

**Opening Statement**  
**Australian Maritime Safety Authority**  
**Public Hearing before the Senate Standing Committee on Rural and**  
**Regional Affairs and Transport Legislation Committee**  
**Tuesday 4 December 2018**

Good morning. I would like to make a brief opening statement to the committee.

I understand the purpose of the hearing is to consider how AMSA has implemented headcounts and other safety measures, following the coronial findings in relation to the death of Mr Damian Mills in Western Australia in 2014, and that the Committee is also interested in the decision not to proceed with prosecutions in the matter.

Firstly, I acknowledge the continued efforts of the Mills family to advocate for improved safety outcomes.

If I may, I would like to address the second purpose for the Committee's hearing first.

*Prosecution*

It is correct that the Commonwealth Director of Public Prosecution makes the final decision to bring charges – the CDPP makes this decision following receipt of a recommendation from the responsible agency by applying the Prosecution Policy of the Commonwealth.

Whether or not AMSA makes such a recommendation is guided by the available evidence, and usually involves pre-brief discussions with the CDPP.

In the case of the Mills fatality, I can confirm that AMSA did not make any such recommendations to the CDPP.

The decision not to progress a brief of evidence was made by AMSA, after consultation with the CDPP, as there were limited prospects for a successful prosecution on the available evidence, taking into account the standard of proof required.

The Western Australian Water Police investigated the missing person incident. In February 2015, the WA Water Police recommended to AMSA that the master of the vessel *Ten Sixty Six* be prosecuted for failure to implement and comply with the vessel's safety management system because he did not:

- conduct a count of the passengers at the conclusion of the charter and
- properly induct the deckhand.

The Commonwealth Director of Public Prosecutions was consulted in August 2015 and raised concerns that there was:

- no conclusive evidence that Mr Mills actually fell overboard; and
- no conclusive evidence as to whether or not the operator conducted a head count of passengers on disembarkation (which is required by the safety management system, but not specifically by the National Law).

They advised that, on the basis of the evidence to hand, it could not be proven beyond a reasonable doubt that the master had committed any offences under the Marine Safety (Domestic Commercial Vessel) National Law.

AMSA accepted that advice because there was no evidence that would counter the master's claim that he had conducted the required headcounts and the induction issue was not significant in the circumstances.

The Western Australian Department of Transport investigated the operations of the owner of *Ten Sixty Six*. AMSA received the Department of Transport's report in December 2014. It recommended prosecution against the operator for alleged breaches of the National Law for a range of matters not associated with the Mills fatality.

However, the material in the report lacked evidence. AMSA tried to obtain further and better particulars to support the recommended enforcement actions, discussed the available evidence with CDPP and decided that there was insufficient evidence to recommend prosecution.

Nothing has changed that would alter these decisions. It is also noted that the timeframe for prosecution of the master has passed.

*[nb: WA Police did commence prosecutions for breaches of the Liquor Act.]*

## *Headcounts*

The Coroner noted AMSA's intention to promote headcounts as a safety measure, which may be relevant in circumstances like those of Mr Mills.

In turning to the first part of the Committee's agenda, AMSA has implemented a suite of regulatory and operational measures to improve the safety outcomes in passenger operations, noting the diverse nature of the passenger vessel fleet.

Since 1 July 2018:

- we've ended grandfathering of operational safety standards (other than crewing) - so owners and operators of passenger vessels must as a condition of their certificate of operation comply with the contemporary operational safety standards, including head count requirements, set out in Marine Order 504;
- we've strengthened safety management requirements. There is now an explicit requirement that the safety management system for the vessel specifically addresses these operational safety standards, giving clearer substance to safety management system obligations. Vessel owners won't be issued a certificate of operation if they don't do this; and
- we've bolstered the obligation to undertake at least 1 headcount and know the number of passengers on the vessel at any time by requiring vessel owners to ensure that the number of crew on board is adequate to ensure that passengers are appropriately monitored.

These regulatory changes only represent one facet of our approach to driving greater rigor around the approach of passenger vessel owners to head counts.

On an operational and compliance level, since 1 July this year, our Western Australian regional office has carried out inspections of 48 Class 1 passenger vessels.

There are five passenger vessels that operate between the mainland and Rottnest Island and we have inspected all but one of those vessels this year.

*(one was in slip under maintenance).*

We have carried out safety management system assessments with an emphasis on headcounts on board all of the vessels operating to Rottnest. Two inspections have been carried out on vessels operating between the mainland and Rottnest on separate occasions.

When certifying vessels, passenger vessels are categorised as high risk throughout the application process for both an initial and renewed certificate of operation. This means that a vessel's safety management system is reviewed as part of the application process to ensure it includes appropriate procedures, among other things, for monitoring passengers.

### *Education*

From a safety education perspective, safety management system workshops have been conducted by AMSA in Western Australia targeting all domestic commercial vessel sectors.

These workshops assist operators to conduct risk assessments on their operation and develop mitigation strategies in a SMS. These workshops are focussed on ensuring that operators understand their SMS obligations as they apply to their particular vessel and operation.

The safety education is evidence based - meaning we target campaigns based on incident reports, inspections and Safety Management System assessments, investigations, and relevant research.

Our safety education efforts will focus on all classes of vessels – that is, fishing, passenger, cargo, hire and drive, throughout the next few years.

The focus will be on developing core knowledge with more targeted workshops being planned that will include passenger management.

### *Guidance*

AMSA has developed new guidance on safety management systems, including information on head counts. Our dedicated industry liaison officers in each state use the guidance in their work with operators.

AMSA has also published a suite of guidance material on meeting safety management system obligations and the operational safety requirements, including practical guidance on developing, implementing and maintaining a safety management system.

### *Compliance*

As part of its compliance efforts we assess the safety management systems for passenger vessels which are considered as high-risk during the process for, or renewal of, a certificate of operation. As part of this process the vessel's safety management system is reviewed during the application process to ensure it includes procedures for monitoring passengers.

Between July and November 2018 AMSA carried out 85 SMS Assessments on passenger vessels.

We have plans for a safety management system forum to cover the larger industry sectors such as passenger ferries and cargo vessels planned for 2019.

In our safety briefings for industry, especially in relation to Class 1 passenger vessels, we place a focus on headcounts. In the last two years we had in excess of 50 people attend briefings in Western Australia including 25 from passenger vessels. This includes fleets such as the Rottnest Island Express and Captain Cook.

We also held commercial operation briefings for the Abrolhos, Boating Industry Association of WA, and in Broome and Exmouth.

### *Closing*

The safety record for passenger vessels is generally very good. While unfortunate and devastating events like this are evidently rare, as the maritime safety regulator AMSA's focus is very much on having a positive influence on the culture of commercial vessel operations.

I am happy to answer any questions in relation to AMSA's responsibilities.