

Rural and Regional Affairs and Transport Legislation Committee

**Senate Inquiry into Oversight of the Australian
Maritime Safety Authority**

ANSWERS TO QUESTIONS ON NOTICE

Public Hearing 4 December 2018

Topic: Oversight of the Australian Maritime Safety Authority

Proof Hansard Page/s: 6, 8 & 9

Senator Patrick asked:

1. I presume there would be no prejudice to legal proceedings if you were to table the correspondence that took place between the DPP and your organisation?
2. I will just ask you to take this on notice: can you provide the committee with details of other incidents that have occurred where a brief has been considered but not advanced, and the circumstances over, perhaps, the last two years in which that has occurred?
3. I just wonder if you could perhaps do a bit of due diligence for the committee and track back to the directors and the operators and advise us as to whether or not there's another company that's been formed that may be operating in your area with the same people and, indeed, the same master if that's possible, please?

Senator Gallacher asked:

4. Mr Kinley, can you take on notice how many prosecutions you have enacted, particularly under this provision of the act, safety management on boats – the success rate of the prosecutions and what they were for. And it would be handy to see your activity level on breach notices, too, over the last three years. Thank you.

Acting Chair, Senator Sterle asked:

5. How can we make sure that we can minimise the chances of this ever happening again?

Answer: (Australian Maritime Safety Authority)

1. There were a number of conversations between representatives from AMSA and the CDPP.
2. Details for maritime incidents that have occurred over the previous two years, where a brief has been considered but not advanced are outlined at **Attachment B**.
3. AMSA is not aware of any company being operated by the same person involved with the *Ten Sixty Six* incident. AMSA has received an application for a Certificate of Operation for a passenger vessel submitted by a person who appears to be a relative of the master. AMSA is assessing the application in accordance with relevant legislation.
4. Details for prosecutions and breaches over the previous three years are outlined at **Attachment B**.
5. The opening Statement provided by AMSA to the Committee at the hearing was intended to provide information on AMSA's implementation of recommendations made by the Western Australian Coroner in relation to the death of Mr Damien Mills, as well as other actions being taken by AMSA intended to prevent such tragic incidents happening in the future.

Following a review of AMSA's compliance functions and enforcement policy in 2017, a dedicated Enforcement and Inspector Support Unit was created. The Unit reports directly to the Chief Executive

Rural and Regional Affairs and Transport Legislation Committee

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Public Hearing 4 December 2018

Officer and has specialist resources to undertake compliance activities including detailed investigations, prosecutions and instigation of civil penalty proceedings.

Formal processes have been developed and implemented to allow other areas of AMSA to refer investigations to the unit, as required.

The unit will investigate all fatalities relating to the operation of domestic commercial vessels and will continue to work with the CDPP.

Since 1 July 2018 AMSA has assumed responsibility for all service functions under the *Marine Safety (Domestic Commercial Vessel) National Law Act* which means that AMSA's Enforcement and Inspector Support Unit will take the lead in investigating incidents under the National Law Act.

Rural and Regional Affairs and Transport Legislation Committee

Senate Inquiry into Oversight of the Australian
Maritime Safety Authority

ANSWERS TO QUESTIONS ON NOTICE

Public Hearing 4 December 2018

Attachment B

Breach reports provided to AMSA by marine safety inspectors		165
Total offences in Breach Reports		206
Offences recommended for prosecution		7
AMSA Actions	AMSA Issued Counselling	31
	AMSA Issued Infringement	37
	NFA - Infield warning	81
	NFA - No Offence/Insufficient Evidence/Public Interest	50
	NFA - Other (referred for admin action)	0
Offences reviewed for prosecution	4 - offences progressed to prepare brief of evidence 3 - no offence	7

No offence - AMSA complete an assessment and determine no offence has been committed.

2017 - Breach Reports (National Law)		
Breach reports provided to AMSA by marine safety inspectors		124
Total offences in breach reports		159
Offences recommended for prosecution *		4
AMSA Actions	AMSA Issued Counselling	68
	AMSA Issued Infringement	33
	NFA - Infield warning	43
	NFA - No Offence/Insufficient Evidence/Public Interest	10
	Other - Referred for Administrative Action	1
Offences reviewed for prosecution	3 - offences progressed to prepare brief of evidence 1 - NFA - past statute	4

Public Interest – of no benefit, or in the public interest, to take someone to court over a minor incident, preference is to educate in these particular incidents.

Rural and Regional Affairs and Transport Legislation Committee

**Senate Inquiry into Oversight of the Australian
Maritime Safety Authority**

ANSWERS TO QUESTIONS ON NOTICE

Public Hearing 4 December 2018

2018 - Breach Reports (National Law)		
Breach reports provided to AMSA by marine safety inspectors		67
Total offences in breach reports – 2 under review		77
Offences recommended for prosecution *		7
AMSA Actions	AMSA Issued Counselling	26
	AMSA Issued Infringement	22
	NFA - Infield warning	12
	NFA - No Offence/Insufficient Evidence/Public Interest	8
	NFA - Other (referred for admin action)	0
Offences reviewed for prosecution	4 - offences progressed to prepare brief of evidence 2 - no offence 1 – TOA	7

TOA – take other action e.g. instead of prosecution, issue an infringement.

Rural and Regional Affairs and Transport Legislation Committee

**Senate Inquiry into Oversight of the Australian
Maritime Safety Authority**

ANSWERS TO QUESTIONS ON NOTICE

Public Hearing 4 December 2018

Prosecutions (National Law)					
Offender	Year AMSA received	Offence	AMSA BoE Status	CDPP Status	Outcome
Master_NP	2016	General safety duties, Master, Strict Liability	BoE referred to CDPP	BoE accepted by CDPP	Conviction & Fine
Owner_BC		General safety duties, Owner, Strict Liability	BoE referred to CDPP	BoE accepted by CDPP	Withdrawn
Owner_BC		General safety duties, Owner, Reckless	BoE referred to CDPP	BoE accepted by CDPP	Conviction & Fine
Owner_BC		Operating without Certificate of Operation, Owner, Strict Liability	BoE referred to CDPP	BoE accepted by CDPP	<i>Ongoing</i>
Owner_BC		Causing operation without Certificate of Operation, Owner, Strict Liability	BoE referred to CDPP	BoE accepted by CDPP	<i>Ongoing</i>
Owner_BC	2017	General safety duties, Owner, Reckless	BoE referred to CDPP	BoE accepted by CDPP	<i>Ongoing</i>
Master_NP		General safety duties, Master, Reckless	BoE referred to CDPP	BoE accepted by CDPP	Withdrawn
Master_NP		General safety duties, Master, Strict Liability	BoE referred to CDPP	BoE accepted by CDPP	Conviction & Fine

Rural and Regional Affairs and Transport Legislation Committee

**Senate Inquiry into Oversight of the Australian
Maritime Safety Authority**

ANSWERS TO QUESTIONS ON NOTICE

Public Hearing 4 December 2018

Master_NP	2018	General safety duties, Master, Reckless	Under investigation		
Crew		Operating without Certificate of Operation, Crew, Strict Liability	Under investigation		
Master_NP		General safety duties, Master, Strict Liability	Under investigation		
Owner_BC		Operating in breach of condition of exemption, Master, Strict Liability	Under investigation		

NP - Natural Person | BC - Body Corporate

BoE - Brief of Evidence

CDPP - Commonwealth Director of Public Prosecutions

Rural and Regional Affairs and Transport Legislation Committee

**Senate Inquiry into Oversight of the Australian
Maritime Safety Authority**

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Public Hearing 4 December 2018

Prosecutions (Other)					
Offender	Year AMSA Received	Offence	AMSA BoE Status	CDPP Status	Outcome
Owner_NP	2016	PR SEA - garbage pollution Master	BoE referred to CDPP	BoE accepted by CDPP	Guilty - No conviction recorded
Owner_BC		PR SEA – garbage pollution Owner	BoE referred to CDPP	BoE accepted by CDPP	Conviction & Fine
Master_NP		PR SEA – garbage pollution Master	BoE referred to CDPP	BoE accepted by CDPP	Withdrawn
Master_NP		PR SEA – garbage pollution Master	BoE referred to CDPP	BoE accepted by CDPP	Withdrawn
Master_NP	2017	Navigation Act 2012 - Taking a regulated vessel to sea without a Safety Certificate (Master)	BoE referred to CDPP	BoE accepted by CDPP	Ongoing
Master_NP		Navigation Act 2012 - taking a regulated vessel to sea without a Safety Certificate (Master)	BoE referred to CDPP	BoE accepted by CDPP	Ongoing
Owner_NP		Navigation Act 2012 - taking a regulated vessel to sea without a Safety Certificate (Owner)	BoE referred to CDPP	BoE accepted by CDPP	Ongoing
Owner_NP		Navigation Act 2012 - Taking a regulated vessel to sea without a Safety Certificate (Owner)	BoE referred to CDPP	BoE accepted by CDPP	Ongoing
Master_NP		Navigation Act 2012 - Operating a vessel in contravention of the regulations (Master)	BoE referred to CDPP	BoE accepted by CDPP	Before the Courts

Rural and Regional Affairs and Transport Legislation Committee

**Senate Inquiry into Oversight of the Australian
Maritime Safety Authority**

ANSWERS TO QUESTIONS ON NOTICE

Public Hearing 4 December 2018

Master_NP		Navigation Act 2012 - operating a vessel in contravention of the regulations (Master)	BoE referred to CDPP	BoE accepted by CDPP	Before the Courts
Owner_NP		Criminal Code Commonwealth/144.1(1)	BoE referred to CDPP	BoE accepted by CDPP	Ongoing
Owner_NP		Criminal Code Commonwealth/144.1(1)	BoE referred to CDPP	BoE accepted by CDPP	Ongoing
Owner_BC		Navigation Act 2012 - taking a regulated vessel to sea without a Safety Certificate (Owner)	BoE referred to CDPP	BoE accepted by CDPP	Before the Courts
Owner_BC		Navigation Act 2012 - taking a regulated vessel to sea without a Safety Certificate (Owner)	BoE referred to CDPP	BoE accepted by CDPP	Before the Courts

PR SEA - Protect of the Sea (Prevention of Pollution from Ships) Act