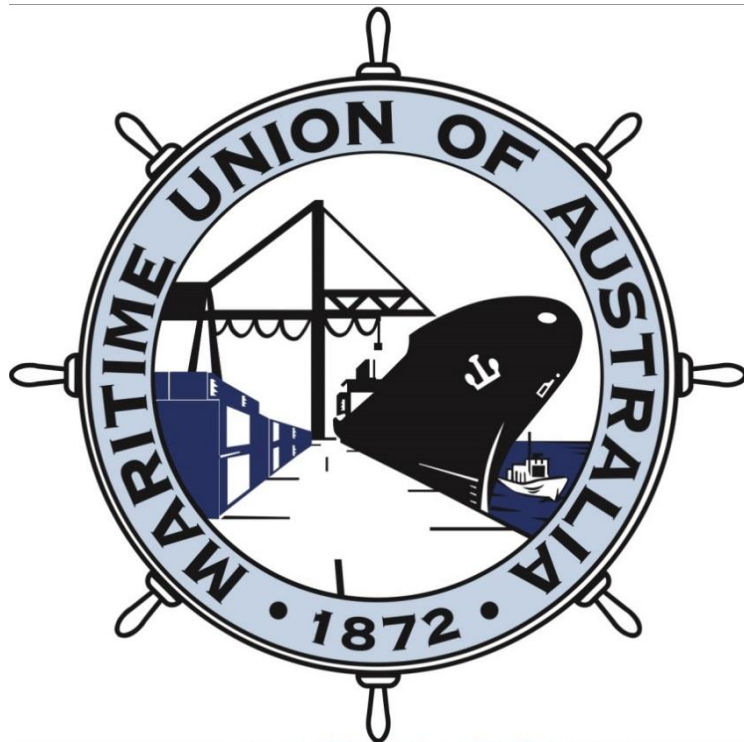


**MUA Submission:**  
**National Transport Regulatory Reform**  
**Productivity Commission Draft Report**



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Submitted by email: [transport@pc.gov.au](mailto:transport@pc.gov.au)

**Paddy Crumlin**

**National Secretary,**

**Maritime Union of Australia**

**A Division of the Construction, Forestry, Maritime, Mining and Energy Union**

365 Sussex St, Level 2,

Sydney, NSW, 2000

For inquiries contact: [penny.howard@mua.org.au](mailto:penny.howard@mua.org.au)

Website: [www.mua.org.au](http://www.mua.org.au)

## Issues addressed in the draft report

The National Transport Regulatory Reform Draft Report has identified many important issues in maritime transport regulation.

In particular, we support the following draft findings and recommendations:

### DRAFT FINDING 4.3

Grandfathering was intended to smooth the transition to the Marine Safety National Law. However, open-ended grandfathering maintains the inconsistencies of previous State and Territory regimes, delays the adoption of new safety standards, complicates enforcement and discourages investment in new vessels and equipment.

### DRAFT RECOMMENDATION 5.4

The Australian Maritime Safety Authority should improve:

- incident reporting by owners of domestic commercial vessels
- its public disclosure of safety incidents by increasing the depth and detail of reported incidents.

Reporting should include a state-by-state and vessel-type breakdown of fatalities and injuries.

The Australian Government should request and fund the Australian Transport Safety Bureau to conduct investigations and publish research on safety incidents and accidents among domestic commercial vessels.

### DRAFT RECOMMENDATION 5.5

The Council of Australian Governments (COAG) and the Australian Maritime Safety Authority (AMSA) should begin to wind up the grandfathering of safety regulations under the Marine Safety National Law (MSNL), with priority given to ending grandfathered exemptions from vessel survey requirements. AMSA should not maintain grandfathering of survey requirements through marine orders or exemptions.

COAG and AMSA should review all other grandfathering provisions under the MSNL. Unless found to be justified through a transparent, public cost-benefit assessment, all grandfathering provisions should be phased out within the next 5 years.

### DRAFT RECOMMENDATION 8.3

The Australian Government should impose a general safety duty on all parties with a significant influence over the safe operation of autonomous transport technologies. The creation of a general safety duty should not preclude the use of prescriptive rules where the assessed risks are high.

### DRAFT RECOMMENDATION 9.3

The Australian and State and Territory Governments should:

- formalise the role of the Australian Transport Safety Bureau to investigate all serious incidents involving domestic commercial vessels, and agree a funding model to support this role
- agree to a funding model to enable the Australian Transport Safety Bureau to adequately carry out its established role in the investigation of rail safety incidents.

#### DRAFT RECOMMENDATION 9.4

The remit of the Australian Transport Safety Bureau should be extended to include any incident where autonomous technologies at or above SAE level 3 autonomy may have been involved.

#### Issues not sufficiently addressed in the draft report

The draft report does not at all address our key concern about the impact of the new national system and the MSNL on the already-existing system of national and international vessel safety regulation originating from the International Maritime Organisation (IMO) and implemented in Australia through the Navigation Act and its supporting Marine Orders. These relate to the following draft findings, recommendations, and requests for further information, with comments below each in italics:

##### DRAFT FINDING 4.1

Implementing national transport regulation and establishing national regulators has been slower than anticipated. Both the regulation and the regulators are works-in-progress. Creating a national regulatory system is complex and time consuming, with early expectations proving to be optimistic.

**MUA comment:** In the maritime sector, this is partly because there are two national overlapping jurisdictions with very different standards. This must be addressed in the final report.

##### DRAFT FINDING 7.2

The broad scope of the Australian Maritime Safety Authority's responsibilities is an impediment to effective regulation of domestic commercial vessels. Safety regulation of 'Hire and Drive' recreational vessels could be undertaken effectively by State and Territory government agencies, which already regulate similar vessels that are not used for commercial activities.

**MUA comment:** We do not oppose moving hire and drive vessels back to states and territories. However, this recommendation does not go nearly far enough to address the extent of the problem.

##### INFORMATION REQUEST 5.2

The Commission is seeking additional information about the operation of the vessel survey regime, including:

- the appropriateness of the existing survey requirements for each vessel category
- any serious impacts on safety outcomes following the changes to the vessel survey regime.

**MUA comment:** The changes and confusion about survey regimes is partly because there are two national overlapping jurisdictions with very different standards. This must be addressed in the final report.

#### DRAFT RECOMMENDATION 7.4

The Australian Government should negotiate with State and Territory governments to return responsibility for regulating Class 4 Domestic Commercial Vessels (Hire and Drive) to State and Territory agencies.

The Council of Australian Governments should consider the benefits and costs of returning regulatory responsibilities for other vessel types to State and Territory governments.

**MUA comment:** We do not oppose moving hire and drive vessels back to states and territories. We support COAG considering returning regulatory responsibilities for some vessel types to State and Territory governments.

However, we also believe it is critical that many vessels are returned to the jurisdiction of the Navigation Act.

#### INFORMATION REQUEST 7.2

Are there activities within the Australian Maritime Safety Authority's responsibilities that the Council of Australian Governments should consider returning to State and Territory oversight?

**MUA comment:** Possibly this could be a solution for parts of the fishing industry with more localised operations.

#### INFORMATION REQUEST 9.2

To what extent are changes needed to the administration of the Marine Safety National Law, workplace health and safety regulation, and environmental regulation of fisheries? How might the interface between regulators and operators be made more effective?

**MUA comment:** We are pleased to see that the PC is looking at the regulation of fisheries. We believe that the attempt to make the MSNL applicable to vessels ranging from fisheries to Major Australian Trading Vessels has been a failure, and resulted in significant reduction in standards on larger commercial vessels.

## Navigation Act 2012

There is nowhere in the draft report that acknowledges the already-existing national system of vessel safety regulation under the Navigation Act, nor the changes made to the Navigation Act in conjunction with the introduction of the Marine Safety National Law. This has significantly affected both safety and productivity in the domestic marine transport industry. The report fails to acknowledge that many vessels operate mainly in the domestic trade, however are regulated in a different manner to vessels that trade completely within the Australian Economic Exclusion Zone. We do not believe that the PC draft has placed enough emphasis on the consequences of large numbers of vessels changing jurisdiction from the Navigation Act to the MSNL, and the lack of synchronisation with this change with WHS laws and the investigation and reporting of the ATSB. The Maritime industry faces challenges separate to the Rail and Heavy Vehicle Sectors and has changed significantly as a result of the transport reforms. The MUA holds the position that many vessels would be better regulated under the Navigation Act rather than the MSNL.

See Section 4 of the MUA's July submission to this Inquiry, pages 12-16, section 5, pages 18-20,

## Skills Shortage and Navigation Act Seafarers

While training and skills were addressed with regards to the Heavy Vehicle sector in the draft report, the growing shortage of skilled seafarers is an issue that should also be addressed in examining the ongoing productivity of the maritime industry. The changes in the Navigation Act and the transfer of jurisdiction to the MSNL have, and will continue to, affect training, quality and quantity of Australian seafarers and exacerbate the skills shortage that will affect the productivity of the country. Navigation Act seafarers not only crew international trading ships, they are required to fill many vital shoreside roles such as pilots, harbour masters, loading masters, lecturers and ship surveyors. Seafarers trained only to the standards of the MSNL do not have the skills required to operate large or complex vessels or carry dangerous and polluting cargoes.

See Section 10 of the MUA's July submission to this Inquiry, p.47-49.

## Dangerous and Complex cargoes

The freight that is carried to, from and around Australia passes through many regulatory environments. The carriage of dangerous goods in package form is standardized in the global marine environment. In Australia, however, a shipper must know how to package and transport goods for transport in different states, countries and on different modes of transport. The MSNL has no regulations regarding the transport of dangerous goods, leaving it up to individual companies to develop individual Safety Management Systems. The IMDG (International Maritime Dangerous Goods) Code, on the other hand, lists thousands of goods and their compatibility for transport with other goods and passengers. Any shipping containers that come from overseas are packed and transported in accordance with these rules, however DCVs transporting these goods around the coast are not required to comply. This is a definite lowering of safety standards since the introduction of the MSNL, and as some of these vessels also carry passengers, have the potential for catastrophic risk. Standardizing the carriage of dangerous cargoes to the international standard across all states and all modes of transport will improve both safety and productivity.

Cargoes such as bulk grain and ore cargoes pose specific risks that can lead to cargo shift and a catastrophic loss of stability. Vessels that are regulated by the Navigation Act, and all vessels that trade worldwide follow a specific set of rules to prevent this from happening. The MNSL does not require either training in, or following of these rules.

Passengers are also a very complex 'cargo'. After many disasters, beginning with the Titanic in 1912, the operational requirements of operating a passenger ship were agreed by the international community. While domestic passenger vessels are required to follow some of these regulations, the MSNL is much less prescriptive regarding formal training and qualification of crew members, regular onboard training and drills and passenger drills and briefings. It is possible to work as crew on a passenger vessel under the MSNL without any qualification, even a first aid certificate.

See p.46 of the MUA's July submission to this Inquiry.

### Work Health and Safety

The draft report did not pick up on the fact that state WHS laws do not apply to all DCVs. The OSH(MI) Act and the reporting by the ATSB applies to DCVs on interstate voyages. This arrangement means that both WHS and reporting obligations can change on a day to day basis.

#### INFORMATION REQUEST 5.3

The Commission is seeking additional information about the situations where greater clarity is required between the operational jurisdiction of national transport regulators and workplace health and safety regulators and overlaps in their responsibilities. What options for rectification would be desirable?

#### INFORMATION REQUEST 7.1

Is the wording of the Marine Safety National Law an impediment to effective enforcement by Australian Maritime Safety Authority? Would a positive requirement that operators 'must ensure' safety be more consistent with providing the regulator with the powers it requires?

**MUA Comment:** We covered both of these topics in our July submission and are pleased to see them being taken up by the PC.

### Un competitiveness in the Australian Domestic Industry

Unlike road and rail, vessels can, and often do, operate outside of the Australian EEZ – the limits of the reach of the MSNL. While also meeting state and national requirements, many vessels in their lifetime also need to comply with international laws. Fishing vessels often operate outside the EEZ, vessels working in the Torres Strait cross in and out of Australian waters, offshore support vessels operate in the Joint Petroleum Development Area, and some are built overseas, go for drydock and maintenance periods in South East Asia, and can be sold when no longer required in Australia. These vessels can be granted special exemptions, temporary licenses and permits to operate in these circumstances. This creates a nontransparent and uncompetitive environment for ship operators with small profit margins. When addressing the productivity and safety of the Australian Maritime industry, it is necessary to investigate how the entire industry has been turned on its head since the COAG reforms.

### Reporting, data collection and incident analysis

The MUA fully supports the PC's recommendation to include safety investigations for the entire maritime industry under the remit of the ATSB. It is imperative to gather useful data to improve safety in the industry. In addition to the ATSB's and AMSA's reporting requirements, the MUA also considers it necessary for vessels to report serious health incidents and suicides. There is a global consensus that seafarers face unique challenges, and that there is a significant portion of the industry that suffers from both physical and mental health issues. As AMSA regulates medical certificates and the contents of medical kits on board, data is key to knowing if this regulation is effective. For example – currently non – passenger vessels under the MSNL are not required to carry Automatic Defibrillation Devices (AEDs). Without appropriate data on health incidents, there is no way of knowing if this is appropriate regulation. If there is a high incidence of poor mental health and suicide in the Australian Industry, guidelines and frameworks must be developed.

### Moving Hire and Drive vessels back to the state's jurisdiction

The MUA acknowledges that AMSA has adopted a mammoth task, and agrees with the PC that some vessels may be better served by separate legislation. While moving hire and drive vessels back to the state jurisdiction is a viable option, it is also worth considering if this may be an option for fishing vessels. The MUA does advocate for large and complex vessels to be returned to the jurisdiction of the Navigation Act, an area that AMSA is effective and practised in regulating.

### The appropriateness of risk-based regulation in the maritime industry

The PC identifies the requirements for effective outcomes and risk-based regulation on p.30 and p.70 of the draft report. We note the PC's finding that: 'AMSA has identified the benefits of taking a flexible, risk-based approach to regulation. However, the regulator has not yet developed the information base that it would require to implement this approach' (p.251). Much more attention must be paid to this finding as it calls into question the appropriateness of the basic principles of the MSNL and AMSA's current approach to maritime safety regulation. The industry conditions requiring prescriptive regulation are identified in the table on pg.30, and we believe that this is a much more accurate description of the maritime industry in Australia than the 'Outcomes principles, risk-based' column.



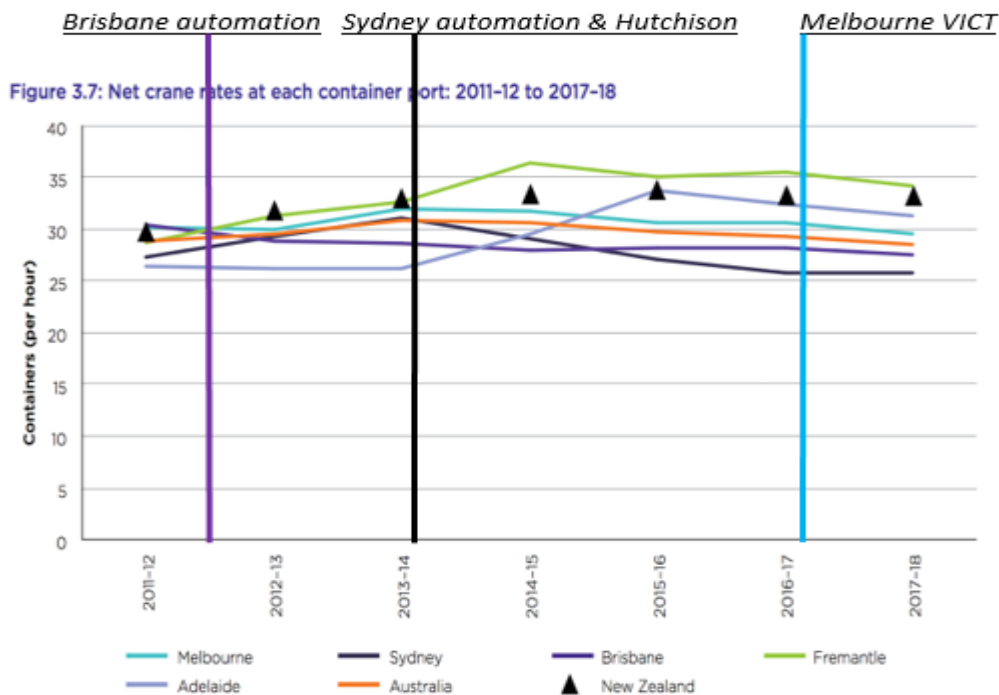
## Automation

Automation has very significant social impacts, and limited productivity gains. Automated machinery was introduced into 6 of the 12 Australian waterfront container terminals between 2013 and 2016, by three different companies, and using a wide variety of technologies. The impact of these changes was substantial: at terminals converting from conventional to automated modes of operation, employers sought to reduce the workforce by 40-50%.

Automation has been implemented unevenly: in Brisbane all three container terminals are automated and have been for some time, in Sydney two of three container terminals are automated (with one of the automated terminals being very small), and in Melbourne only one very new terminal is automated, with the vast majority of cargo being handled manually. Terminals in Adelaide and Fremantle are not automated.

Every year the Australian Competition and Consumer Commission produces the Container Stevedoring Monitoring Report. This report consistently identifies Melbourne as the most productive port, and Brisbane as one of the least.<sup>1</sup> Moreover, historical graphs show productivity declining in ports after automation is introduced.

**Figure 1:** Productivity in relation to container terminal automation. The graph is from the ACCC and have added lines to indicate when container terminals in the relevant ports were automated.



**Source:** Australian Competition and Consumer Commission, 2018, Container Stevedoring Monitoring Report 2017-18, p. 47.

<sup>1</sup> Australian Competition and Consumer Commission, 2019, Container Stevedoring Monitoring Report 2018-19, p. 27.

## Opportunities for further reform

In the final draft, the PC should also recognise:

- The need to reduce transport emissions, and the opportunity for improving safety, lowering emissions and reducing road congestion by shifting freight onto ships (p. 74-77 of the MUA's July submission).
- The need for the Australian domestic freight market to operate on a level footing among all modes by creating competitive neutrality between all modes of transport. Part of this would be to ensure that road, rail and shipping are equally subsidised. (p. 63-73 of the MUA's July submission).
- How the functionality of intermodal freight terminals and supply chain efficiency has been impacted by privatisation (p. 61-63 of the MUA's July submission).
- The need for Australia to have a commercial fleet of vessels that can be tasked in case of road closures or in national emergencies. The recent tasking of the Far Saracen and Far Senator to assist the community of Mallacoota in the fires highlights this requirement.