

As legislated, the National Law applies to any Australian-registered vessel that does not trade internationally, regardless of its size and total propulsion-power.

As a result, for example, the 6 ships which trade between Victoria and Tasmania[2] (but which were previously held to the STCW standard of the *Navigation Act 1912*) are now natively under the jurisdiction of the National Law.

To ensure safe regulation of these vessels to the STCW standard AMSA had to rely on the good-graces of the Owner in each case to voluntarily Opt-in to the higher standards of the *Navigation Act 2012*, which require Engineer Class 1 and Master Class 1 qualifications for Chief Engineer and Master respectively.

It is a poor regulatory model which relies on voluntary opting-in to achieve a safe standard.

2.5.2 HIGH OPERATIONAL RISK VESSELS: e.g. HARBOUR TUGBOATS

For some time there has been a growing appreciation that reliance only on a simple measure such as ***Length*** or ***Propulsion Power*** to determine the minimum Certificates of Competency ('CoC') required in a ***Minimum Manning*** is not a sufficiently complete picture of the minimum safety regulation appropriate to a particular DCV. Recent discussions suggest that concepts such as 'complexity' of machinery/systems on the one hand and a more critical look at the risk of the operations that the vessel performs may provide a more nuanced way for AMSA to stipulate ***minimum manning*** under Marine Order 504.

The existing National Law reduces standards of training/experience and certification for its Chief Engineer by artificially ignoring the total propulsion power of any multi-screw vessel less than 35m in length. Concept of counting only one main engine and one screw for a multi-engined vessel relies on the assumption that the greatest engineering-risk the DCV is exposed to is loss of propulsion. The premise is that if one engine/screw fails then a fishing vessel or tourist vessel can still 'get-home' if it has another screw propelled by a different engine. We do not cavil with that, as it relates to the open-waters operations of a fishing vessel or tourist vessel.

However, that is not the case for tugboats, where all engines and all steering nozzles/rudders are needed at full power in order to move the towed ship on the one hand or in order to extricate the tugboat from danger when in confined space such as being over-run by the massive ship it is towing.

Towage within river/harbour involves applying force to much larger vessels and understanding their handling characteristics which may require higher level navigation skills than the minimum specified in MO504. Moreover, a tugboat is chartered for a towage job based on its total bollard-pull relying on both engines at full capacity and its manoeuvrability relies on the ability to steer independently from both propellers/rudders at all times. Azimuth propulsion may be omni directional but the tug relies on its total/full power from all engines in order to control the tow and maintain its own safety.

Whichever mode of propulsion the tug has, the loss of one engine can put the vessel and all its crew in immediate danger of being over-run by the tow or dragged underwater with consequent loss of life. Therefore a risk-based nuancing of MO505 would not permit determination of the level of ***engineering certificate*** required based on the proposition that you only count the power of one engine towards assessment of ***Propulsion Power.*** Instead MO505 would be amended so that for all towage operations ***Propulsion Power*** must counts all of its engines towards that power, basically because the safety of vessel and personnel in the towage operations require all engines.

Tugboats that engage in harbour towage should be excised from the DCV-National Law and expressly placed under the jurisdiction of the *Navigation Act 2012*.

[2] The 6 ships are Spirit of Tasmania I, Spirit of Tasmania II, Searoad Liekut, Searoad Mersey II, Victorian Reliance II, and Tasmanian Achiever II.

2.6 BLIND TO 50% OF MARITIME QUALIFICATIONS

As legislated and empowered by Marine Order 505, the DCV-National Law does not recognise the existence of any engineering standards of training/experience or competence higher than 'Engineer Class 3 Near Coastal'.

The 'band-aid' solution of Exemption 30 will no longer be necessary once the redrafted Marine Order 505 comes into effect, but even it does not recognise and enable the use of Engineer Class 2 and Engineer Class 1 competencies and work-permissions on a DCV.

Instead the redrafted Marine Order 505 deems those superior certificates to be able to be used on a DCV as if they were only competencies at Engineer Class 3 level.

As a result, had the Owners of the 6 ships which trade between Victoria and Tasmania not volunteered to apply the higher standards of the *Navigation Act 2012* then the Owner/employer could have reduced the Class 1 standard for Chief Engineer and Master down to this 'Class 3' standard, and there would be nothing AMSA could do to maintain the Class 1 standard.
It is a poor regulatory model which relies on voluntary opting-in to achieve a safe standard.

2.7 CONFLICT OF INTEREST FOR PRIVATE SURVEYORS

AMSA has ceased using State-employed vessel-Surveyors who, in NSW for example, previously ensured the standard of safety of all commercial vessels in the State. State-funded Surveyors performed this task with independence and diligence.

However the scheme of the National Law makes plain that the job of vessel-survey is out-sourced to accredited private surveyors, with the result that a private Surveyor who actually finds too many faults, and who demands they be rectified before issuing a certificate of survey, will face far less business in future as Owners can choose to place all future survey work with another private surveyor who overlooks many faults and issues a certificate without rigorously applying the standards as they are written.

Commercial pressure on the private surveyor inevitably results in owners refusing to utilise the services of any private surveyor who adheres to a strict safety standard, and owners will only contract for the services of a private surveyor whom is known to be soft/lenient on safety standards.

For evidence you need go no further than publicly-available documents in relation to the death of a female passenger on Sydney Harbour in 2019 onboard the charter vessel LADY ROSE.
The passenger vessel LADY ROSE passed survey by such an accredited private surveyor but after the death of a passenger (Hydrogen Sulphide poisoning in a toilet) AMSA subsequently investigated and found 43 safety breaches and immediately commence separate prosecutions against both master and the owners.

That should not have been possible if the survey was performed by a publicly-funded NSW-government-employed Surveyor, as in the past, who was NOT amenable to such commercial pressure.

3. INADEQUATE REGULATORY MINIMUM-REQUIREMENTS, MONITORING AND POLICING

3.1 MINIMUM CREW/CERTIFICATION STANDARDS

The drafting of Marine Order 504 is so poor that the only guidance it provides as to a regulatory minimum crewing to underpin the owner's decision-making at s.6 of Schedule 1 is to provide a number of "…certificated crew and master …". It does not specify that within this number must be a person qualified to be chief engineer of the vessel.

As a result if for a particular vessel the mandatory minimum number of "…certificated crew and master …" was 3 then the owner at his/her discretion could decide to operate the vessel with a Master and two Mates and no engineer at all.

Such inept parliamentary drafting is an embarrassment.

3.2 OPERATIONAL STANDARDS & LIMITS

Marine Order 504 requires a number of conditions to be met for issue by AMSA to the owner of a Certificate-of-Operation for the vessel to undertake specific operations in particular conditions/waters with an "appropriate" crewing as determined by the owner after performing a Risk Assessment, and requires the owner to have a Safety Management System ('SMS') that comprehensively sets the policies and procedures by which the business will meet all those regulatory obligations.

But AMSA does not require a copy of the documents said to be conditions to be met for issue or variation or renewal of that Certificate-of-Operation.

- AMSA does not require a copy of the Risk Assessment on which the "appropriate" crewing is required to be based.
- As the RISK ASSESSMENT document is not placed on-the-record and filed with AMSA, what is to stop the owner unilaterally amending that document in the period after an incident/death but before an AMSA investigator arrives?
- Employees do not have a right to be a participant in that Risk Assessment.
- There is no regulatory requirement entitling EMPLOYEES/Masters/Engineers to Review and question the owner's RISK ASSESSMENT based on their operational experience; and
- The master may disagree with the Risk Assessment but has no right to demand a review of it or to participate in a review. To assert his rights the master effectively has to refuse to sail the vessel in the circumstances/condition that he/she considers to be unsafe. That does not trigger AMSA's involvement in the matter, it is more likely to trigger the dismissal of the master.
- No one checks the SMS to see if it is actually a live document suitable to manage ALL the risks this vessel and its operations are exposed to; private surveyors only ask to see that a document exists without perusing it (on the Lady Rose the off-the-shelf SMS made no mention of any hazards connected with Hydrogen-sulphide gas that leaked through the plumbing system and asphyxiated the woman in the toilet); and
- It does not have to be lodged/registered with AMSA; so it can be amended discreetly after an incident to cover off things that should have been in it before the incident; and
- Members report that it is common practice for Owners to contract a private company to supply them with an off-the-shelf SMS written in general terms and not particular to the company, the vessel, or its actual operations and taking into account the actual manning that the Owner has determined (at their sole discretion based on Owner-conducted RISK ASSESSMENT). The document sits on the vessel to satisfy the Survey requirement an MO504 requirement and is otherwise ignored by company and its employees; and
- There is no regulatory requirement entitling EMPLOYEES/Masters/Engineers to Review and add/amend the SMS based on their operational experience; and

Referring again to the death on the LADY ROSE, if many of the issues leading to an incident/death are result of design flaws in the plumbing system, how can the Owner and Master be held accountable for what the authority (MSQ at the time of construction apparently) saw fit to approve and which an AMSA-accredited private surveyor had only recently also approved?

This laissez-faire approach of a general-safety-obligation without requiring mandated documents necessary for issue of a Certificate-of-Operation to be actually produced to AMSA and kept on record, and exercising zero guidance to the owner as to the adequacy of any of those documents and systems is NOT a satisfactory way to PREVENT incidents/deaths.

Instead it is a bureaucratic disowning of any liability for a safety regime and a cheap resort to dishing out retributive punishment on Owners/Masters when the inevitable accident/death occurs.

3.3 MONITORING AND ENFORCEMENT OF OPERATIONAL LIMITS

Some conditions required by Marine Order 504 for the issue of a Certificate-of-Operation result in the imposition of an operational limit which is not to be exceeded by the owner. For example, operations may be limited to 100NM offshore.
However the Coroner's Report into the death of Martin Sydney CUNNINGHAM arising from the collision of the Svitzer tug NANA with the fishing vessel CYGNET LASS on 25 May 2016 reports that:-

> "…61. The intended voyage of the *Cygnet Lass* was to the Diamond Islets about 200 nautical miles (nm) offshore. Its Certificate of Operation allowed operation to only 100nm from shore…"

Whilst not suggesting that the decision by the master and owner of the fishing vessel to travel 200NM offshore, despite the 100NM offshore Limit on his Certificate-of-Operation, contributed to his death, what is apparent is that such limits albeit set by AMSA pursuant to the National Law are breached with impunity.

It suggests that conditions or limitations on the operating area of a vessel, stipulated having regard to the particular operational risks for which a 'Certificate-of-Operation' was granted, are not monitored in practice and are therefore incapable of enforcement without AMSA being resourced similar to the US Coast Guard for inspection/enforcement in open waters.

3.4 MONITORING AND ENFORCEMENT OF TRAINING REQUISITES

Many conditions required by Marine Order 505 as requisites for training, testing and issue of Certificates of Competency under the National Law are insufficiently monitored or enforced.
World-wide best practice maritime training involves a combination of formal college training about the skills to be acquired plus, necessarily, a period of sea-service performing tasks relevant to the Certificate of Competency aspired to. This sea-service must be evidenced to AMSA's satisfaction.
A practice has grown whereby AMSA will accept any statement of sea-service so long as it is on company-letterhead, yet a number of employers have ceased recording the days of sea-service of their employees and no record of whether they performed tasks/duties understudying for a different Certificate of Competency.

An example of this is the Policy statement 'HMS Memo 2021 – 06 Record of Sea Service' issued by Svitzer's Regional Training Manager on 30 April 2021 for the Attention of All crew and Port Management which directs employees as follows:-

> "…To all Svitzer Australia crew and Port Management,
> Sea service records of time served on Svitzer vessels must be done in accordance with this policy. Svitzer will validate all claims or requests for sea service based on records provided by the seafarer. No sea service is to be signed off on a Svitzer vessel without adherence to the policy. Svitzer will internally investigate any claims of sea service signed off on a Svitzer vessel outside of this procedure.
>
> **Sea Service Records**
> 1. The seafarer is responsible for providing evidence of the number of actual days served on each vessel to the Port Manager
> 2. The Port Manager is responsible for validating the sea service records and signing the sea service letter.."

It is hard to see how it is possible for the employer to warrant/certify to AMSA the credibility of sea-service when the lack of employer-records means the employee can make whatever claims he/she likes and it is likely the company will sign off on what may be confected claims.

Significantly, AMSA's regulations under the Navigation Act 2012 include at Section 40 of Marine Order 70 a penal-requirement that the Owner must keep records of the days of each employee's sea service and the capacity/functions in which that sea service was performed and must provide such record to an employee upon request.

However, neither the existing nor the revised Marine Order 505 contain any such requirement. Without such mandatory requirement the entire training and certification structure of the National Law appears to be put at risk.

4. DAMAGED TRAINING OUTCOMES AFFECT NATIONAL SECURITY

The reduction in safety/certification requirements brought about by the DCV-National Law and the *Navigation Act 2012* has reduced the demand in Australia for certificates of competency above Engineer Class 3 Near Coastal.

Training of new entrants for Engineer WatchKeeper have plummeted and reduced enrolment figures for Engineer Class 1 suggest that in only a couple of years Australian colleges/RTOs will follow the New Zealand example and cease providing training for Engineer Class 1.

As a result, should the international security environment deteriorate such that Australia commits armed forces to a theatre of war initiating a strategic need for Australian merchant shipping to support/supply such operations, Australia may no longer have the capability of training seafarers to the STCW-*Navigation Act 2012* standard required to operate such vessels internationally.

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BACKGROUND BRIEF

JOINT MUA-AIMPE POSITION PAPER FOR STATE/NT MINISTERS WITH RESPONSIBILITY FOR VESSEL SAFETY REGULATION

MUA-AIMPE PROPOSAL FOR A MOVE TO NATIONAL VESSEL SAFETY REGULATION FOR COMMERCIAL VESSELS

FOR DISCUSSION WITH STATE MINISTERS PRIOR TO AUSTRALIAN TRANSPORT COUNCIL, 2 MAY 2008

Prepared 16 April 2008

1. Introduction

1.1 The maritime unions have two priority concerns about the regulatory and related management of vessel safety regulation in Australia.

1.2 Of immediate concern is the process being undertaken by the National Marine Safety Committee to review Part D, Crew Competencies of the National Standard for Commercial Vessels. The MUA and AIMPE are strongly opposed to the direction of that review which we believe will erode the existing enforceable safety standards of the Uniform Shipping Laws (USL) Code. This matter is a priority to the Unions because the consultation process, which has not achieved a consensus outcome, is as far as we know due to be reported to Ministers as early as the May 2008 ATC meeting.

1.3 The overarching concern relates generally to the inadequacies of the current Commonwealth-State arrangements for the regulation of commercial vessel safety in Australia. The process being undertaken in relation to Crew Competencies is indicative of those inadequacies.

1.4 The maritime unions believe the time is right to adopt a new approach to the regulation of commercial vessel safety in Australia. This submission sets out the maritime unions proposals in that regard.

2. The maritime unions' principal concerns about current regulatory arrangements for commercial vessel safety regulation in Australia

2.1 For some time the maritime unions have been concerned about:

- The trend towards the deregulation of maritime safety, particularly ship safety regulation, by State and NT marine/maritime safety agencies.
- Our main concern is that the deregulated approach is compromising vessel safety and occupational health and safety (OHS).
- This trend is impeding the development of a highly skilled and qualified maritime workforce necessary to service both offshore and onshore maritime operations in Australia.
- The compromising of OHS and vessel safety is demonstrated by such factors as:
  - the high numbers of seafarer and dive tourism employee deaths, particularly in Qld, where, in 2006 17 fatalities were recorded (6 of those on commercial vessels and 11 on recreational vessels), with a further 5 maritime related deaths that the maritime safety authority in Qld regards as out-of-scope;
  - the high fatality rate in the fishing industry. From 1997–98 to 2004–05, the number of compensated fatalities in the Agriculture, forestry and . shipping industry ranged between 26 and 36 per annum. There were 23 fatalities recorded in the preliminary data for 2005–06. This corresponds to a fatality incidence rate of 12.7 fatalities per 100 000

employees in 2005–06, which was five times the rate for Australia (all industries) of 2.6 fatalities per 100 000 employees;

- the scathing indictment of regulatory failure by Maritime Safety Qld in the Report of the Board of Inquiry into the marine incident involving the ship *Wunma* in the waters of the Gulf of Carpentaria on 6 and 7 February, 2007, released in November 2007; and

- South Australia being unable to deal with the failure of the owners of the vessel MV "Destiny Queen" to maintain the seaworthiness of the vessel, including breaches of required watertight and fire-rated bulkheads and refusal to pay for spare parts to allow machinery to be properly maintained. As a result of safety issues and OH&S concerns no qualified Australian Engineers would work on this unsafe vessel and increasing safety concerns lead to an unwillingness of other Australian workers to put themselves in jeopardy. Employees and their unions took the matter up with AMSA but AMSA said they had NO jurisdiction as the vessel was South Australian-registered. The state maritime authority however took the view that the vessel was outside the scope of their expertise so AMSA should take charge [somehow].
  In the end the owners re-registered the vessel under the Flag of Tuvalu and the vessel is now crewed with personnel that fly-in/fly-out from Singapore. The business is still owned by Australians living in South Australia but, similar to many other Australian vessels which have been re-Flagged, this can permit:

  - an escape from Australian Employment Law
  - an escape from Australian Taxation Law
  - an escape from Australian OH&S Law
  - an escape from Australian maritime Law

- the findings in the NSW Office of Transport Safety Investigations (OTSI) report into a collision between the Sydney Ferries harbourcat the *Pam Burridge* and motor launch *Merinda* on Sydney Harbour, released on 28 March 2008, and in particular: (i) the current NSW regulatory provision which allows an unlicensed person to operate a motor vessel in NSW, regardless of its size and the number of passengers onboard, provided they do so at below 10 knots, which OTSI says requires review; and (ii) qualifying for a recreational boating licence in NSW which the OTSI report found needs to be contingent upon satisfying a knowledge test and demonstrating a satisfactory level of proficiency in basic boating competencies, contrary to current lax regulations.

- We are also concerned about the inconsistent application of regulation across jurisdictions, reflecting a failure on the part of the National Marine Safety Committee (NMSC) to successfully fulfil the mission it was given 10 years ago by Australian Transport Council (Commonwealth and State/NT Transport Ministers) in April 1998 in accordance with the National Marine Safety Strategy (A Strategy for Small Commercial and Recreational Vessels in Australia).

3. The failure of the NMSC to deliver against the ATC objectives in the National Marine Safety Strategy

3.1 That strategy required the NMSC, among other objectives to:

- Create and maintain a modern, efficient and responsive system for the coordination and adoption of consistent legislation and standards for marine safety across all jurisdictions:

    - we say that the NMSC has not achieved this objective, as evidenced by continuing inconsistencies in regulation, and by the letter the Hon Joe Tripodi, NSW Minister for Ports and waterways has written to his colleagues (see **Attachment A**).

- Ensure that standards are established in a flexible, responsive and timely fashion that meets the needs of users and industry:

    - we say that the NMSC has failed to adequately respond to the differing needs of commercial vessels as opposed to the needs of recreational vessels, which has resulted in a dragging down of standards in the commercial vessel sector, which, by the nature of their size and voyage patterns need to be much more attuned to International Maritime Organisation (IMO) standards and national regulatory requirements.

- Ensure appropriate and consistent standards for crew levels and qualifications:

    - we say NMSC has failed in this task, in that that injuries/fatalities continue to occur because new employees are not required by regulation to undertake entry-level safety training before commencing employment, and there remains significant variation in standards applying to crew levels and qualifications, across jurisdictions.

- Encourage the adoption of best practice in OH&S in marine safety:

    - we say that rather than encourage adoption of best practice OHS in marine safety, NMSC has promoted a deregulated model of OHS (essentially self regulation) which has sought to eliminate enforceable safety standards and recognises no role for the workforce and their unions in implementing good OHS practice, contrary to the Robens model which is the foundation of all OHS systems in Australian law.

- Adopt world's best practice for competency based crew training:

    - we say that NMSC has sought to reduce competency levels and eliminate regulatory oversight of licensing and endorsement processes that have weakened crew competency levels generally, created the basis for industrial disputation over appropriate safe minimum manning standards, has resulted in barriers to developing the maritime skills bank, reduced labour mobility and has weakened the capacity to address the maritime labour shortage, particularly in the commercial sector.

4. The time for reform on maritime safety regulation for commercial vessels in Australia

4.1 The maritime unions believe that it is time to reform the maritime regulatory arrangements in Australia to create a single national jurisdiction for the regulation of commercial vessel safety. A single nation-wide Maritime Safety Authority for all commercial vessels, regardless of size, will ensure consistent and effective vessel and employee-safety without differences between the States. With a single national jurisdiction the construction-standards and operational safety requirements will be the same throughout Australia ending the situation where a vessel built in one State does not meet the standards of another State. These advantages will assist commercial maritime businesses by reducing the regulatory burden that simply arises through having a different Maritime Safety Authority in each State. It will also ensure the full portability of qualifications by issuing them to a national set of competencies which have regard to the desirability that in order to facilitate international portability of skills those issued in Australia should conform with relevant international conventions, thereby providing a stronger foundation of marine skills appropriate to commercial vessels of all sizes consistent with the revitalisation of the Australian shipping industry (a policy objective of the Rudd Government), and improving both vessel and employee safety.

4.2 The Rudd Government has already announced an Inquiry into coastal shipping policy and regulation, to be undertaken by the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government by October 2008 (see terms of reference at **Attachment B**).

4.3 Term of reference 3 provides for a review of the regulatory arrangements for coastal shipping. Among the issues that will inevitably be considered by the Inquiry is the commercial vessel ship safety regulatory arrangements in Australia, examining how well or otherwise they are working. It seems that we can help shape the outcome of the review by giving early consideration to this important area of regulatory reform aimed at improving the efficiency and competitiveness of the commercial shipping industry.

5. Federal ALP policy – supports a single maritime regulatory arrangement

5.1 At the ALP Conference in April 2007, the Platform was amended by inclusion of a two new clauses as follows:

Chapter 6: Nation Building

Maritime Transport

Clause 36: Labor will:

- explore the possibility of a single, cooperative national maritime jurisdiction through integration of the various State, Territory and Federal maritime authorities.

Maritime Safety

Clause 42: Labor will:

- maintain an appropriately resourced Australian Maritime Safety Authority (AMSA), Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority), National Offshore Petroleum Safety Authority (NOPSA) and Australian Transport Safety Bureau (ATSB), and equivalent State organisations, to ensure they operate efficiently and in a coordinated way to maintain a strict maritime safety regime.

5.2 These Platform provisions provide Labor's policy direction for moving to a new nationally integrated maritime regulatory regime.

6. What have we put to the Hon Anthony Albanese MP, Federal Minister for Infrastructure, Transport, Regional Development and Local Government

6.1 In an MUA submission to Minister Albanese dated 18 January 2008, supported by AIMPE, we provided the following background in seeking the commitment of Minister Albanese to reform of ship regulatory arrangements:

- "The MUA believes that the timing and national circumstances are right to work towards rationalising national commercial maritime regulation under the Commonwealth jurisdiction in a single regulator. The following factors have led us to this view:

  - The Rudd Government's commitment to improved Commonwealth-State/NT relations and the end of the blame game;

  - The recent proposals by the Hon Joe Tripodi MP, NSW Minister for Ports and Waterways, for a new national legislative framework for the regulation of commercial vessels;

  - The desire of industry for uniform and efficient shipping regulation (essentially ship and seafarers safety and welfare), which would complement the already national regulation of workers' compensation and OHS in the shipping industry;

  - The success of the national model for safety regulation in the offshore oil and gas industry (though not the application of the model); and

  - The commitment of the Hon Julia Gillard, Minister for Employment and Workplace Relations to the development and implementation of improvements in OHS standards for stevedoring and the introduction of an appropriate code of OHS practice on a national basis."

7. What do we want from the State & NT Ministers with responsibility for maritime safety?

7.1 First, we want State/NT Ministers to commit in-principle to reform the regulatory arrangements for commercial ship safety, for all the reasons outlined in this submission, to create a single nation-wide Maritime Safety Authority for all commercial vessels, regardless of size.

7.2 Second, we want the State/NT Ministers to have the proposal for reform considered at a forthcoming meeting of ATC during, ideally during 2008.

7.3 Third, we want State/NT Ministers to support at May 2008 ATC a moratorium on further adoption of Part D (Crew Competencies) of the National Standards for Commercial Vessels (NSCV) until a decision is taken on the question of excising commercial vessels from the responsibilities of NMSC, which would then require a further review of NMSCs proposed changes to Part D. In a separate paper we detail why the National Standards for Commercial Vessels is not capable of providing for commercial vessel-safety or employee-safety and we oppose its provisions being used as amendments of the Uniform Shipping Laws Code.

7.4 Finally we want State/NT Ministers to support an overhaul of the National Marine Safety Strategy to reflect the appropriate division of regulatory responsibility between the States and Commonwealth, under a concept of excision of commercial vessels from State regulation.

- The mechanism we propose is a State referral of powers to the Commonwealth where commercial vessels engaged in intra-state voyages (intra-state trade and commerce) are involved.

8. What are the advantages for State and NT jurisdictions of this approach?

8.1 A single nation-wide Maritime Safety Authority with responsibility for all commercial vessels, regardless of size will ensure consistent and effective vessel and employee-safety without differences between the States.

- All safety-certification, at varying levels appropriate to vessel size / horsepower [consistent with international standards on vessel categorisation] will be usable throughout Australia without State-differences. This will allow for a mobile workforce to move from State to State in response to market forces.

- The full portability of qualifications issued to a national set of competencies can also have regard to the desirability that they should conform also with relevant international conventions, thereby also enabling *international* portability of skills, into and out of Australia, in response to market forces.

- With a single national jurisdiction the construction-standards and operational safety requirements of vessels will be the same throughout Australia. This will end the situation where a vessel built in one State does not meet the standards of another State.

- These advantages will assist commercial maritime businesses by reducing the regulatory burden that simply arises through having a different Maritime Safety Authority in each State.

8.2 The delinking of commercial ship regulatory arrangements from the regulatory arrangements for recreational vessels will result in a much simpler and smoother regulatory system at the State and NT level, and will allow the States to focus on their major area of interest/expertise.

The findings of recent Boards of Inquiry as well as the new enquiry[1] into the capacity of Maritime Safety Queensland, and the underpinning Act which is similar in approach to the NSCV, demonstrate considerable doubt about the capacity of State maritime safety authorities to deliver a safe outcome for either:

- maritime training and safety-certification of employees; or
- safe construction & operation standards for any commercial vessels

8.2 It will also remove the tension between the application of IMO standards to recreational vessels under State jurisdiction who are rightly concerned about getting caught in the more onerous employee-safety OH&S and IMO regulatory requirements, applicable to commercial vessels.

8.3 The overall impact on State marine/maritime regulatory arrangements is likely to be small given the small number of commercial vessels falling under State regulatory arrangements. States would lose only around 5% of their ships, which would have only a small impact on revenue collected from fees and charges, but would have a large impact on ease and efficiency of regulation of the remaining non-commercial vessel fleet.

9. What is the preferred alternative model?

9.1 The maritime unions support the central proposition outlined in Minister Tripodi's letter of 10 December 2007, that involves the Commonwealth providing the legislative framework for adopting and enacting standards.

9.2 However, the maritime unions' proposal differs from Minister Tripodi's proposal in that the unions' proposition relates only to commercial vessels. Hence, we see the *Navigation Act 1912* and the Australian Maritime Safety Authority as providing the appropriate legislative and regulatory framework for achieving the objective we propose. AMSA is the only maritime authority with the capacity to deliver consistent regulation of commercial vessels throughout Australia.

9.3 AMSA is currently responsible for vessel safety in relation to vessels undertaking interstate and international voyages. The legislation it administers is closely attuned to the operation of commercial vessels and is consistent with Australia's IMO Convention obligations. AMSA already has the structures, relationships, expertise and capacity to be the regulator of all commercial vessels in Australia, irrespective of the nature of the voyage. Suitably qualified personnel, then surplus to requirements of the Maritime Safety Authority in each State may be able to be employed by AMSA as part of AMSA's adjustment to regulate commercial vessels of all sizes.

9.4 It is our view that a transition to AMSA of all vessel safety regulation of commercial vessels in Australia could be achieved with administrative ease.

[1] In response to a Queensland Council of Unions [co-signed by AWU, MUA and AIMPE] letter of 29 November 2007 Queensland's Transport Minister John Mickel has initiated an independent inquiry into the capacity of MSQ, and it's underpinning legislation, to ensure that commercial vessels are safe and that employees who work on the m are safe. The Inquiry will be conducted by Mr. Robin Stewart-Crompton, a former Deputy Secretary in the Department of Workplace Relations with specific experience in industrial law and practice, international labour law and occupational health and safety.

Letter from the Hon Joe Tripodi, NSW Minister for Ports seeking support for development of new national legislative framework for maritime safety – December 2007

New South Wales

Joseph Tripodi
Minister for Ports and Waterways
Minister for Regulatory Reform
Minister for Small Business

Mr Eddie Seymour
National Training and Development Officer
Maritime Union of Australia
Level 2 365 Sussex Street
SYDNEY NSW 2000

10 DEC 2007

Our Ref: 07/01472

Dear Mr Seymour

I am writing to seek your support for the development of a new national legislative framework for the regulation of commercial vessels.

Over recent years, the National Marine Safety Committee (NMSC) has developed extensive and commendable standards for commercial vessel safety and operations. I am concerned about the pace of reform and that national consistency could be jeopardised by the inconsistent implementation of the National Standard for Commercial Vessels through the marine safety legislation frameworks in each State and the Northern Territory.

Mutual recognition is at the heart of providing the framework necessary to facilitate interstate trade of vessels and allowing businesses to gain scale through the volume this would generate. I am concerned about the potential cost to industry of not effectively implementing a national scheme.

I would like to propose a new approach to the legislative implementation of the NMSC standards which would involve the Commonwealth providing a legislative framework for adopting and enacting standards developed through the NMSC process.

This approach would involve national vessel, operator and crew certificates issued under Commonwealth and complementary State and Territory legislation by a Commonwealth body, or by State and Northern Territory marine safety agencies under delegated powers. Such certificates would have force throughout Australia.

What I am proposing is not meant to curtail the NMSC's current work program but rather to suggest a long term solution for the achievement of mutual recognition.

I look forward to receiving your views on this proposal.

Yours sincerely

Joe Tripodi
Minister for Ports and Waterways

Level 31, Governor Macquarie Tower, 1 Farrer Place, Sydney 2000, NSW Australia
Telephone: (61-2) 9228 5451 • Facsimile: (61-2) 9228 5466 • Email: joe@tripodi.minister.nsw.gov.au

Attachment B

House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government - Inquiry into Coastal shipping policy and regulation

Terms of Reference

The Committee is to inquire into coastal shipping policy and regulation and make recommendations on ways to enhance the competitiveness and sustainability of the Australian coastal shipping sector.

The Committee's report is to:

1. Outline the nature and characteristics of the Australian shipping industry and the international and coasting trades;
2. Review the policy and regulatory arrangements in place for the coastal shipping sector;
3. Assess strategies for developing an adequate skilled maritime workforce in order to facilitate growth of the Australian coastal shipping sector;
4. Consider the effect of coastal shipping policy on the development of an efficient and productive freight transport system, taking into account issues such as environmental and safety impacts and competitive neutrality between coastal shipping and other modes of transport; and
5. Consider the implications of coastal shipping policy for defence support, maritime safety and security, environmental sustainability and tourism.

Annexure 2
to AIMPE & AMOU Submission to Independent Review of National Law, March 2022

New South Wales

Joseph Tripodi
Minister for Ports and Waterways
Minister for Regulatory Reform
Minister for Small Business

FAXED
2-5-08

By facsimile: 9319 7505

2 May 2008

07 MAY 2008

Mr Henning Christiansen
Federal Secretary
AIMPE
52 Buckingham Street
SURRY HILLS NSW 2010

Dear Mr Christiansen

I refer to your letter dated 1 May. I wish to provide clarity on the NSW position on the issue of national commercial vessel standards, in particular Part A and D. The NSW Government supports the current standards A and D and will not support any dilution of this standard.

Consistent with this policy position, I have given instructions to my departmental representatives attending the special meeting of the NMSC considering Part D, scheduled for 9 May that I will not support any weakening or dilution of Part D.

In order to achieve higher standards across the whole of the Commonwealth, I have initiated reform through the COAG process for a national framework to achieve more effective adoption and enforcement of commercial vessel standards.

I have welcomed your support of my initiative.

The purpose of this initiative is to prevent jurisdictions from failing to adopt standards that have not been in their commercial interests.

It is my position that the creation of a national standard must be to the highest safety training/certification and vessel standards in Australia, not the lowest.

It is the view of the NSW Government that the Federal Government must involve itself to achieve a more effective adoption and enforcement of national standards.

The adoption of a national framework will allow us to work towards increasing standards across the nation in the interests of maritime safety.

I understand today's ATC meeting will take steps towards achieving this outcome.

With respect to the assurances you have sought in your correspondence dated 1st May I agree with each of the requests and they reflect my position on these issues.

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Your correspondence of May 1 reflects a misunderstanding of my position and what was conveyed at my meeting with you and I hope this makes very clear what my intentions are, and have been, since initiating the national reform agenda.

Yours sincerely

Joe Tripodi.

JOE TRIPODI
MINISTER FOR PORTS AND WATERWAYS

Annexure 3
to AIMPE & AMOU Submission to Independent Review of National Law, 28 March 2022

Australian Institute of Marine & Power Engineers

BACKGROUND BRIEF

JOINT AIMPE-MUA LOBBYING PAPER FOR STATE/NT MINISTERS WITH RESPONSIBILITY FOR COMMERCIAL VESSEL SAFETY REGULATION

AIMPE-MUA OPPOSE ADOPTION OF PART 'D' & 'A' OF THE NATIONAL STANDARD FOR COMMERCIAL VESSELS.

FOR DISCUSSION WITH STATE MINISTERS PRIOR TO AUSTRALIAN TRANSPORT COUNCIL, 2 MAY 2008

Prepared 10 April 2008

As a safety issue for our members in all States & Territories, we seek the active support and advocacy of each and every Minister within the Australian Transport Council:-

- **AGAINST the adoption of Part 'D' of the 'National Standard for Commercial Vessels' and**

- **FOR a repeal of the 2002 ATC endorsement of Part 'A' of the 'National Standard for Commercial Vessels'.**

The Safety Issues: OVERVIEW.

More than 12 years ago Vessel operators complained that the Uniform Shipping Laws Code ["USL Code"] was not being consistently applied by each of the State maritime authorities.

Instead of inquiring why some States were unwilling to uniformly apply the USL Code the State maritime authorities formed a drafting-group under the name "National Marine Safety Committee" to write a Regulation that they *would be* prepared to apply consistently.

After 11 years, costing tax-payers over $2 Million per year since 2005 and about $1.1 Million per year before that, NMSC have produced the so-called *'National Standard for Commercial Vessels'* ["NSCV"] which is flawed in that:-

- It is a vague document, incapable of enforcement as a regulation;

- Even before it is concluded some State maritime authorities declare they will still NOT apply it consistently.

- It provides an inadequate regulatory framework to assure the safe construction or operability of a commercial vessel;

- It provides an inadequate regulatory framework to assure a commercial vessel is a safe workplace;

- It does not address the OH&S rights of workers on commercial vessels to be required to be provided by their employer with minimum safety-training/certification *before* they work on a commercial vessel;

- It reduces the existing USL Code levels of required safety training/certification; **reduces safety standards for employees** on commercial vessels and **adopts the de-regulatory model** which is now under investigation in Queensland for it's role in unacceptable incidents/injuries/deaths[4]. That will place our members at risk Australia-wide.

Detail of these problems with the NSCV are set out in the next two sections:

1. Part 'A' of NSCV
2. Part 'D' of NSCV

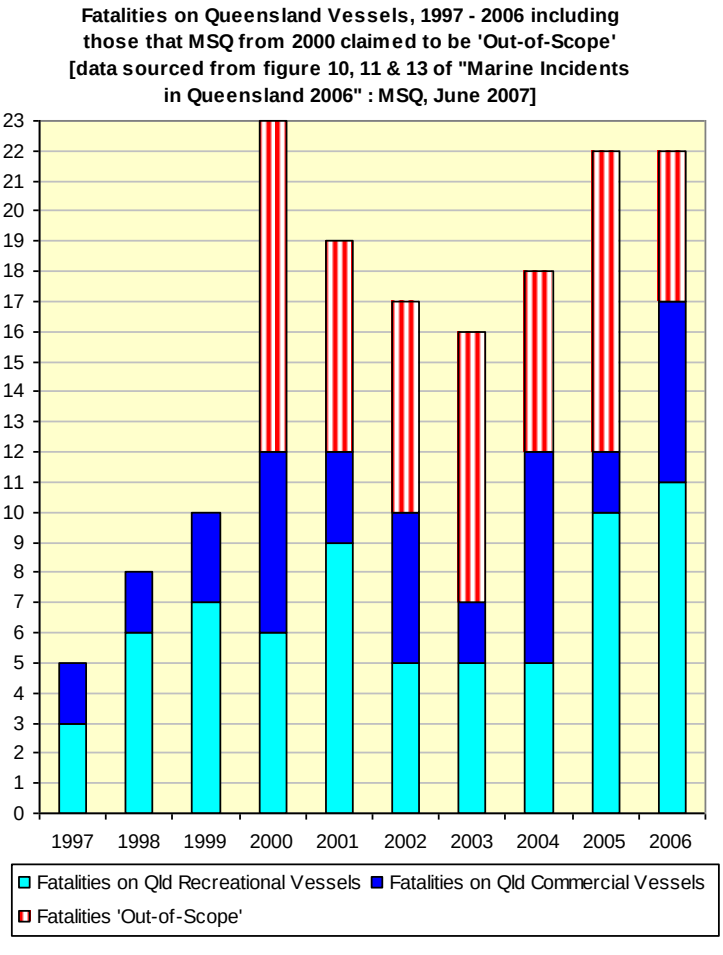
1 National Standard for Commercial Vessels: Part 'A' - an Inadequate Regulation unable to Ensure that a Commercial Vessel is properly constructed/maintained or is a safe workplace.

Oddly, the State maritime authorities were never able to identify what was allegedly wrong with the USL Code. Despite this NMSC decided to rewrite it afresh and enthusiastically took nothing from what had been crafted and tested previously.

NMSC's 'standard' uses loose, amateurish terminology that is not written to the standard of a regulation; it is open to interpretation and will provide a lawyers feast when attempts are made to enforce it. This is especially so because NMSC un-necessarily changes/rewrites all the existing definitions and terminology of the USL Code and consequently existing case-precedent of previous regulation is unable to be relied upon.

Examples of the loose/amateurish/unenforceable terminology can be found as early as the OBJECTS of NSCV Part 'A' SAFETY OBLIGATIONS. We set out [see OBJECTS sections in TABLE on the next page] relevant extracts from the Objects of the WORKPLACE HEALTH AND SAFETY ACT 1995 [Qld] and the OCCUPATIONAL HEALTH AND SAFETY ACT 2000 [NSW] which clearly and unambiguously require an employer to *ensure* the health and safety of their employees in the workplace.

The third column of the Table shows extracts from the TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994 [Qld] in which the employer is required to provide only "…adequate levels of safety with an appropriate balance between safety and cost…" which has been relied on by both MSQ and commercial vessel operators in taking NO ACTION WHEN EMPLOYEES OR UNIONS RAISE SAFETY CONCERNS and has resulted in the initiative by the Queensland Transport Minister to establish an independent investigation into it's role in unacceptable incidents / injuries / deaths[4].



Similar to this unsafe de-regulatory 'hands-off' approach, NSCV Part 'A' requires the employer to only assess hazards and "…control... to acceptable levels…" but at 1.1 it is stated that the entire NSCV Part 'A' is in any event only "for guidance" and 1.2 states that the "…provisions of this Part are informative…" which means the NSCV is NOT written to a Regulatory standard capable of enforcement and imposes NO enforceable safety standards for commercial vessels or for those

who work on them.

If one compares the *operative* provisions of each Act [see OPERATIVE sections in TABLE on the following page], the NSCV Part 'A' SAFETY OBLIGATIONS is revealed even further as being utterly incapable of ensuring safety for employees in the maritime workplace, or to ensure vessel standards:

- NSCV Part 'A' at 2.1 it is stated that the entire NSCV Part 'A' is in any event only "for guidance" and

- At 2.2 states that the "The general and specific duties listed in this Chapter are illustrative …" after which no prosecution for breach of any putative 'safety-obligation' could ever be sustained in court.

- At 2.3 states that this illustrative/for-guidance DUTY is, similar to the unsafe Qld 'hands-off' approach, to be based merely on the "…principle that risk to health and safety arising from the operation of commercial vessels and systems of work associated with such vessels should be controlled to acceptable levels…". Contrast this to the extracts from the Operative provisions of the WORKPLACE HEALTH AND SAFETY ACT 1995 [Qld] and the OCCUPATIONAL HEALTH AND SAFETY ACT 2000 [NSW] which clearly and unambiguously require an employer to *ensure* the health and safety of their employees in the workplace.

Comparison of OBJECTS of Act

Extracts from the **WORKPLACE HEALTH AND SAFETY ACT 1995 [Qld]**	Extracts from the **OCCUPATIONAL HEALTH AND SAFETY ACT 2000 [NSW]**	Extracts from the **TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994 [Qld]**	Extracts from the **NATIONAL STANDARD FOR COMMERCIAL VESSELS Part A – SAFETY OBLIGATIONS**
7 **Objective of Act** (1) The objective of this Act is to **prevent a person's death, injury or illness being caused by a workplace**, by a relevant workplace area, by work activities, or by plant or substances for use at a workplace. (2) The objective is achieved by **preventing or minimising a person's exposure to the risk of death, injury or illness caused by a workplace**, by a relevant workplace area, by work activities, or by plant or Substances for use at a workplace. (3) This Act	3 **Objects** The objects of this Act are as follows: (a) **to secure** and promote the health, safety and welfare of people at work, (b) **to protect people at a place of work against risks to health or safety arising out of the activities of persons at work,** (c) to promote a safe and healthy work environment for people at work that protects them from injury and illness and that	**3 Objectives of this Act** (1) The overall primary objective of this Act is, consistent with the objectives of the Transport Planning and Coordination Act 1994, to provide a system that achieves **an appropriate balance between**-- (a) **regulating** the maritime industry **to ensure marine safety**; and (b) **enabling the effectiveness and efficiency of the Queensland maritime industry to be further developed.** (2) In particular, the objectives of this Act are-- (a) to allow the Government to have a strategic overview of marine safety and related marine operational issues; and (b) to establish a system	**1.1 SCOPE** This Part provides **guidance** on the safety obligations and responsibilities of persons who design, build, own, operate and otherwise exercise some control over the safety of commercial vessels. **1.2 APPLICATION** Part A applies to designers, builders, suppliers, owners, operators and others that exercise some control over the safety of a commercial vessel, be it new or existing. The **provisions of this Part are informative** for the purposes of compliance with this standard.

establishes a framework for preventing or minimising exposure to risk by-- (a) **imposing workplace health and safety obligations** on certain persons who may affect the health and safety of others by their acts or omissions; and (b) establishing benchmarks for industry through the making of regulations and codes of practice; and (c) establishing a workplace health and safety board—[etc passage deleted] (d) providing for the development of accredited training programs for delivery and assessment of competence by---[etc passage deleted] (e) providing for the election of workplace health and safety representatives, and the establishment of workplace health and safety committees, —[etc passage deleted] (f) providing for the appointment of-- (i) workplace health and safety officers to assist employers and principal contractors to manage workplace health and safety; and (ii) accredited providers to assist industry in managing particular risks; and (iii) inspectors to **monitor and enforce compliance** with this Act; and (iv) authorised representatives to help workers with workplace health and safety issues;	is adapted to their physiological and psychological needs, (d) to provide for consultation and co-operation between employers and employees in achieving the objects of this Act, (e) to **ensure** that risks to health and safety at a place of work are **identified, assessed and eliminated or controlled,** (f) to develop and promote community awareness of occupational health and safety issues, (g) to provide a legislative framework that allows for **progressively higher standards of occupational health and safety** to take account of changes in technology and work practices, (h) to deal with the impact of particular classes or types of dangerous goods and plant at, and beyond, places of work.	under which-- (i) marine safety and related marine operational issues can be effectively planned and efficiently managed; and (ii) **influence** can be exercised over marine safety and related marine operational issues **in a way that contributes to overall transport efficiency**; and (iii) account is taken of the need to provide **adequate levels of safety with an appropriate balance between safety and cost.** (3) These objectives are to be achieved **mainly by imposing general safety obligations** to ensure seaworthiness and other aspects of marine safety, and allowing a general safety obligation to be discharged by complying with relevant standards or in other appropriate ways chosen by the person on whom the obligation is imposed. (4) In particular, a ship may be taken to sufficiently comply with the general safety obligation even though a certificate of survey has **not** been issued for the ship. (4A) A further objective of this Act is to manage the operation and activities of ships. (5) The objectives of the Act are also achieved by establishing the Marine Board as a representative body to advise the Minister	**1.3 OBJECTIVE** The objective of this Part is to protect the health and safety of persons by— a) ensuring that hazards associated with the operation of commercial vessels in the marine environment are identified and risks to health and safety within the work environment are **assessed and controlled**; b) **controlling to acceptable levels**, and eliminating where practicable, risk to health and safety arising from the operation of commercial vessels; and c) requiring the provision of relevant information.

Comparison of OPERATIVE PROVISIONS

Extracts from the **WORKPLACE HEALTH AND SAFETY ACT 1995 [Qld]**	Extracts from the **OCCUPATIONAL HEALTH AND SAFETY ACT 2000 [NSW]**	Extracts from the **TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994**	Extracts from the **NATIONAL STANDARD FOR COMMERCIAL VESSELS Part A – SAFETY OBLIGATIONS**
22 Ensuring workplace health and safety Workplace health and safety is ensured when persons are free from-- (a) death, injury or illness caused by any workplace, relevant workplace area, work activities, or plant or substances for use at a workplace; and (b) risk of death, injury or illness created by any workplace, relevant workplace area, work activities, or plant or substances for use at a workplace. **24 Discharge of obligations** (1) **A person on whom a workplace health and safety obligation is imposed must discharge the obligation**.	**8 Duties of employers** (1) Employees **An employer must ensure the health, safety and welfare at work of all the employees of the employer**. That duty extends (without limitation) to the following: (a) ensuring that any premises controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risks to health, (b) ensuring that any plant or substance provided for use by the employees at work is safe and without risks to health when properly used, (c) ensuring that systems of work and the working environment of the employees are safe and without risks to health, (d) providing such information,instruction, training and supervision as may be necessary to ensure the employees' health and safety at work, (e) providing adequate facilities for the welfare of the	**23 Obligations about marine safety** The chief executive must ensure that-- (a) marine **safety strategies** are developed in a way that-- (i) takes into account national and international benchmarks and international best practice; and (ii) promotes, **within overall transport objectives**, the safe transport of persons and goods; and (iii) encourages **efficient and competitive behaviour** in the Queensland marine industry; and (b) the provision and operation of all marine safety infrastructure and services for which the State is responsible is designed to achieve-- (i) **efficiency**; and (ii) **affordable quality**; and (iii) **cost effectiveness**. safety) Each annual report of the department must include a report on the way in which effect has been given to section 23 (Obligations about marine safety) during the financial year to which the report relates. **29 Achieving an appropriate balance between safety and cost** (1) This Act is primarily about marine safety. (2) Even though it is **possible to regulate to**	CHAPTER 2 DUTIES **2.1 SCOPE** Chapter 2 **provides guidance** on general and specific duties applicable to persons that exercise some control over the safety of a vessel. **2.2 APPLICATION** The general and specific **duties listed in this Chapter are illustrative** and should not be considered exhaustive. **2.3 GENERAL PRINCIPLES** A person should apply the **principle that risk to health and safety arising from the operation of commercial vessels and systems of work associated with such vessels should be controlled to acceptable levels**, or eliminated wherever practicable. The extent of the duty under this part should not be taken as being limited by the standards required for the issue of a Certificate of Survey, or Certificate of Competency as expressed in Parts B, C, D, E and F of this National Standard. If more than one person is under an obligation to comply with a clause, each person should comply with the clause regardless of the fact that others may also have some, or the same, responsibility.

	employees at work.	**achieve the highest level of safety, this would ignore the impact of the regulation on** the effectiveness and efficiency on **the Queensland maritime industry.** (3) **Therefore,** this Act establishes a system to achieve an appropriate **balance between safety and cost.** **43 General obligation on persons involved with operation of ship to operate it safely** (1) A person involved with a ship's operation (including the owner, master, pilot and crew members) must not cause the ship to be operated unsafely.	

- The 'duties' relating to vessel design[1] and construction[2] set out in item 2.6 and 2.7 consistent with the 'hands-off' de-regulatory approach of "…for guidance…" and " illustrative…." above are expressed *not* as a mandatory requirements, but instead are things the vessel-operator merely "…should…" do. As a result NSCV has no enforceable ability to ensure by regulation that commercial vessels are designed and built to a safe standard.

- The remaining 'duties' relating to vessel-operators set out in item 2.9 are all expressed not as mandatory requirements, but instead consistent with the 'hands-off' de-regulatory approach of "…for guidance…" and " illustrative…." above, are stated as things the vessel-operator merely "…should…", not must, do[3].

Consistent with safety standards for workers on shore, employees on commercial vessels ***should be*** entitled to:

- a regulatory framework that will ensure a safely constructed and maintained vessel and provide for regulatory intervention and enforcement; and
- a regulatory framework that will ensure a safe system of work involving enforceable OH&S provisions capable of enforcement.

That the NSCV Part 'A' does not deliver either of these is a safety issue for our members.

NSCV Part 'A' was adopted by the ATC in 2002.
We respectfully ask that in consideration of the above the ATC suspend it's support for Part 'A' and, after making suitable inquiries in relation to the concerns we now raise, withdraw the support of the ATC from Part 'A' entirely.

2) National Standard for Commercial Vessels: Part 'D' - an Inadequate Regulation unable to Ensure that a Commercial Vessel is properly constructed/maintained or is a safe workplace.

On safety grounds we urge you at the upcoming session[s] of the ATC to *oppose* the adoption of any of Part 'D' of the "National Standard for Commercial Vessels", whether in its own right or in the guise of an amendment to the USL Code.

In the de-regulatory model adopted in Queensland under the TOMSAct, and now under investigation as perhaps producing an unsafe workplace[4], the vessel-owner [despite perhaps possessing no maritime qualifications or experience at all, determines:

- whether the commercial vessel is seaworthy
- how many maritime-qualified persons should be employed; and
- at what level of knowledge and safety-training/certification those qualifications should be.

NSCV Part 'D' is similarly an unacceptable regulatory regime because it will allow the operator of the commercial vessel, in response to commercial cost-cutting pressures, to similarly reduce safety-certification standards.

That the NSCV Part 'D' reduces safety-certification standards is a safety issue for our members.

It is the opinion of the maritime unions that NMSC has been 'captured' by the fishing and tourism industries who are the interest groups that pushed for the TOMS Act in Queensland originally;

> In 2000 AIMPE noted that there were *no* Employee representatives on NMSC's "Industry Advisory Panel"; yet a meeting of NMSC in December 2000 resolved not to accommodate this.
>
> In 2003 AIMPE again drew to NMSC that the advice being provided to NMSC could only be biased because NMSC's "Industry Advisory Committee" was composed only of:-
>
> - 3 representatives of Towage Employers
> - 3 representatives of Fishing Employers & owner operators
> - 2 representative of Charter & Houseboat vessel operators
> - 2 representatives of Recreational boat users
> - 1 representative of Yachting organisations
> - 1 representative of boat builders
>
> AIMPE was successful in getting both ourselves and the MUA on the IAC in 2004, but by then the path NMSC was taking in regard to the NSCV was set in concrete.

These interest groups sit in the consultative forums and push NMSC to reduce the vessel-owners' cost by reducing regulation and allowing the commercial operator to push down safety-certification standards currently set in the USL Code.

NMSC has uncritically accepts these commercial demands and their resulting NSCV:

☒ *Reduces* USL Code standards for safety training and certification; they have not engaged with us and with AMSA in a proper engineering analysis yet they propose to abandon the USL Code standards for vessel-categorisation and step-by-step increase in the required safety-certification for employees; note these USL Code standards are based on I.M.O. STCW95[4] and other Conventions that require these standards of maritime training for international consistency] **this is a safety issue for our members**;

Extraordinarily NMSC have clearly made a decision to cast away the USL Code standards for vessel-categorisation and step-by-step increase in the required safety-certification for Engineer/Engine-drivers without a sound base and without a properly thought out and critically-analysed alternative.
NMSC seeks to justify this decision by reference to a rough idea first outlined some years ago by Trevor Faust of Marine Safety Tasmania. But in a presentation on what would replace the USL Code Engineer/Engine-driver standards it is clear NMSC don't intend to apply the logical outcomes of his idea as those out comes are not supported by the Fishing/Tourism interest groups anyway

☒ Refuses to regulate for minimum entry-level deckhand training before service on a commercial vessel as a Deckhand, Untrained employees are losing limbs[5] ; **this is a safety issue for our members**;

Despite concern from the unions that on safety grounds there MUST be a minimum requirement for marine safety training and certification by the regulator for ALL workers including deckhands on commercial vessels, NMSC has only included this most reluctantly in their latest draft to the comment it is "….put in as a 'straw-man' to be knocked back by industry…" [Quote from NMSC Secretariat 26 2 2008] This is totally unacceptable and is a safety issue for us all.

☒ *Eliminates* regulatory authority Audit of training courses and training providers; **this is a safety issue for our members**;

☒ *Eliminates* independent testing/assessing of a candidate by the regulatory authority before issues of safety-licence [claiming they must uncritically do so because of a general COAG resolution, despite Australia being signatory to I.M.O. STCW95 Convention that requires these standards of maritime training for international consistency.]; **this is a safety issue for our members**;

☒ *Reduces/Eliminates* marine-experience requirements before issues of safety-licence [claiming they must uncritically do so because of a general COAG resolution, despite Australia being signatory to I.M.O. STCW95 Convention that requires these standards of maritime training for international consistency.]; **this is a safety issue for our members**;

We note that despite enormous input from employees raising concerns over many of these items above, NMSC's secretariat deftly keep condensing and rewriting the inputs so that the minutes show at least cautious support for where the owners of fishing and tourism vessels want to go.

Despite the fishing operators having the worst safety standard of any maritime industry sector in Australia[6] the NMSC accedes to their requests that have the effect of lowering safety standards further.
Most vessels registered in each of the States are recreational vessels, *not* commercial. For example recreational vessels are **97**% of Queensland registered vessels yet the commercial vessels that are the other **3**% *represent **61**% of injuries and deaths*[7]

Despite the push for standards to be lowered coming from the least safe vessel sectors, the NMSC catch-cry is to lower standards further because "…that is what industry wants!"

Employees and their representative unions are very dis-satisfied with NMSC's cavalier approach to our members' safety through their reckless approach to maritime safety regulation.

The entire foundation of the NSCV is flawed to it's very heart and must, on safety grounds, not be proceeded with any further.

FOOTNOTE REFERENCES

[1] **NATIONAL STANDARD FOR COMMERCIAL VESSELS**
Part A – SAFETY OBLIGATIONS
2.6 SPECIFIC DUTIES OF DESIGNERS

2.6.1 Design process A designer **should** ensure that hazards arising from a vessel or systems of work associated with a vessel are identified during the design process.
Where a hazard has been identified in the design of the vessel that presents a risk to health and safety, the designer **should** incorporate solutions in the design that control the risk to acceptable levels, or eliminate the risk where practicable.

2.6.2 Provision of information
A designer **should** ensure that the builder is provided with sufficient information for the vessel to be constructed in accordance with the design.

2.6.3 Hazard identification during build and operation
A designer **should** be responsive to the resolution of unacceptable risks that may be identified during building or subsequent operation of the vessel.

[2] **NATIONAL STANDARD FOR COMMERCIAL VESSELS**
Part A – SAFETY OBLIGATIONS
2.7 SPECIFIC DUTIES OF BUILDERS

2.7.1 Duty where builder acts as designer
Where the builder has a significant role in the design of part, if not the entire vessel, the builder **should** assume the same responsibilities as the designer in Clause 2.6.

2.7.2 Duty where designer is outside Australia
Where the designer is outside Australia, a builder **should** assume the responsibilities normally ascribed to the designer in Clause 2.6.

2.7.3 Duty to meet designer's specifications
Subject to Clauses 2.4, 2.7.4 and 2.7.5, the builder **should** ensure that the vessel is constructed, inspected and, where required, tested to verify that it meets the designer's specifications.

2.7.4 Faults identified during construction

If the builder identifies during the construction process a fault in the design that may affect health or safety, that fault **should** be controlled, and measures put in place to ensure that the fault is not incorporated into the vessel. The designer of the vessel **should** be consulted regarding the rectification of the fault.

2.7.5 Hazards and risks identified during construction
Where a hazard or risk arising from the design of the vessel being constructed is identified during the construction process, the builder **should** inform the designer and seek that assessment is made of risks associated with that hazard by the designer.

2.7.6 Faults identified after handover If after handover to an owner or supplier, the builder identifies a fault in the vessel that may affect health or safety, the builder **should** advise the owner or supplier of the fault and fault rectification requirements.

[3]NATIONAL STANDARD FOR COMMERCIAL VESSELS
Part A – SAFETY OBLIGATIONS
2.9 SPECIFIC DUTIES OF OWNERS AND EMPLOYERS

2.9.1 Consultation Owners and/or employers **should** consult with employees regarding—
a) hazard identification, risk assessment and control of risk;
b) training needs;
c) use of information regarding the safe operation of the vessel; and
d) changes of systems of work which may affect health and safety.

2.9.2 New vessels, alterations to vessels, changed operations
An owner and/or employer **should** ensure that hazards are identified, risks analysed and risks controlled to acceptable levels, or eliminated where practicable—
a) before the vessel enters into service; and
b) before any—
    i) alteration to the vessel; or
    ii) change in a system of work; or
    iii) change in the area of operation.

2.9.3 Work practices The employer **should** ensure that—
a) the various technical and operational measures intended for the control of risk are implemented and maintained as required so as to keep risks to health and safety within acceptable levels;
b) systems of work are implemented and effectively supervised so as to **control to acceptable levels risks to health and safety**; and
c) where personal protective equipment is required, the equipment is provided and maintained.

2.9.4 Training, information, instruction and supervision
An owner or employer **should** ensure that persons likely to be exposed to risk, and anyone supervising those persons, are appropriately trained and provided with information regarding—
a) the nature of the hazards;
b) safety procedures;
c) the proper use of control measures;
d) personal protection and safety equipment;
e) the use of specific safety information relevant to the vessel; and
f) the maintenance of proper records.

2.9.5 Design
Where an owner engages a contractor to design a vessel or part of a vessel, the owner **should** ensure that the contractor is provided with all necessary information about the proposed operation of the vessel and systems of work on the vessel so that the risks to health and safety associated with the proposed operation may be taken into account during the design process.

2.9.6 Commissioning
An owner and/or employer **should** ensure that—
a) the person responsible for commissioning a vessel is provided with such information as necessary to minimise risks to health and safety;
b) the vessel is commissioned in a suitable location;
c) safe access and egress are provided;
d) appropriate safeguards are used during testing; and
e) a contingency plan exists for emergency situations.

2.9.7 Use and repair
An owner or employer **should** ensure that—
a) the vessel is not operated by a person unless that person has received adequate information and training;

b) the vessel is used only for the intended purpose;
c) where access is required for the purpose of maintenance or repair, equipment is made safe by using lockout or isolation devices, danger tags, permit-to-work systems, or other control measures;
d) safety features and warning devices are maintained and tested; and
e) repairs are carried out by competent persons.

2.9.8 Emergency procedures An owner or employer **should** ensure that information on emergency procedures relating to the vessel is displayed in a manner that can be readily observed by persons who may be exposed to risks arising from the use of the vessel.

2.9.9 Specific requirements for certain plant
Owners and employers **are required** by Occupational Health and Safety (OH&S) legislation to meet specific duties for the control of risk pertaining to certain plant that might be installed on a vessel, including:
a) Boilers and other plant under pressure.
b) Machinery or equipment having exposed moving parts.
c) Hot or cold working conditions in using equipment on a vessel.
d) Electrical equipment on a vessel.
e) Plant designed to lift or move persons, equipment or materials.

2.9.10 Record keeping
An owner or employer **should** make and keep records on any relevant tests, maintenance, inspection, commissioning and alteration of the vessel or its equipment.

2.10 SPECIFIC DUTIES OF MASTERS AND OTHER SUPERVISING PERSONS ON THE VESSEL

2.10.1 Agent of the employer
The master and other supervising persons on the vessel **should** fulfil the duties pertaining to owners and employers in Clauses 2.4 and 2.9 in their capacity as the agent of the employer, to the extent that these matters are within their control.

2.10.2 Matters within their control
Matters within the control of the master and other supervising persons on the vessel **should** include, but need not be limited to, the following:
a) A safe working environment.
b) Ensuring safe systems of work.
c) Maintaining equipment in a safe condition.
d) Ensuring safe access and egress to the vessel.
e) The provision of information, instruction, training and supervision to ensure that each employee is safe from injury and risk to health.

[4] STCW95 is the United Nations [IMO] convention on Standards of Training Certification & Watchkeeping 1978 as amended in 1995 & the related Code.

[5] Example: Deckhand's leg cut off by nylon rope on ferry 'LAKARMA' whilst berthing

About 8pm on Monday 16th October 2006 a Deckhand had his leg cut off by a 30mm 'silverflex' nylon rope which was under strain during the manoeuvring of the ferry 'LAKARMA' whilst berthing.

23 year old Michael Walker was trying to handle ropes on his own that, until recently, had been a two man operation. But in June 2006 ferry operator Stradbroke Ferries insisted that the Engineer/Deckhand who had helped him with these ropes would have to do Michael's job as well [in which case Michael might have been sacked], OR Michael would have to work the ropes on his own as well as race down to the engineroom from time to time [under instruction of the Skipper who could not leave the Bridge] in which case the company could sack the Engine-driver instead.

As it turned out the Engineer/deck-hand, Mr. Murray Hammond, refused to single-handedly do the work of the Deckhand/Toll-Collector and in his letter of 7 June 2006 he raised a number of safety concerns.

The company had made it plain to Mr. Hammond that under John Howard's WorkChoices Mr. Hammond had ***no*** choice; if he did not agreed to the Manning reduction [company's letter 7 June 2006] he would be sacked. Mr. Hammond chose to resign instead.

And so Michael Walker kept his job…. But now had to handle the ropes on his own and was frequently directed by the skipper to attend the engine room; **a task he was untrained for** and which workmates saying he was fearful of entering even under the skippers instructions from the Bridge.

Nor was he formally given any training by the company in his duties as a deckhand:-

- each new deckhand mimics the actions of the deckhand whom he works beside during a brief period of job familiarization; this constitutes on-the-job training.
- But each new deckhand, who works beside a different existing deckhand, may be taught differently….. dependent on the level of experience and genuine understanding on the part of the deckhand who is supposed to be teaching him
    - there is no systematic training for new employees in how vessels berth
    - there is no systematic training regarding the effects of wind and tide on the berthing operation
    - there is no safety induction or safety awareness training provided
- this on-the-job training, such as it was, was based on a three man operation. There was no consideration of, nor changed training given, in respect of how the job was to be done by two men rather than three.

Even before the reduction in crewing from 3 to 2 took place, the AIMPE, as one of the unions covering ferry-workers, raised a number of safety concerns with the company and, more importantly, with Maritime Safety Queensland ["MSQ"]: Attached at Appendix C & D please find 2 letters of 15 June 2006 as follows:-

1. to Stradbroke Ferries CEO Ron O'Grady expressing the Institute's concern that whilst the company may be moved by commercial considerations to eliminate the Engineer-position and therefore require one person to do the duties of both Engineer and Deckhand/Toll-Collector thus reducing the crew from 3 to 2 , we nevertheless asked the company to NOT to do so on the grounds of safety and detailed our safety-issues; and
2. in similar vein to the first letter we wrote to John Watkinson of Maritime Safety Queensland ["MSQ"] asking them to investigate our concerns and requesting that the investigating officer contact the Institute so that we could "...ensure the Marine Safety Officer(s) have the opportunity to hear not just from management but, more relevantly, from the party raising the concerns...."

AIMPE did not correctly identify that safety hazard which took off Michael Walker's leg.
But we did raise several safety concerns, *none* of which were investigated by either MSQ or the company.
Therefore even if we had correctly identified that safety hazard, **there was no system in place by either the company or by Maritime Safety Queensland to investigate our safety alerts, assess the potential for loss of life or limb, and if necessary take preventative action before an accident occurred.**

Extraordinarily, despite our letter, MSQ did not make contact with us and as far as we know *made no investigation whatever of our safety concerns.*

Note also that the Transport Operations (Maritime Safety) Act 1994 puts the onus for marine safety within Queensland on the unusual [by comparison with all other States] notion of *self-regulation by the commercial operator.*
Therefore Stradbroke Ferries were only required, we understand, to provide a written 'Risk Assessment' of every eventuality that they could think of and an argument that [in the company's opinion] the reduced crew of 2 could safely deal with every eventuality. We attach at Appendix E a copy of the 'Risk Assessment' that was used as the justification for the reduction of 'LAKARMA' crew from 3 to 2. [On page one note the one-line dedicated to the particular hazards of operating & maintaining a vehicle/passenger ferry; they are not identified let alone mitigated against.]

The company's 'Risk Assessment' includes repeated references to training for the remaining two crew members once the Engineer/Deck-hand was removed, but NO training was actually given.
Young Michael Walker had worked for the company for about 8 months and had no previous training or qualification for the marine industry.

What on the job training he had received previously was based on a three man crew. There had been no special training for the two men left in how to run the operation now that Murray Hammond was gone. No training. Just a vacuum.

It was only in the last few weeks that Michael Walker asked his father [Steve] to pay for a course on basic marine safety awareness. Michael then went to the company and asked them to reimburse his father the cost of the training which they did reluctantly, complaining of the time he had been away from work.

The company's 'Risk Assessment' for a two man crew assumes that the Skipper/Engineer will be able to leave the Bridge in order to assist the Deck-hand but did MSQ ever evaluate how unrealistic this is ?:-

- the Deckhand/Toll-Collector is trying to handle the ropes for berthing or unberthing the vessel …… as the skipper must remain on the bridge driving the vessel he can not come to the assistance of the Deckhand/Toll-Collector
- When the accident occurred, and Michael Walker lay screaming, with his leg amputated by the rope, the skipper immediately called '000' and was directed by the emergency services to remain by the phone for instructions. All this time Michael's severed leg had fallen in the Bay and his lifeblood was pouring out on the deck.

- ✪ The skipper had to be in three places at once: he had to continue to steer and drive the vessel because it was not properly secured to the jetty; he had to stand by the phone as directed by the emergency services; but if he could not get down to Michael Walker soon and tourniquet his leg Michael would bleed to death. [ultimately the skipper had to leave the helm, drop the phone, and tourniquet Michael's leg then race back to the Bridge].

We understand that so long as such a 'Risk Assessment' is done there is not even a procedure by MSQ to evaluate/test that 'Risk Assessment' or to invite interested parties [e.g. the travelling public or industrial/professional organisations] to make submissions to MSQ on whether the 'Risk Assessment' should be accepted.

It was this 'self-regulation' model that allowed the company to bow to commercial pressure and reduce the crew whilst MSQ ignored our safety concerns. If MSQ ever investigated they did not, as our letter asked, confer with the complainant.

Had MSQ investigated when we raised safety concerns, 4 months before the incident in which his leg was severed, MSQ might not have found it necessary now to investigate the tragic loss of a limb by Michael Walker.

[6] Australian Government: NOHSC: NOTIFIED FATALITIES Statistical report July 2003 to June 2004 : "The highest number of fatalities occurred for workers employed in the Agriculture, forestry and fishing industry (42 fatalities, 33%), followed by Construction, (29, 23%) then Transport and storage (10, 8%)." Note that NOHSC only began collecting notifications of work-related fatalities from Australian OHS authorities on 1 July 2003.

[7] source: 'Marine Safety Incidents Report 2006' issued by Marine Safety Queensland.