



AIMPE

Australian Institute of Marine and Power Engineers



AMOU

Australian Maritime
Officers Union

Tuesday 14 March 2023

Joint- Response by the
Nautilus Federation of Australia
(AMOU & AIMPE)
Supplementary Response to INTERIM SAFETY REPORT + FUNDING Shortfall
- Independent Review of DCV National Law.

This submission is made jointly on behalf of the masters and deck officers members of the Australian Maritime Officers Union and the *maritime professionals* employed by AMSA (including Advisers and Operations personnel) as well as chief engineers and engineer officers members of the Australian Institute of Marine and Power Engineers.

This submission relates to FUNDING for AMSA to administer and deliver the Safety outcomes prescribed by the DCV National Law but also is a supplement to the submission already made in respect of your INTERIM SAFETY REPORT:-

- 1. Supplement to our Response to Finding 1: FUNDING:** in our 6 September 2022 Submission we indicated our concern 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...".

By now the Inquiry will be aware that a large part of AMSA's Funds are derived from a LEVY on international shipping calling at Australian ports, permissible under international Conventions if the purpose of the Levy is to fulfill Australia's international obligations to international shipping including Search & Rescue and Port-State-Control (PSC) operations. The delivery of these PSC operations is the responsibility of AMSA-employed Port Marine Surveyors.

Since allocated the responsibility for administering and delivering the safety outcomes of the DCV National Law AMSA has employed some new staff (Marine Inspectors) who deal solely in the DCV National Law jurisdiction, however a large part of the DCV National Law work has been added to the responsibility of existing (international-Levy-funded) Port Marine Surveyors.

If existing Port Marine Surveyors had a great deal of unused time on their hands who could fault AMSA for this dual-use of their expertise?

But there are adverse consequences:-

1.1 The two jurisdictions, PSC and DCV National Law, are not similar:

- 1.1.1 The underpinning legislation is completely different. The Navigation Act 2012 (under which AMSA exercises PSC operations in respect of international shipping in accordance with a suite of international Conventions which do not apply to DCV vessels) and the DCV National Law Act do not even acknowledge the existence of each other.

- 1.1.2 The required knowledge base for each jurisdiction is completely different and does not overlap.
 - 1.1.3 AMSA's protocols/instructions to their employees are different in each jurisdiction.
- 1.2 The role/powers of an AMSA inspector are very different under the 2 jurisdictions:
- 1.2.1 The *enforcement* powers of an AMSA inspector under PSC are clear and defined: AMSA is obliged to 'detain' an international vessel that does not comply with international standards.
 - 1.2.2 However, as relatively new 'complementary' legislation that is only given effect because each of the States *agreed* to it, AMSA's instructions to their inspectors are coy on when *education* of DCV owner/operators should be replaced with *enforcement*.
 - 1.2.3 This is because any action/decision by an AMSA inspector under the DCV National Law has the potential for a political backlash from the DCV-owner/operator through their local member of parliament/Senator with repercussions in Canberra.
 - 1.2.4 These differences in the role/powers/politics of the AMSA inspector places a new workplace stress on Port Marine Surveyors/Marine Inspectors.
- 1.3 Jumping from one (complex) jurisdiction to another is difficult and inefficient.
- 1.3.1 It slows down work in both jurisdictions: a Port Marine Surveyor (or other AMSA-employed marine professional) who spent much of the day assessing and making decisions under international Conventions/Rules who is then required to make assessments/decisions under the DCV National Law is thrown into disarray. None of the background against which they have operated can be relied upon and they must try to clear from their mind their current reference framework and go back and painstakingly check against the details of the DCV legislation and DCV Marine-Orders to refocus their mind on the alternate jurisdiction.
 - 1.3.2 AMSA's employee performance measures (KPIs) do not take account of these difficulties. Even something others judge to be a simple task in the alternate jurisdiction will take much longer to perform. This impacts on the total amount of PSC and DCV work that can be completed.
 - 1.3.3 Reports from Port Marine Surveyors and other AMSA-employed marine professionals are that they take home a great deal more stress and spend time at home second-guessing themselves on whether the assessments/decisions they made that day were in error if they did not exhaustively clear their mind of the previous jurisdiction and ground themselves by taking time to refresh their recollection of salient points of the alternate jurisdiction before coming to a conclusion.
- 1.4 AMSA does not have sufficient DCV-specific Funding to provide adequate *training* for maritime-professionals/Advisers/inspectors who they now require to operate in 2 such different jurisdictions.
- 1.5 As a result much more time is spent on DCV National Law work and the Port Marine Surveyor's PSC obligations are suffering as, effectively, AMSA has shifted PSC operations resources to DCV National Law work.
- 1.5.1 It is significant that AMSA requires that the work of Port Marine Surveyors in PSC operations be meticulously 'tracked' and documented, but that their work in respect of DCV National Law work *not* be tracked.

1.5.2 It might be surmised this instruction is to ensure the extent of diversion of PSC resources into DCV National Law work cannot be quantified, having regard to the sensitivity that the Levy on international shipping is now being used in large part to fund AMSA's DCV National Law work.

1.6 Whether AMSA's international PSC obligations are still being met with this reduction in PSC resources, and the legitimacy of the Levy on international shipping being spent on DCV National Law work, is a matter for AMSA and for the Minister/government.

1.7 We understand the proper funding of AMSA's DCV National Law work would require a tripling of current DCV funding.

In our submission, it is only a matter of time before the reliance by AMSA on Funding of DCV National Law work from an international Levy becomes unsustainable. The Independent Inquiry should therefore recommend that Federal/State governments take the hard decision, separate from the international Levy, to properly fund AMSA's DCV National Law work to ensure the safety outcomes set out in the DCV National Law Act.

2. **Supplement to our Response to Finding 4 and Recommendation 3: REPORTING:** in our 6 September 2022 Submission we indicated our concern that :-

"...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 12th 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."

Our members advise that **much of the DCV industry is completely unaware of the existence of the offence set out in s12(4) of the DCV National Law Act, and with no requirements for reporting and no visible effort by AMSA to enforce it, undue pressure by owners on a master's safety decision is far too common.** Currently a decision by a master to 'dob-in' his employer for interfering with the master's safety-decision is effectively a career-ending decision.....particularly because such an action is a voluntary action, with no compulsion exerted by the DCV National Law Act to report as there is with a defined *Marine Incident*.

We have engaged extensively with AMSA in the hope of using the existing powers under the DCV National Law to amend Marine Order 504 to require mandatory reporting of a prima facies breach of s12(4) of the DCV National Law Act.

AMSA have advised us that without AMENDMENT to the Act this is impossible because:-

2.1 AMSA's legal advice is that where the National Law Act is specific on a matter, the regulations subordinate to that Act can do no different. Because the Act is specific about what must be *reported*, and that is specified as being ONLY a **Marine Incident**, the regulations cannot ADD to that.

2.2 Definition of a Marine Incident is as follows:-

"...marine incident means any of the following:

- (a) a death of, or injury to, a person associated with the operation or navigation of a domestic commercial vessel;
- (b) the loss or presumed loss of a domestic commercial vessel;
- (c) a collision of a domestic commercial vessel with another vessel;
- (d) a collision by a domestic commercial vessel with an object;
- (e) the grounding, sinking, flooding or capsizing of a domestic commercial vessel;
- (f) a fire on board a domestic commercial vessel;
- (g) a loss of stability of a domestic commercial vessel that affects the safety of the vessel;
- (h) the structural failure of a domestic commercial vessel;
- (i) a close quarters situation;
- (j) an event that results in, or could have resulted in:
 - (i) the death of, or injury to, a person on board a domestic commercial vessel; or
 - (ii) the loss of a person from a domestic commercial vessel; or
 - (iii) a domestic commercial vessel becoming disabled and requiring assistance;
- (k) the fouling or damaging by a domestic commercial vessel of:
 - (i) any pipeline or submarine cable; or
 - (ii) any aid to navigation within the meaning of the *Navigation Act 2012* of the Commonwealth;
- (l) a prescribed incident involving a domestic commercial vessel..."

2.3 We asked AMSA if Marine Order 504 could define that a **prima facies breach of s12(4) of the DCV National Law Act** constitutes a **prescribed incident** pursuant to that definition?

AMSA's advice is that the **DCV National Law Act does not provide either:-**

2.3.1 **A specific means to specify what is a *prescribed incident*;**

or

2.3.2 **A general regulation-making power that could be utilised to do the same thing.**

In our submission, the Independent Inquiry should Recommend amendment of the DCV National Law Act to include a prima facie breach of s12(4) of the DCV National Law Act in the Definition of a *Marine Incident*.