



AUSTRALASIAN INSTITUTE OF MARINE SURVEYORS

Submission to the Productivity Commission Inquiry into National Transport Regulatory Reform

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Introduction to the AIMS

The Australasian Institute of Marine Surveyors is the peak industry body for Marine Surveyors in Australia and the Australasian Region. The AIMS has over 400 marine surveyor members and is the only Australian organisation that represents the entire sector of the marine survey industry. The AIMS has formed strong links with the marine survey community, the Australian Maritime Safety Authority and key stakeholders such as shippers, charterers, insurers and vessel owners. Over one third of AMSA accredited surveyors are AIMS members.

The AIMS is also the primary provider of marine survey training in Australia and was responsible for the development of the first accredited VET qualifications for marine surveyors.

The AIMS has transitioned the marine survey sector of the maritime industry to a contemporary model that addresses consumer welfare in terms of the quality, price and standard of work they receive from marine surveyors through a marine surveyor Certification scheme. We are now working on an application to the Professional Standards Council to further bind our association to monitor, enforce and improve the professional standards of our marine surveyors and protect consumers by ensuring professional standards are maintained.

The current Certification scheme implemented by the AIMS is a rigorous process of verification of qualifications, skills and experience that a marine surveyor holds to ensure that the surveyor is appropriately qualified, skilled and experienced for the type of surveys that they undertake.

The scheme is administered by the AIMS and monitors the ongoing professional development of marine surveyors (an annual mandatory requirement) and ensures that appropriate insurance cover is held by the surveyor or their employer. It is of a similar nature to that implemented by AMSA in the Accreditation of marine surveyors.

Our surveyors cover survey services for international and domestic trading ships that include warranty and insurance, offshore oil and gas, classification, dry bulk and liquid cargo, draft surveys, insurance and claims as well as a suite of services for domestic towage and salvage tugs, cargo, dredges, workboats, ferries, houseboats, recreational vessels and statutory surveys for domestic commercial vessels.

The AIMS is an Australian Incorporated Association and is a not for profit professional organisation. The AIMS is an Australian Registered Body with ASIC and is ISO9001:2015 accredited. We publish an annual report covering our industry involvement, progress with regulatory reform and the financial position of the association.

The AIMS has a public commitment to the maritime community, an indigenous training strategy and is currently developing skill log books to facilitate traineeship opportunities as these are not facilitated under the national VET system.

The AIMS has in place mentoring and coaching mechanisms for students and new entrants to the industry and actively supports and encourages women to become professional marine surveyors.

The AIMS fully supports the MSNL and is committed to and proactive in the development of marine survey and safety standards that reflect IMO regulations, the Navigation Act and the MSNL, as appropriate for the different sectors of the industry.

Executive Summary

The AIMS is pleased to have an opportunity to contribute to the inquiry into National Transport Regulatory Reform and would ask the Commission to note that our submission deals solely with the issues related to the Domestic Commercial Vessel sector.

We note that the draft report focusses heavily on safety and the AIMS acknowledges and supports the Australian Maritime Safety Authority's efforts in their ongoing challenge to encourage greater safety and regulatory compliance for vessels, passengers and crew captured by the MSNL.

AMSA, as part of their remit as the national regulator, is actively involved in the development of VET qualifications for seafarers contained in the Maritime Training Package.

The Maritime Industry Reference Committee (IRC), facilitated by the Australian Industry Standards Skills Council, has been assigned responsibility for the MAR Maritime Training Package and therefore has the responsibility to ensure that Work Health and Safety regulations are included in (VET) qualifications for occupations involved in: General Purpose Hands, Coxswains, Marine Engine Drivers, Marine Engineers, Integrated Ratings, Deck Officers, Ship's Masters and Marina Operations.

The IRC is Chaired by representatives from industry as well as AMSA, the Maritime Union of Australia, the Australian Institute of Marine and Power Engineers and the Australian Maritime Officers Union.

It is the responsibility of these representatives, and the IRC generally, to ensure that the appropriate requirements of any and all Work Health and Safety regulations are embedded into all maritime qualifications.

The model national WHS laws extends the primary duty of care beyond the traditional employer and employee relationship to all persons who carry out work in any capacity for a business or undertaking, in recognition of the changing nature of work relationships and to ensure that safety protection is extended to all types of work.¹

The Commission must accept that while AMSA is largely responsible for mandating the qualification requirements for seafarers, it is the responsibility of Registered Training Organisations delivering these qualifications to ensure that the assessment requirements are met and that graduates are fully aware of their Work Health and Safety obligations and how to implement them.

It is our opinion that AMSA's prime responsibility is to ensure that WHS requirements that meet current legislative and regulatory obligations are included in seafarer Certification criteria and that ongoing revalidation occurs.

We believe it is the responsibility of marine surveyors (whether accredited or not) to ensure that vessel owners, masters and crew develop and implement those standards in accordance with the MNSL, the existing Occupational Health and Safety (Maritime Industry) Act 1993 and regulations as well as any State, Territory or Commonwealth legislation that may apply.

¹ Explanatory statement Work Health and Safety Act and Regulations 2011

It is important to acknowledge that under the MSNL, AMSA have implemented a wide range of safety initiatives that are intended to compliment the requirements for WHS in the VET qualifications and this has been welcomed by marine surveyors however these could be strengthened by applying the Occupational Health and Safety (Maritime Industry) Act 1993 to vessels, owners and seafarers captured under the MSNL.

The current publications and training material that AMSA produces for vessel owners is high quality with easy to understand information on implementation measures to suit most if not all vessel owners and types of vessels.

To further strengthen awareness of the safety requirements for seafarers and vessel owners the AIMS has supported these AMSA initiatives through the development marine survey training programs that specifically address the auditing and assessing of safety management systems applicable to all vessels and crew captured under the MSNL and the International Safety Management (ISM) Code.

All marine surveyors are strongly encouraged to assist and advise vessel owners and crew on their workplace safety obligations and AIMS as an organisation, and its members understand that this is one of the primary roles of a professional marine surveyor regardless of the type of surveys they undertake.

Information request 5.2

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

- For Class 1, 2A, and 2B (MO503 high frequency) the survey regime is appropriate
- For Class 2, 3 and 4 vessels over 12 metres (MO503 medium frequency) in addition to the initial survey there should be a survey at year 1 and a risk rating for the vessel applied at this time by a professional marine surveyor. The overall condition of the vessel as well as compliance to safety requirements should form the basis of the risk rating and determine whether the vessel should be surveyed again in year 2 or 3 based on deficiencies identified.
- For Class 2, 3 and 4 vessels over 7 metres with passengers and or modifiers (MO503 medium frequency) in addition to the initial survey there should be a survey at year 1 and a risk rating for the vessel applied at this time by a professional marine surveyor. The risk rating would then determine whether the vessel should be surveyed again in year 2 or 3 based on deficiencies identified.
- For Class 2, 3 and 4 vessels over 7 metres but under 12 metres with no passengers or modifiers (MO503 medium frequency) in addition to the initial survey there should be a survey at year 1 and a risk rating for the vessel applied at this time by a professional marine surveyor. The risk rating would then determine whether the vessel should be surveyed again in year 3 based on deficiencies identified.
- Class 2 ferry in chains, class 2 and 3 permanently moored and class 2 and 3 unpowered barge no modifiers will have an initial survey and should subsequently be surveyed in years 2 and 5.

Significant data can be gained from the year 1 survey. Overall condition, appropriateness of the safety management system and general fitness for purpose (against the certificate of operation) can be identified. If AMSA developed a risk rating checklist or similar risk assessment tool in conjunction with surveyors, this would go a long way to providing the regulator with both accurate vessel data and appropriate survey regime.

Having a year 1 survey will also enable a process whereby those vessel owners who can demonstrate a commitment to safety through the overall condition of the vessel and the appropriateness of the safety management system can be rewarded with a reduced survey regime. Vessel owners who are unable to demonstrate compliance would be subject to another survey in 12 months.

Accredited marine surveyors are not required to survey, audit or assess the SMS at any survey point. This is deemed an optional and not necessary task for the surveyor. AMSA base the majority of the survey reductions on risk assessments and a well defined and functional SMS. The fact that the SMS is not assessed at survey is a missed opportunity in the survey process. Our experience overwhelmingly is that the DCV Operators are not prioritizing the SMS. They treat it more as paperwork that is required by AMSA and nothing more. AIMS surveyors, especially those who are seagoing professional marine engineers believe the majority of SMS they encounter are not in use, working, maintained, improved or a successful system and process that enhances safety. The Australian DCV Operators approach to WHS is well below other industries and very much below industries such as mining and offshore oil and gas. They are more comparable with the family farm.

The most serious impacts on safety outcomes are those that may occur due to the reduced survey scheme that does not capture those grandfathered vessels that are old and poorly maintained.

We believe that there was a missed opportunity to assess the condition of the fleet and that it is common sense to consider that a risk assessment is physically carried out by a qualified professional surveyor on these vessels. The survey should include the overall condition of the vessel, the safety management system, previous history of the operator, whether an ongoing maintenance plan allowing for the older age of the vessel is in place and the implementation and effectiveness of the safety management system and training of any crew.

This assessment would ensure the correct survey regime for the class and age of the vessel is determined. For these older vessels more than one surveyor should attend as a means of double checking and jointly confirming the vessel condition.

We understand that this would be a difficult task to undertake and would pose an additional cost on vessel owners in the first instance however, we also believe that this process would solve many of the problems outlined in the Draft Report and give an accurate assessment of the condition of the fleet.

Information request 5.3

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?

The AIMS has no direct information about situations where greater clarity is required.

It is our understanding that AMSA is the overriding occupational health and safety inspectorate and is responsible for handling health and safety issues for personnel on prescribed ships that are engaged in trade or commerce on international and domestic voyages.

If the Occupational Health and Safety (Maritime Industry) Act 1993 or its regulations do not include Domestic Commercial Vessels as 'prescribed ships' then our opinion is that the Minister should declare them as such.

There should be no overlap with other regulatory authorities and inspection functions should be the primary role of Marine Safety Inspectors and accredited marine surveyors. Serious or potentially harmful breaches of safety that are detected at the point of survey should be reported as deficiencies and investigated by AMSA. A certificate of survey should not be issued unless all parties are satisfied that any breaches of safety requirements are fully rectified.

Accredited marine surveyors are highly skilled and qualified to assess safety measures and while we understand that Marine Safety Inspectors are not qualified marine surveyors, they should at the very least hold similar skills in the assessment and audit of safety management systems, practices and equipment for all vessels under the MSNL.

Alternatively, given that MSNL is applied nationally, a Code of Practice (similar to that used in NSW for Stevedoring and used in conjunction with Marine Orders) could be developed for the Domestic Commercial Vessel sector and implemented uniformly across all regions and / or included in the MSNL or marine orders and in all seafarer Certificate of Competency qualification requirements outlined in the MAR training package.

Codes of practice are admissible in court proceedings under all WHS Acts and Regulations.

"Courts may regard a code of practice as evidence of what is known about a hazard, risk or control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates. Compliance with the WHS Act and Regulation may be achieved by following another method, such as a technical or an industry standard, if it provides an equivalent or higher standard of work health and safety than the code. An inspector may refer to an approved code of practice when issuing an improvement or prohibition notice."²

² https://www.safework.nsw.gov.au/_data/assets/pdf_file/0006/326940/Managing-Risks-in-Stevedoring-Code-of-Practice-SW08622.pdf

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?

Yes, the AIMS is of the opinion that this would strengthen powers and achieve more clarity for operators and owners, marine safety inspectors and surveyors.

This should also be enforced in all maritime training qualifications and the assessment criteria, and seafarers must be made aware of their particular responsibilities under all legislative instruments including their responsibility to report incidents and poor practices.

For example, the unit MARF006 – Observe Personal Safety and Social Responsibility states

Evidence required to demonstrate competence in this unit must include knowledge of:

- *applicable commonwealth, state or territory WHS/OHS legislation, regulations, codes of practice, standards*

and must be able to demonstrate

- *interpreting and following information on WHS/OHS legislation, safety management system, organisational procedures, written job instructions, specifications, standard operating procedures, charts, lists, and other applicable reference documents*

AMSA could request that RTO's delivering this qualification must be able to demonstrate that this is being assessed effectively by the RTO and the IRC should review all WHS units applicable to seafarer Certificates of Competency to ensure that MSNL is included as appropriate.

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?

It is well known that the culture of the industry, in regard to workplace safety, is lacking in terms of application by vessel owners and crew however our internal polling of surveyors suggests that AMSA have largely inherited the poor track record of industry WHS compliance from the States and Territories who have been seen to not effectively communicate or enforce the safety requirements at the point of vessel survey.

We have received written and anecdotal evidence from accredited surveyors outlining serious breaches of safety found at the point of survey and who were told by vessel owners 'the state guys never asked us to fix that, so we are not about to do it now'. There have also been instances of abuse and physical intimidation of private surveyors by vessel owners who have been questioned by surveyors in regard to obvious safety breaches.

AIMS members have agreed that it is highly unlikely that returning hire/drive vessels to the States will result in greater safety measures being enforced and suggest that these vessels are in the medium risk range due to their operations, and operators should be educated in the specific requirements for Work Health and Safety for their vessels and their responsibilities to those who hire these vessels.

It is our opinion that backtracking on the MSNL at this point in time would be counter-productive to AMSA achieving the recommendations listed by the Productivity Commission. We also believe that the States, particularly NSW and QLD are overwhelmed with the oversight of recreational vessels and that ensuring the safety of persons and the seaworthiness of recreational vessels should be their priority.

AMSA should remain entirely responsible for all commercial vessels nationally with State and Territory regulators being responsible for recreational vessel safety.

Conclusion

The AIMS puts forward this submission on behalf of its members and in particular on behalf of those who are AMSA accredited and directly impacted by the MSNL.

- a) We consider draft recommendation 5.5 to be of value but are of the view that grandfathered vessels should be immediately surveyed for condition as per our statement in information request 5.2. The AIMS supports the phasing out of all grandfathering including the grandfathering of surveyors. There should be a level playing field for all marine surveyors.
- b) We do not support Draft Recommendation 7.4 in any way and consider this to be backtracking and cause for more confusion for all key stakeholders.
- c) While we support AMSA in their challenges it is our opinion that the existing survey regime can only improve safety if the current condition of the fleet is accurately assessed and data provided to AMSA.
- d) Anecdotal evidence suggests that Marine Safety Inspectors do not hold the same skills as professional marine surveyors and are not qualified surveyors and often “miss” safety issues on vessels. Accredited surveyors have reported to us that they have boarded a vessel after a marine safety inspector and noted safety deficiencies that were not identified by the inspector. This confuses the operator and diminishes the ability of both the marine safety inspectors and marine surveyors.
- e) Marine surveyors across other sectors of the marine survey industry regularly inspect vessels for condition and assess and audit safety management systems to ensure that they are fit for purpose. This does not occur under the MSNL and safety would be greatly improved if sighting and auditing of safety management systems is carried out at the time of survey.
- f) The Occupational Health and Safety (Maritime Industry) Act 1993 and its Regulations and complimentary Marine Orders should cover the Domestic Commercial Vessel sector and both AMSA and the Maritime IRC should ensure that qualifications for Certificates of Competency provide the required knowledge and skills required for workplace safety management. Penalties for serious breaches of safety should be amended to include revocation of Certificates of Competency as well as Certificates of Survey and Operation for vessel owners.
- g) We note that there are three primary streams of accredited surveyors, Naval Architects, Shipwrights and Seafarers (engineers and masters). While Naval Architects and Shipwrights do hold some qualifications that apply to certain categories of survey it is clear that they have not had enough sea time (if any) to be aware of the appropriate SMS requirements and most have never faced the reality of dying at sea in a fire or drowning in rough weather. SMS is not just equipment and a policy. It needs to be implemented. Seafarers live and die by their Safety Management Systems and those who have become surveyors are disappointed in the auditing and implementation of ‘fit for purpose’ Safety Management Systems. If AMSA lack the resources to do this, they should be provided with additional funding or alternatively go to tender and appoint an organisation to do this work.

AMSA and all sectors of the domestic commercial vessel industry would benefit from an expert panel to assist in the provision of advice in regard to recommendations outlined in the draft report and the future direction of regulation of the industry.

While the AIMS has a strong collaborative relationship with AMSA we would welcome a more formal forum to provide regular focussed input and believe that this would also go a long way to improving communication issues with industry as a whole and would certainly complement the current workshop method and ensure that communication is more effective and reaches a greater audience.

As noted in our previous discussions with the Productivity Commission we consider that it is not the remit of AMSA to “accredit” marine surveyors. This is the role of the AIMS as the peak industry body and AMSA’s remit should be limited to auditing the accrediting body.

As the AIMS is now applying to the Professional Standards Council to be recognised it would be well placed moving forward to be the accrediting body.

The AIMS has also noted that there are inconsistencies in the accreditation process and a lack of clarity as to specifically what qualifications and what type of practical experience is required. There should also be more clarity on what constitutes continual professional development and how this will be measured and monitored.

Additionally, the term, “AMSA accredited” has created an opportunity for misleading conduct by blue water surveyors and a more appropriate term would be MNSL Accredited or similar wording that would clearly distinguish MNSL surveyors from AMSA inspectors.