



# AIMPE

Australian Institute of Marine and Power Engineers



# AMOU

Australian Maritime  
Officers Union

6 September 2022

**Joint- Response by the**  
**Nautilus Federation of Australia**  
**(AMOU & AIMPE)**  
**INTERIM SAFETY REPORT**  
**of the Independent Inquiry as to whether the Domestic Commercial Vessel**  
**National Law is Fit-for-purpose.**

This submission in response 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.

Firstly, there are some issues that the Interim Report does not address, or address with sufficient clarity, such as that the *Marine Safety (Domestic commercial Vessels) National Law Act* and the *Navigation Act* were both written as if the other does not exist. And that as a result Harbour-Towage vessels and merchant-cargo vessels which would require a higher level of deck and engineer officer qualification (based on complexity and operational risk) cannot be assigned such higher requirement because the 'National Law' deems higher qualifications to be equated with the lesser qualifications issued under the 'National Law'.

Secondly, whilst we welcome a number of the Findings and Recommendations, or parts of them, we have concerns that some of them will, in our estimation, reduce safety:-

- A. **Response to Recommendation 1:** whilst we commend that part of Recommendation 1 which speaks of "...requiring higher risk vessels to comply with the Navigation Act and associated international standards, including the International Dangerous Goods Code and the Standard of Training, Certification and Watchkeeping..." the only example given as to what constitutes a high risk vessel was a reference to the carriage of dangerous goods.

We would appreciate if you were able to address the concerns we raised in our earlier submission in which we argued that the operational risks of Harbour-Towage vessels in their primary task of pushing/pulling and maneuvering of massive merchant-cargo vessels in hazardous close confines of port/river as well as their Emergency Towage/Salvage work to rescue stricken merchant-cargo vessels at sea, constitute a clear basis for this specialized high risk class of vessels to be removed from the jurisdiction of the 'National Law'.

**In our submission, the large merchant-cargo vessels, the Fuel-Bunker vessels which refuel them and the Harbour-Towage vessels which manipulate them and rescue them in Salvage operations at sea should all be excluded from the 'National Law' and placed under the *Navigation Act*.**

- B. **Response to Recommendation 1:** we are enormously concerned however with that part of Recommendation 1 which speaks of "...removing the universal requirement for all DCV's to have Certificates of Survey and Operations..." as we will suffer both:-

- a reduction in safety for employees on those commercial vessels as a result of removal of the requirements for structured RISK ASSESSMENT currently required as the basis for the Owner's determination of what constitutes safe crewing (i.e. 'Appropriate Crewing') for the company's operations; and
- a reduction in safety for employees, industry participants and the travelling public as a result of removal of the requirements for independent SURVEY of the seaworthiness of ALL commercial vessel(s).

**In our submission, the universal requirement for all DCV's to have a Certificate of Survey and a Certificate of Operations must be maintained.**

- C. **Response to Finding 1:** We are concerned that AMSA will never have the funding/resources of the scale required to monitor/enforce and implement a completely Risk-Based regulatory approach, and to comprehensively identify the "...riskier segments...".

As it is now there are bottom-feeder operators who choose not to take the time to develop the Safety-Management-Systems to give effect to a reliance on the imposition of general safety duties: avoidance rather than compliance is a too frequent modus operandi that does not get detected until AFTER someone is badly injured and cannot be covered up.

Risk-Based regulation is NOT a preventative strategy.

Waiting until someone is hurt to focus on Prosecution after the fact is a reactionary regulatory model that uses the limbs/lives of employees as disposable indicators of whether their employer is making proper RISK ASSESSMENTS and 'Appropriate Crewing' determinations to ensure their safety.

The safety of employees (particularly employees in non-unionised workforces) will be reduced if there are not clear regulatory prescriptions that ensure a safety standard below which no operator must go.

**In our submission, there must be no reduction in regulatory requirements mandating processes of RISK ASSESSMENTS and 'Appropriate Crewing' determinations to ensure employee safety.**

- D. **Response to Finding 2:** This reduction in safety for employees would be exacerbated by Finding 2 and that part of **Recommendation 1** which proposes "...**removing the universal requirement for all DCV's to have Certificates of Survey and Operations...**" because without the need to formally apply to AMSA for a Certificate-of-Operation to perform specific operations within specific operational limits, many operators will no longer be spurred to actually perform the RISK ASSESSMENT currently required as the basis for the Owner's determination of what constitutes safe crewing (i.e. 'Appropriate Crewing') for those operations.

Without a mandated requirement to perform such RISK ASSESSMENT not only for normal operations but also for significant variations in operations (including different cargoes and longer voyages) the operators will not be forced to give real substance to their (claimed) Safety-Management-System which is the only systemic method of providing safe working conditions for employees.

**In our submission, the universal requirement for all DCV's to have a Certificate of Survey and a Certificate of Operations must be maintained.**

- E. **Response to Finding 3 and Recommendation 2:**  
**We support Finding 3 and Recommendation 2 regarding the withdrawal of existing grandfathering arrangements.**

- F. **Response to Finding 4 and Recommendation 3:** State WH&S jurisdictions can only operate within the remit of their enabling legislation so it is not possible for State WH&S authorities to investigate and enforce marine regulatory obligations. Potential breaches of marine regulatory requirements (such as s.12, s.13 and s.16 of the *Marine Safety (Domestic commercial Vessels) National Law Act*, and breaches of mandatory requirements for Safety Management Systems, for RISK ASSESSMENTS and 'Appropriate Crewing' determinations can ONLY be investigated and enforced by AMSA.

However, unlike the State WH&S legislation, the National Law and Marine Orders make NO requirement for breaches (e.g. of s.12(4) of the National Law) to be REPORTED to AMSA by both the Master and by the Owner. Without any requirements for reporting, the Owner is able to threaten the Master with dismissal to cover up the breach and force the Master to work in a manner the Master had judged to be unsafe. AMSA has zero capacity to enforce its legislation without amendments REQUIRING reporting of such incidents.

We have a recent instance of this which occurred on 10 June 2022 regarding the Svitzer tug *Mataranka*, with one Master brave enough to document the breach. Only because the Unions on 12<sup>th</sup> July 2022 then went to AMSA with this is there any investigation occurring at all. if required we are happy to provide the Inquiry with the details of this breach, as an example, on the proviso that all identifying details of individuals are first redacted.

**In our submission, AMSA cannot rely on the reporting and HSR powers under State WH&S Acts and will continue to be unable to monitor and enforce maritime-specific provisions of the National Law unless amendments are made to Marine Orders to require all prima-facie breaches of s.12 and s.16 of the National Law and of Marine Order 504 to be Reported.**

- G. **Response to Finding 5 and Recommendations 4 & 5:**

**We support Finding 5 and Recommendations 4 & 5 regarding the need to improve AMSA's enforcement powers and penalties for breaches of safety requirements.**

- H. **Response to Finding 6:**

Risk Assessment by Owners has been repeatedly demonstrated to inadequately involve affected employees and focus more on corporate and commercial risk rather than vessel and task specific based operational risks. There is evidence of risk assessments already so inadequate that risks to operations, vessel and indeed the crew members in foreseeable operational scenarios and contingencies are simply not assessed under the current oversight regime; we cannot support a lessening of Regulatory oversight, in fact Regulatory approval of high level risk assessments should be mandated.

As per our Response to Finding 1, we are concerned that the move to an even more 'Risk-Based' approach relies on prosecution of industry participants AFTER an unusual number of incidents/injuries have occurred to provide the statistical evidence for increased regulatory monitoring.

Fundamentally this treats employee's limbs/lives as statistical indicators, not as real persons whose injury should aim to be PREVENTED.

**We oppose further shift away from auditable safety requirements which require formal Risk Assessments and documented Appropriate Crewing determinations by the Owner, but support that part of Finding 6 that proposes AMSA's enforcement powers should be further enhanced.**

- I. **Response to Finding 7 and Recommendations 6, 7 & 8:**

**We support Finding 7 and Recommendations 6, 7 & 8 regarding funding for ATSB to undertake a no-blame investigation program for the DCV sector.**

**J. Response to Finding 8 and Recommendation 9:**

We support Finding 8 and Recommendation 9 regarding need for the establishment of a concerted effort by AMSA to lead, develop and foster a safety culture within the maritime industry and create a 'white-card' system of minimum safety knowledge even for those not required to hold a certificate of competency (e.g. snorkelling instructors, wait-staff etc ), however we believe AMSA needs additional AMSA-employed officers sufficient to greatly increase the capacity for unannounced auditing of Safety Management Systems and inspection of Risk Assessments and Appropriate Crewing determinations.

**K. Response to Finding 9 and Recommendation 10:**

Competency and independence of private/commercial Surveyors must be placed under greater control, not less. Engineer Surveyors and Auditors fail on an ongoing basis to identify defects and breaches of operational and navigational Standards (equipment, practices, records etc.) and similarly those with Deck Officer CoCs and background presumably fail to adequately survey machinery and engineering Standards....

Examples:

Svitzer Lynx and Svitzer Oryx were imported to Australia in 2021: AMSA issued Certificates of Operation but both vessels were subsequently found to be unsafe and unseaworthy (by HSR and Crew inspection) warranting issue of Improvement Notices by the OH&S Regulator, VWA, (see attached). AMSA subsequently issued Prohibition and Improvement Notices (see attached). Note the AMSA Certificate of Survey inspection and the vessel Australian Class Certification surveys were all undertaken by Lloyds Register, the private/commercial Surveyor was placed under immense commercial pressure by the Owner. HSRs asked Lloyds to conduct an internal investigation of this, but after initial acknowledgement of receipt of complaint Lloyds made no response.

Further examples can be given if required.

**We believe that further investigation of the shift to Private (i.e. commercial) Marine Surveyors should be undertaken before any further changes are made. Critically important is the commercial pressure on these private surveyors to NOT find fault with the vessels they are inspecting, for fear of word-of-mouth amongst Owners effectively black-listing any surveyor who is rigorous in their inspection and findings. This commercial pressure on the surveyor is in conflict with the safety objectives which are the purpose of the survey system requirements.**

**Additional regulatory requirements that Surveyors be forced to have relevant and appropriate marine qualifications would enhance safety and effectiveness of private/commercial Surveyors as well.**

**L. Response to Finding 10 and Recommendations 11:**

We support Finding 10 and Recommendations 11 that the current requirement that changes to regulations be unanimously agreed by the States and the Northern Territory be removed.

**M. Response to Finding 11 and Recommendations 12:**

We support Finding 11 and Recommendations 12 that AMSA should set up a taskforce to consider how to optimise and future proof the National Law framework to regulate new and emerging technologies.



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