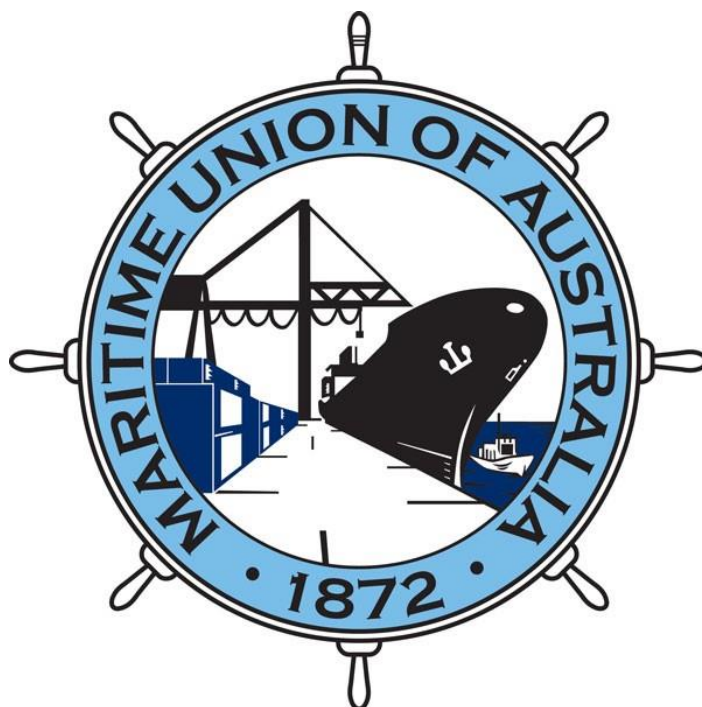


MUA Submission:

**Draft report of the
Independent Review of Domestic
Commercial Vessel Safety Legislation**



5 December 2022

Independent Review Panel

Submitted by email: dcvsafetyreview@infrastructure.gov.au

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About us

This submission has been prepared by Maritime Union of Australia (MUA). The MUA is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union and an affiliate of the 20-million-member International Transport Workers' Federation (ITF).

The MUA represents approximately 13,000 workers in the shipping, offshore oil and gas, stevedoring, port services and commercial diving sectors of the Australian maritime industry.

Overview

Our position in terms of the need to reform the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law) and the *Navigation Act 2012* (Navigation Act) has been set out in the following documents already supplied to the Panel:

1. Maritime Union of Australia, Submission to the Independent Review of the National Law, 8 April 2022.
2. Maritime Union of Australia, Stopping the race to the bottom on maritime safety, May 2021.
3. Maritime Union of Australia, National Transport Regulatory Reform, 12 July 2019
4. Maritime Union of Australia, National Transport Regulatory Reform, Productivity Commission Draft Report, 29 January 2020.

In this submission we do not intend to repeat to the same arguments we have made in the documents listed above. Our position remains the same. For clarity we have attached our broad suite of recommendations for reform of the National Law and relevant parts of the Navigation Act. In the body of the submission we will respond to relevant findings and recommendations in the Draft Report, and highlight the gaps that remain in that report.

We are very encouraged that the Draft Report recognises the need to move some vessels currently being regulated under the National Law to the Navigation Act. From our perspective this could be the most important outcome of the Review. The Draft Report suggests that 'AMSA in consultation with industry' (p.28) would determine vessel risk and therefore determine what vessels would move to the Navigation Act. Such a process will need to be led by the Department of Infrastructure and Transport to ensure it also fits in with government policies and planning around developing the STCW-qualified workforce to crew a future strategic fleet and staff a thriving maritime cluster. AMSA, industry and unions will all need to be involved in this process.

However there are other concerns that we have with the direction of the Draft report. While the Report has recognised the challenges that exist in relation to the interface with the WHS system, it has fallen far short in its understanding of that system. An expert in the WHS system must be engaged by the panel to properly carry out a safety analysis and to inform

its recommendations around the development of Codes of Practices and the broader relationship with the WHS system.

We are also concerned that the Draft Report seeks to remove existing safety standards from a large suite of DCVs. We are not convinced that the case has been made that such vessels are indeed 'low risk'.

We are disappointed that the Draft Report has not addressed the existing challenge of two separate and incompatible maritime qualification standards under the National Law and Navigation Act. Workforce shortages in the maritime industry continue to grow and this absurd situation will continue to negatively impact the maritime industry if it is not addressed.

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Role of the Navigation Act

Recommendation 1 (partial)

- *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.*

We support this part of Recommendation 1. We are very encouraged that the Draft Report and AMSA's initial submission to this Review recognises the need to move some vessels currently being regulated under the National Law to the Navigation Act, and the associated suite of international conventions. The International Dangerous Goods Code (IMDG) and the Standard of Training, Certification and Watchkeeping (STCW) conventions are critically important, along with the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention for the Prevention of Pollution from Ships (MARPOL). From our perspective this could be the most important outcome of the Review.

The Draft Report characterises vessels that could move to Navigation Act as of a 'higher safety risk, akin to international shipping' and gives the example of 'vessels carrying dangerous goods (p.27-8). The Draft Report also says that 'AMSA in consultation with industry would need to determine characteristic or risk profiles of vessels that are appropriate for regulation in each layer of the pyramid (diagram and quote on p.28).

We would be very happy to participate in a consultation process to define high-risk vessels to move to Navigation Act coverage. Such a process will need to involve AMSA, industry and unions, but will need to be led by the Department of Infrastructure and Transport to ensure it fits in with government policies and planning. It will of course require legislative change to be implemented, which could be achieved through amendment of s.15 of the Navigation Act, which defines what vessels are Regulated Australian Vessels. Commercial vessels should fall under the Navigation Act as the default standard, but with a non-discretionary provision for statutorily defined ships to be regulated under the National Law. Our proposal for what vessels should fall under each piece of legislation is below and in Recommendation 2 at the end of this submission.

Having a larger pool of vessels regulated under the Navigation Act is critical to developing the international STCW-aligned training and qualifications which are required to operate Australia's international ports and significant parts of our maritime industry. This will be particularly important for delivering the government's objectives to establish a strategic fleet and to build an integrated Australian maritime industry. We explore this issue further in the section 'Gaps: qualifications'.

Safety and incident statistics will no doubt be a part of this discussion to define high-risk vessels moving to Navigation Act coverage. The discussion must also consider that in many higher-risk operations there are already strong safety management systems in place and good safety outcomes, particularly where there are union agreements and elected Health and Safety Representatives. Aspects of risk on vessels that should be considered in relation to future Navigation Act coverage include:

- the complexity of the operations, systems and risks being managed on the vessel

- the training required of the crew in order to be able to operate, maintain and troubleshoot complex ship's systems
- the requirement for vessels operating more than 12nm from a safe haven to be self-sufficient and independently deal with emergencies, particularly firefighting and rescue operations
- the requirement to have sufficient trained crew and systems in place to operate continuously for days, weeks or months at a time
- any requirement to interface with other infrastructure or vessels at sea. Any transfer of personnel at sea (for example to platforms, facilities and wind turbines) is extremely high risk
- the existence of known hazards that require additional training, such as managing explosive and dangerous goods, managing enclosed spaces, working from heights, managing commercial dive operations, operating cranes, operating dredge equipment, and operating at high speeds.
- the potential for large numbers of casualties on passenger vessels, or vessels with large crew.

Our view is that those higher-risk vessels regulated under the Navigation Act should include vessels that:

- Voyage more than 12nm from the coast and a safe haven, or
- Are more than 24m in length, or
- Carry more than 50 passengers, or
- Carry dangerous or polluting cargoes, including oil, gas, ammonia and hydrogen, or
- Proceed on voyages of more than 36 hours in length, or
- Carry out 'high risk' operations.

We think that these basic rules could be applied flexibly, as follows:

- Vessels greater than 24m and less than 80m and not engaged in high-risk operations can apply to be regulated under the National Law providing the vessel remains in smooth waters or partially smooth waters.
- Vessels carrying more than 50 passengers and under 24m in length may apply to be regulated under the National Law providing the vessel remains in smooth waters or partially smooth waters.
- 'High risk' operations include tugs, ro-ros, dredgers, tankers, passenger vessels carrying more than 50 passengers, vessels servicing offshore wind farms, vessels working in the oil and gas industry (including diving and decommissioning work), high-speed craft 12m and over in length, and vessels engaged in salvage and construction. The national regulator may add (but not remove) vessels and classes of vessels to the schedule of 'high risk' vessels at any time.
- Vessels other than tankers regulated under the Navigation Act but less than 80m long, with less than 3000kw engine power, and of less than 3000GRT and operating only in smooth waters or partially smooth waters may apply to use the General Purpose Hand qualification as part of their Minimum Safe Manning, subject to an assessment of required STCW short courses according to vessel operational functions and equipment.

We note that AMSA made an important submission to the initial round of consultation for this review in March 2022. The Panel has picked up on some of these measures, with varying levels of detail. We are broadly supportive of AMSA's proposals, and pleased that they are recommending that some vessels be moved to the Navigation Act. We do have some concerns about their recommendation to move vessels owned by government agencies out of the jurisdiction of the National Law, and we note the Panel has not picked up on this recommendation.

The distinction AMSA make about much lower level of risk in human-powered vessels as compared to other small vessels is important. Unfortunately the Draft Report has not picked up on this, even referring to human-powered vessels and workboats as having the same level of risk on pg. 28. We note the careful way that AMSA has sought to define lower-risk vessels, particularly on paragraphs 20, 21 and 22 of its submission. We suggest that the Panel return to examine the detail of these sections more closely.

For those vessels transitioning to coverage under the Navigation Act, it will be important that there be a well-structured and managed transition process to protect those seafarers who are currently working on DCVs holding a GPH or other Marine Order 505 qualification who, as a result of a new application provision of the Navigation Act, would find themselves on a RAV requiring an STCW qualification and associated AMSA occupational licence. We would be happy to work with AMSA on the design of a transition arrangement.

Safety analysis

Key Finding: *While there is room for improvement, there is evidence to suggest the National Law framework has improved safety outcomes. However, the legal framework has introduced unnecessary complexity and regulatory burden and is not responsive to innovation and change.*

We are very disappointed in the quality of the safety analysis provided in the draft report (p.21-24), which significantly undermines its 'Key Finding'.

We have raised concerns about the problems with accurate and consistent analysis of safety statistics for DCVs over many years now. The key issues have been a lack of clear definitions, and no clear and consistent reporting of a fatality or injury 'rate'.

We have been advocating that AMSA report safety statistics consistent with the Safe Work Australia reporting, which includes comprehensive explanations of the definitions and data sources it uses for injuries, fatalities, and the size of the relevant workforce.¹ AMSA have been moving in this direction, but questions remain over:

- how fatalities are defined

¹ Safe Work Australia, [Explanatory notes: Traumatic Injury Fatalities database for Safe Work Australia](#), March 2020.

- the size of the workforce used to calculate the rate (it has been calculated based on 66,000 people working on DCVs each year since 2016-17).²

This review should be an opportunity to set a clear path to fixing these problems. For this reason, among others, we nominated recognised WHS expert Marie Boland to be among the reviewers.³ The previous government declined to nominate her, or any other person with equivalent WHS experience.

Instead of clarifying the use of DCV safety statistics, the draft report of the Independent Review Panel has confused the issue even further through an incorrect use of the term 'fatality rate'. A 'rate' is 'a quantity, amount, or degree of something measured *per unit of something else*' (emphasis added).⁴ For fatalities, Safe Work Australia calculate a 'rate' per 100,000 workers. Unfortunately the Independent Review Panel have not made any reference to the size of the workforce. This is not a fatality 'rate', these are fatalities.

The incorrect use of the term 'rate' is repeated multiple times in the Draft Report, and is even more problematic when used to compare fatalities and injuries with larger industries such as heavy vehicles, rail, and commercial aviation. An accurate comparison must include a consideration of the size of the workforce in these industries.

While it is good to see a declining number of fatalities (Figure 3), there is no clear definition offered of what is considered a fatality, or what fatalities are included or excluded. For example, do the numbers cited involve passenger fatalities? It appears that they do as the numbers are significantly different from those cited in the most recent AMSA Annual Report, across 5 different years.⁵ It is distressing to the workforce to have government agencies and reports cite different numbers of industry fatalities without a clear explanation, as it gives the impression that no one can be bothered to accurately count worker deaths.

The number of injuries listed appears to be only from those reported to AMSA – although this is not clearly specified. It appears that no effort has been made to cross-reference the number of injuries with workers' compensation data to verify the accuracy of these report numbers, despite a reference to a 'less than ideal culture of reporting' (p. 23-24). A later section of Draft Report even says that 'The Panel has formed the view that the level of incidents and accidents reported is, in reality, substantially below the actual numbers of incidents and accidents occurring' (p.54). This concern is not properly reflected in the way that the safety statistics are included in the Report, or in its Key Finding.

There is no clear or forward-looking discussion in the section on the limitations of the data offered, and how this can be improved in the future. The draft report refers to

² AMSA, Annual Report 2016-17 p.IV, AMSA, Domestic commercial vessel annual incident report, January - December 2020. '[Consequences to people](#)'.v. In its most recent annual report a rate is not calculated.

³ Marie Boland completed a review of Australia's WHS laws for Safe Work Australia in 2018. In May 2021 WHS ministers reached agreement for action on all of the 34 recommendations of the Review. She spent 11 years at SafeWork SA, including as Executive Director.

⁴ www.merriam-webster.com/dictionary/rate

⁵ AMSA, Annual Report 2021-22, p.19

recommendations ‘to encourage better incident reporting and data collection (Finding 7 and Recommendation 8),’ (p.24) but these only relate to the role of the ATSB.

The Panel must engage a qualified safety professional to review available maritime industry safety statistics and prepare benchmarks that could be used in the Report and by AMSA and other agencies going forwards to properly inform policy making.

- This should be consistent with Safe Work Australia’s reporting and definitions.
- The size of the workforce should be properly calculated in order to ensure that the fatality and incident rates are accurate.
- Reported information on injuries should be compared with information available through state and national workers’ compensation authorities to determine the potential discrepancies (noting that workers compensation data excludes the fishing industry in Tasmania).
- Safety benchmarking and statistics should also include the level of inspections and other enforcement actions.

Safety duties and a risk-based regulatory framework?

Finding 1: *Much of the complexity and regulatory burden would be reduced if the general safety duties in the National Law, supplemented by codes of practice developed by AMSA in consultation with industry, were used as the primary regulatory tool for the less risky segment of the DCV fleet. This would also allow AMSA to concentrate on the riskier segments.*

Recommendation 1 (partial)

The law should be amended to better reflect a risk-based regulatory model that is flexible and able to adapt to innovation and emerging technologies by:

- *retaining general safety duties on all parties that have a duty under the current law;*

In our previous submission, we recommended that the definition of ‘owner’ in the National Law should be aligned with the definition of a Person Conducting a Business or Undertaking (PCBU) in the model WHS Act. The Duties of the PCBU should also be aligned with the model WHS Act. Wherever possible, other duties and definitions should be aligned with the model WHS Act.

We note that AMSA has proposed narrowing the current safety duties in the National Law to concentrate on the unsafe operations of vessels and the safety duties of surveyors. We would like to gain a better understanding of the risks and merits of this proposal.

In practice we understand the AMSA proposal would mean that state WHS regulators would be responsible for bringing forward a wider range of prosecutions under the WHS Act general safety duties provisions, with the current higher level of penalty. Measures would need to be taken to ensure they were resourced and competent to bring forward such prosecutions.

The report emphasises a 'risk-based regulatory framework' (p.26). However, there is no assessment in the report of what the risks are, how they are distributed across the fleet, or method for benchmarking and analysing changes over time.

This is concerning because the draft report recommends removing significant aspects of current safety regulation.

The MUA has long supported the use of Codes of Practice made under the national WHS Act system. Our previous submissions outline the improvements the stevedoring Code of Practice has made to safety in the Stevedoring industry. These Codes have been made through a consultative process managed by Safe Work Australia and have WHS rights for workers and Health and Safety representatives embedded in them. Safe Work Australia is now very experienced in making such Codes, and workers understand how to use them.

However this does not appear to be what is being proposed in the draft report, which proposes that AMSA develop these codes of practice. AMSA is not embedded in participatory model of the WHS system, which in our view is critical to the success of other Codes of Practice.

We are concerned that this proposal is simply to water down NSCV or Marine Order standards and make them non-mandatory.

The form of the proposed codes of practice must be clarified, and they must be made in conjunction with Safe Work Australia and include WHS practices and requirements.

Recommendation 1 (continued)

- *removing the universal requirement for all DCV's to have Certificates of Survey and Operations;*

Finding 2: *The requirement for all DCVs to have Certificates of Survey and of Operation is unnecessary to achieve safety outcomes and has resulted in a complex and burdensome array of exemptions for less risky operations.*

We oppose this recommendation. Vessels are required to hold Certificates of Survey and Operations for good reason: to ensure they are seaworthy, carry appropriate safety equipment, and appropriately qualified crew.

There has also been no evidence presented to demonstrate what vessels are 'less risky'.

There is an implication on pg. 27 that hire and drive vessels are less risky and require less prescriptive regulation. When a person hires a vessel they place an enormous level of trust on the operator that the vessels is safe and seaworthy. The consequences of sloppy maintenance can be fatal. We are not confident that this has been properly considered.

There is an implication on pg. 28 that small workboats are less risky and require less prescriptive regulation. Many small workboats are involved in very high-risk activities such as marine construction, salvage, and crane operations. Two workers have died and there have been multiple near misses on small workboats in Sydney Harbour in recent years. This is within a comparatively small workforce and small number of companies.

The relevant areas of work include:

- Ongoing bridge and wharf maintenance
- Major bridge and wharf repair and construction
- Salvage work dealing with abandoned and/or sunken yachts and other debris in harbours and rivers

This area of work is likely to increase significantly as the impacts of climate change worsen. For example, bridges were damaged and needed repair after the March 2020 floods. Further repairs will be needed after 2021 and 2022 floods. Floods and storms also bring significant debris into estuarine basins, sink vessels, and break them from their moorings.

On 1 March 2017, Tim Macpherson was crushed and killed by a two-ton metal beam while working on board the barge *Maeve Anne* constructing the new ferry hub at Barangaroo, Sydney. The metal beam, or headstock, was standing upright on the floating barge without any restraint, when it could have been laid down flat to avoid the risk. McConnell Dowell Constructors was found guilty of failing to comply with the Work Health and Safety Act, and fined \$500,000. Brady Marine & Civil was also prosecuted for the same incident and fined \$450,000.⁶

In January 2021, Max Haywood was killed when a crane lift of a sunken vessel was carried out incorrectly. The company was attempting to lifting the sunken vessel by its mast instead of having divers put slings around the vessel. The mast parted from the vessel and struck Mr. Haywood in the head. His workmates performed CPR.⁷

There was also a dangerous near miss during the replacement of the Windsor Bridge in 2021 where a crane was used inappropriately when divers should have been called.

There is currently no requirement to hold a licence to operate a crane on a vessel. We are advocating that such a licence be created in the current Safe Work Australia review of crane licencing. The SWA working group will consider new licencing for 'vessel mounted cranes'.⁸ The support of the Panel for the creation of such a licence would be appreciated.

⁶ Daniella White, [Construction company fined \\$500k over man's death on Sydney work site](#), Sydney Morning Herald, 16 April 2021. MUA Sydney branch officials also attended the site. See also Senator Doug Cameron in the [Hansard](#).

⁷ [Fatal crane incident in Sydney](#), vertikal.net, 9 April 2021. MUA Sydney Branch staff attended the site and spoke to other workers immediately after the incident.

⁸ Safe Work Australia, [Crane Licencing Review](#),

Recommendation 1 (continued)

- *providing that vessels of a type or class specified in the regulations (or Marine Orders) be required to comply with NSCV Standards and/or hold a Certificate of Survey or Certificate of Operations; and*

This point is linked to the recommendation that only some vessels are required to have Certificates of Survey and Certificates of Operations. We note above that the rationale presented has been dubious.

However, if the Review is going to proceed down this path, Certificates of Survey and Certificates of Operations are absolutely required for

- Passenger vessels – Class 1
- Trading vessels – Class 2
- Aquaculture vessels. These vessels are currently defined in NSCV Part B as Fishing Vessels but in their operation they are more like large trading vessels, and many of the ones currently operating in Australia are internationally flagged. The definition of Fishing Vessels should be changed to correct this anomaly.

Grandfathering

Recommendation 2: *The grandfathering arrangements that are a risk to safety should be wound back in accordance with a phased risk-based program.*

- *All existing DCVs subject to grandfathered design and construction standards should meet acceptable baseline set of design and construction standards based on the current ‘transitional standards’ within seven years of implementation of this change.*
- *DCVs that would be required to be certified under the risk-based regulatory regime proposed under Recommendation 1, and that are subject to grandfathered survey requirements or otherwise subject to grandfathered design and construction standards, should undergo survey inspection to assess gaps and requirements to the baseline design and construction standards.*
 - o *These inspections should occur over a two to five year period, with higher risk vessels/operations given greater priority for early inspection*
 - o *Owners should be required to rectify inspection findings within two years of inspection.*
- *Grandfathered crewing and crew competency arrangements should be phased out within five years of implementation of this change.*
- *Grandfathered crewing and crew competency arrangements should be phased out within five years of implementation of this change.*
- *The Australian Government should establish and fund an Industry Assistance Package with a suite of incentives to assist attaining these standards.*

We support this recommendation. Assistance from AMSA and perhaps other parts of government are likely to be required to achieve this improvement.

However, we do note that it is the responsibility of vessel owners to maintain their vessels in a safe condition, and there must be a responsible use of any funding in the public interest.

Alignment with the WHS System

Recommendation 3: AMSA should:

- review its Memorandums of Understanding with State and Territory WHS Authorities to include principles to apply to decisions around which regulator is to lead on safety duties held by persons in the maritime industry; and
- reflect these in communications and guidance to industry explaining the rationale for the dual operation of the National Law and WHS Law, and how AMSA and WHS Authorities work practically to reduce any duplication of effort and regulatory burden, including reporting requirements.

We agree that there is work to be done on the interface between AMSA and the WHS system. However, this isn't limited to a division of responsibility as outlined in the recommendation.

AMSA needs to be better integrated into the national WHS system, and gain a deeper understanding of the role of worker participation and elected Health and Safety Representatives within that system. At the same time, WHS regulators need to be more confident about dealing with WHS process issues that arise in a maritime context.

Recommendation 4: The offences and penalties in the National Law should be aligned to those in the WHS law to the extent practical.

We support this recommendation.

Penalties and safety investigations

Recommendation 5: The National Law should be amended to:

- explicitly refer to an officer's due diligence obligation to ensure that the owner of a DCV complies with their safety duties under the National Law;
- allow scaling of infringement notice penalties;
- fill a gap in the law relating to negligent navigation;
- align the present limitation period on commencement of prosecution action with WHS law; and
- introduce a power for the courts to suspend or revoke certificates.

We support this recommendation. However please note that the term 'officer' has a particular meaning in the maritime industry (ships' officers), and should probably be avoided if possible to reduce potential confusion.

Recommendation 6: *The ATSB should be funded by the Australian Government to undertake a no-blame investigation program sufficient to support the identification of systemic safety issues. The Minister should issue a statement of expectations regarding the ATSB's DCV function.*

Finding 7: *Expanding the Australian Transport Safety Bureau's (ATSB) role to include DCV safety incidents would provide for an independent review of systemic safety issues that would support enhanced safety outcomes.*

We support this finding and recommendation.

We note that the ATSB must also be directed to look beyond vessel operations to identify organisational failures leading to incidents, including vessel regulation, seafarer qualifications and training, the application of safety management systems, and seafarer fatigue.

Recommendation 7: *Where a State has its own safety investigator the ATSB may engage it to undertake investigations on its behalf.*

We oppose this recommendation. We have confidence in the work of the ATSB in investigating safety incidents and making recommendations about lessons to be learned.

This role should be carried out consistently across all states and territories.

We do not support DCV safety investigations being carried out by other state safety investigators.

Recommendation 9: *AMSA should establish and support an Australian Government funded long-term safety engagement program with all sectors of the DCV industry to:*

- *promote the benefits of reporting;*
- *identify best data collection methods;*
- *develop simple and accessible guidelines for ease of compliance.*

These are sensible recommendations, which should be carried out in conjunction with Safe Work Australia and state safety regulators.

A 'white card' would undermine existing qualifications

Recommendation 9 (continued)

- *investigate the creation of a 'white card' scheme; and*

We strongly oppose this part of Recommendation 9.

The draft report says that:

There is currently no formal mechanism for maritime workers to port their skills, training and experiences between and across the broader DCV maritime sectors, particularly the generic skill sets and underlying training that could be universally recognised.

With seasonality affecting a significant component of employment in the maritime sector (e.g. whale watching, prawn trawling, etc.), the Panel has formed the view that the universal recognition of employees and contractors experience, skills, training and qualifications across sectors could be enabled by a 'White' card or equivalent concept and the feasibility of this concept should be further investigated

[...] It would be transferable between many maritime industries, jurisdictions, fishery sectors, and employers and also ultimately help retain personnel. It has the potential to contribute to increased safety awareness and performance, allowing individuals, training organisations and industry sectors to keep track of skill sets and safety training. (p.54)

The rationale cited above is the basic purpose of all maritime qualifications. These already exist for the National Law in Marine Order 505.

The GPH is a minimum qualification in the industry, which can be obtained in a short period of time without any seatime. This is the entry level qualification. Introducing a 'white card' as described, which could be obtained with even less training, would undermine this minimum.

It is perverse that this proposal is being made in response to a finding that there is a need to 'foster a safety culture within the maritime industry' (Finding 8, p.54). The proposal to introduce the 'white card' described would reduce safety and the safety culture within the industry, by further reducing the minimum standards of safety training required of vessel crew.

Other recommendations

Recommendation 10: *The marine surveyor accreditation scheme should be reviewed to make it fit for purpose. As part of that review, consideration should be given to introducing (among other matters):*

- a tiered accreditation scheme according to size and complexity of the vessel;
- a formal continuing professional development program;
- regular random audits of surveyor approvals and subsequent standards applied;
- increasing the approval powers for accredited marine surveyors;
- greater flexibility in who can be accredited as a marine surveyor, and expanding categories of accreditation to adequately cater for new and emerging technologies; and
- a formal rulings program to provide certainty for surveyors and operators.

The review should consider a reasonable timetable for implementation of the proposed reforms.

We support this recommendation.

We note that vessel surveying would be better served with vessel inspections, not desktop audits. At present there is too much reliance on vessel paperwork, and insufficient vessel inspections.

Recommendation 11: *The current requirement that changes to certain regulations be unanimously agreed by the States and the Northern Territory be removed.*

We support this recommendation.

Recommendation 12: *AMSA should set up a taskforce to consider how to optimise and future proof the National Law framework to regulate new and emerging technologies.*

- *The taskforce should consider whether definitions in the National Law remain fit for purpose*

This is a sensible recommendation. However there must be employee representation on this task force.

Gaps in the report: Qualifications

It is disappointing that that Review has not addressed the issue of maritime qualifications. National Law qualifications are based on standards developed for inshore vessels, yet they can be used on vessels of up to 100m in length operating up to 200 nautical miles offshore. Only Navigation Act qualifications are compatible with international standards – and our substantial international trade and international ports rely on these qualifications.

The incompatibility of the qualification system under the National Law and Navigation Act is contributing to the current critical national shortage of seafarers. There is no way for a seafarer with qualifications under one Act to be able to transition to qualifications under another Act. We address this issue in more detail in our document *Stopping the race to the bottom* (p.9) and our 2019 submission to the Productivity Commission (p.47-48).

Australia cannot rebuild a viable, commercial and sustainable shipping industry if its ship and seafarer safety legislation and regulatory system is undermining the very skills base and the requirements of ships to be crewed by internationally (STCW) certificated seafarers, required for a revitalised shipping industry.

Only ships crewed by seafarers with internationally recognised certificates and associated VET qualifications are accepted internationally as suitable for trainee and cadet seafarers to undertake sea time, and for certificated seafarers to gain the experience for employment on gas ships, chemical ships, petroleum and oil/petroleum tankers and certain dry bulk ships (which all require specified periods of experience on ships maintaining IMO standards) that are chartered by reputable shippers. In addition, we need to be preparing for the ships that will be supporting new industries such as offshore wind energy production and hydrogen production, as well as for ships using different propulsion fuels.

These inadequacies are clearly evident from the results of the MIAL Seafaring Skills Census Report 2018. That report found, based on the views of maritime organisations that employ internationally certified seafarers on board ships and ashore, that an additional 560 internationally certified and qualified seafarers will be required (under current shipping policy settings) in the next 5 years to 2023, an 11.6% increase. The decline in the maritime skills base has deteriorated since the MIAL Seafaring Skills Census Report in 2018.

A review of Marine Order 505 has been recently completed. This sets the framework for maritime qualifications under the National Law. The new Marine Order does make some small improvements, for example, by creating structures that remove the need for some exemptions and putting substitute qualifications in place (for example, the Coxswain 3 qualification). A major flaw of the previous Marine Order 505 was the provision for 'uncertificated crew', and the new Marine Order improves the requirements for a General Purpose Hand qualification.

A full and transparent review of the seafarer qualification framework and associated VET certificates and units of competency be carried out. Domestic and international seafarer qualifications must be streamlined in order to have STCW standards of competence integrated at all levels to allow seafarers to develop their career and training in a straightforward process. Incorporating the higher standards of STCW, at an appropriate level, into the units of competency of the VET certificates will increase the overall standards of Australian seafarers, reduce the complexity of the system and reduce overall training costs. It is also recommended that all personnel working on any type of vessel must have STCW-compliant survival and fire prevention training.

Gaps in the report: Seafarers' Rights

We are disappointed that the Panel has not addressed the lack of seafarer rights under the National Law. Because seafarers are required to live in their workplace for extended periods of time, they can be particularly vulnerable to abuse from unscrupulous operators. For this reason, there is international recognition of the basic rights of seafarers in the Maritime Labour Convention, and in the Navigation Act. There are no equivalent provisions in the

National Law, which is problematic as the extended application of this law now covers larger vessels on extended voyages with crew living on board.

Seafarers on DCVs over 12m in length and on voyages over 12 hours should have access to the same rights as seafarers working under the Navigation Act and Marine Order 11, including the provision of free food and water, medical care and repatriation, as well as exemption from jury duty.⁹ The Maritime Labour Convention should also apply to DCVs.

⁹ These include Navigation Act s62(1) on free provisions, 63(1) on food and water, 64 (1) on catering facilities, 68, 69, 70, on seafarers' medical care, 89 on jury duty, 90(1) preventing abandonment. There are additional provisions in Marine Order 11 on the right to repatriation and to make complaints, and the implementation of the Maritime Labour Convention.

MUA recommendations

These recommendations cover the breadth of reform we believe are needed to the National Law and associated areas of the Navigation Act. They are consistent with the MUA's April submission to the Review. Recommendation 2, 6, 8, and 27 have been updated and new Recommendations 3 (on qualification transition) and 20 (on vessel cranes) has been added, with numbering updated accordingly.

Coverage

Recommendation 1: Commercial vessels should by default fall under the Navigation Act and the IMO Convention safety standards it implements.

Recommendation 2: Restore coverage of the National Law to be closer to the types of vessels originally covered by the National Standards for Commercial Vessels (NSCV) that underpin the National Law, through amendment of s.15 of the Navigation Act which defines Regulated Australian Vessels. All commercial vessels must be regulated by the *Navigation Act 2012*, except those which:

- Voyage only within 12nm of the coast and a safe haven, or
- Are 24m or under in length, or
- Carry less than 50 passengers, or
- Do not carry dangerous or polluting cargoes, including oil, gas, ammonia and hydrogen, or
- Do not proceed on voyages of more than 36 hours in length, or
- Do not carry out 'high risk' operations.

Note 1: Vessels greater than 24m and less than 80m and not engaged in high risk operations can apply to be regulated under the National Law providing the vessel remains in smooth waters or partially smooth waters.

Note 2: Vessels carrying more than 50 passengers and under 24m in length may apply to be regulated under the National Law providing the vessel remains in smooth waters or partially smooth waters.

Note 3: 'High risk' operations include tugs, ro-ros, dredgers, tankers, passenger vessels carrying more than 50 passengers, vessels servicing offshore wind farms, vessels working in the oil and gas industry (including diving and decommissioning work), high-speed craft 12m and over in length, and vessels engaged in salvage and construction. The national regulator may add (but not remove) vessels and classes of vessels to the schedule of 'high risk' vessels at any time.

Note 4: Vessels other than tankers regulated under the Navigation Act but less than 80m long, with less than 3000kw engine power, and of less than 3000GRT and operating only in smooth waters or partially smooth waters may apply to use the General Purpose Hand qualification as part of their Minimum Safe Manning, subject to an assessment of required STCW short courses according to vessel operational functions and equipment.

Recommendation 3: For those vessels transitioning to coverage under the Navigation Act, it will be important that there be a well-structured and managed transition process to protect those seafarers who are currently working on DCVs holding a GPH or other Marine Order

505 qualification who as a result of a new application provision would find themselves on a RAV requiring an STCW qualification and associated AMSA occupational licence. We would be happy to work with AMSA on the design of a transition arrangement.

Recommendation 4: Vessels that are Regulated Australian Vessels (RAVs) and Domestic Commercial Vessels (DCVs) must be clearly identified as such. This information must be available on the list of registered vessels online, and onboard for the information of passengers, crew and special personnel.

Recommendation 5: Consideration needs to be given to a greater level of separation between standards for qualification and crewing for the fishing industry, as compared to passenger and trading vessels.

Incident and fatality reporting

Recommendation 6: The Panel must engage a qualified safety professional to review available maritime industry safety statistics and prepare benchmarks that could be used in the Report and by AMSA and other agencies going forwards to properly inform policy making.

- This should be consistent with Safe Work Australia's reporting and definitions.
- The size of the workforce should be properly calculated in order to ensure that the fatality and incident rates are accurate.
- Reported information on injuries should be compared with information available through state and national workers' compensation authorities to determine the potential discrepancies (noting that workers compensation data excludes the fishing industry in Tasmania).
- Safety benchmarking and statistics should also include the level of inspections and other enforcement actions.

Recommendation 7: AMSA must also report fatalities and injuries on Regulated Australian Vessels, and vessels with majority Australian crew, instead of including them in reports that do not distinguish between these vessels and all other international vessels visiting Australia.

Work Health and Safety

Recommendation 8: A WHS Act aligned Safety Code of Practice for Domestic Commercial Vessels must be developed, in line with the current *Code of Practice: Health and Safety in Shipboard Work, including Offshore Support Vessels*, which has been developed for larger vessels more likely to be RAVs. Such a Code can give practical and flexible guidance to seafarers in the industry, with specific chapters to address the diverse sectors of the industry.

Recommendation 9: That AMSA should become a member of Safe Work Australia and the Heads of Australian Workplace Safety Authorities. At a minimum, it must develop an MOU with Safe Work Australia, and make every effort to align its safety reporting and analysis

with Safe Work Australia standards. Better integration is required between AMSA, state safety regulators, SafeWork Australia and the Seacare Authority on all WHS issues, including inspections, guidance, analysis and enforcement of work health and safety (including mental health and ongoing surveillance of health issues in the maritime industry).

Recommendation 10: That the Domestic Commercial Vessel industry be declared a ‘national priority industry’ for preventative action, and that AMSA should work with Safe Work Australia and maritime unions to develop a strategy to reduce fatalities and injuries on Domestic Commercial Vessels.

Recommendation 11: Sections of the National Law involving General Safety Duties and Safety Management Systems should be reviewed and amended to ensure that they are clear, robust and practical. Safety Management Systems that are not subject to consultation or review should not be elevated to the status of law, instead, a safety Code of Practice should be developed to cover minimum standards. The National Law should be amended to required due diligence of vessel owners.

Recommendation 12: The definition of ‘owner’ in the National Law should be aligned with the definition of a Person Conducting a Business or Undertaking (PCBU) in the model WHS Act. The Duties of the PCBU should also be aligned with the model WHS Act. Wherever possible, other duties and definitions should be aligned with the model WHS Act.

Recommendation 13: The WHS Acts are underpinned by the need for consultation and participation of the workforce, including an active role and powers for elected Health and Safety Representatives. The National Law should be aligned with these requirements, and AMSA staff should be fully trained in these principles and requirements.

Exemptions and grandfathering

Recommendation 14: That grandfathering provisions in the National Law for vessel and crewing standards be phased out, with the understanding that the current arrangements are a threat to crew and public safety.

Recommendation 15: The criteria for an exemption from the National Law should be aligned with established practices under the WHS Act to establish what is ‘reasonably practicable.’¹⁰ S.143 of the National Law should be amended accordingly, as at present it only requires that exemptions ‘will not jeopardise the safety of a vessel or a person on board a vessel,’ with no criteria for how this is demonstrated and tested. Any exemptions issued by AMSA should require a vessel inspection and risk assessment, be subject to the approval of two or more managers, and published on AMSA’s website.

International maritime safety standards

Recommendation 16: The International Maritime Dangerous Goods Code (IMDG Code) must apply to vessels regulated under the National Law.

¹⁰ Safe Work Australia, [How to determine what is reasonably practicable to meet a health and safety duty](#), May 2013.

Qualifications and training

Recommendation 17: That a full and transparent review of the seafarer qualification framework and associated VET certificates and units of competency be carried out. Domestic and international seafarer qualifications must be streamlined in order to have STCW standards of competence integrated at all levels to allow seafarers to develop their career and training in a straightforward process. Incorporating the higher standards of STCW, at an appropriate level, into the units of competency of the VET certificates will increase the overall standards of Australian seafarers, reduce the complexity of the system and reduce overall training costs. It is also recommended that all personnel working on any type of vessel must have STCW-compliant survival and fire prevention training.

Recommendation 18: Training in the use of electronic charts should be incorporated into all relevant qualifications under the National Law.

Recommendation 19: The quality (and by necessity, the length) of training courses on offer for all DCV qualifications must be improved.

Recommendation 20: The Review and AMSA should support the creation of High Risk Work Licences for operating 'vessel mounted cranes' in the current Safe Work Australia review of crane licencing.

Vessel crewing

Recommendation 21: The National Law should be amended to require Minimum Safe Manning Documents (MSMDs) or crewing determinations be assessed and issued by AMSA for all vessels over 12m. Minimum crewing complements and qualifications should be increased in MO 504, and qualifications should be aligned IMO STCW Convention training components.

Recommendation 22: Larger DCVs should be required to make greater use of STCW short courses and endorsements including Proficiency in Lifeboats and Rescue Craft other than Fast Rescue Craft (PSC&RB), Fast Rescue Craft (FRC), Advanced Fire Fighting (AFF), Crowd and Crisis Management, Ro – Ro, Security, Tanker Familiarisation and specialised training, Training in the use of ECDIS, and Enclosed Space Entry.

Recommendation 23: The Navigation Act (s.51) should be amended to ensure that all RAVs *must* be issued with a Minimum Safe Manning Document (MSMD) and be crewed with seafarers with qualifications issued under the Navigation Act (subsequent amendments will also be required to Marine Order 21). Effective consultation with crew representatives must take place before the issue of documents and determinations, and an appeal process for these decisions should be created. The practice of allowing Regulated Australian Vessels under 300GT to operate with National Law qualifications in the EEZ, and RAVs under 500GT to be exempted from having a MSMD at all must end.

Compliance and investigations

Recommendation 24: That AMSA carry out more transparent reporting of the agency's compliance and enforcement actions.

Recommendation 25: The number of inspections of Domestic Commercial Vessels should be increased and should be publicly reported.

Recommendation 26: That the ATSB's role and resources be expanded to encompass all maritime incidents, in Australia, including Domestic Commercial Vessels. The ATSB must also be directed to identify organisational failures leading to incidents, including vessel regulation, seafarer qualifications and training, the application of safety management systems, and seafarer fatigue.

Seafarers' rights

Recommendation 27: Seafarers on DCVs over 12m in length and on voyages over 12 hours should have access to the same rights as seafarers working under the Navigation Act and Marine Order 11, including the provision of free food and water, medical care and repatriation, as well as exemption from jury duty.¹¹ The Maritime Labour Convention should apply to this group of DCVs. These rights recognise that seafarers are often required to live in their workplace for extended periods of time. There are no equivalent provisions in the National Law.

¹¹ These include Navigation Act s62(1) on free provisions, 63(1) on food and water, 64 (1) on catering facilities, 68, 69, 70, on seafarers' medical care, 89 on jury duty, 90(1) preventing abandonment. There are additional provisions in Marine Order 11 on the right to repatriation and to make complaints, and the implementation of the Maritime Labour Convention.