



Australian Government
Australian Maritime Safety Authority

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CHIEF EXECUTIVE OFFICER

Senator Gavin Marshall
Chair
Joint Select Committee on the Christmas Island Tragedy
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Marshall

Thank you for your letter dated 9 June seeking a response from the Australian Maritime Safety Authority (AMSA) in relation to the Christmas Island Tragedy.

Please find enclosed AMSA's response.

Yours sincerely


GRAHAM PEACHEY

15 June 2011

Encl. (1)

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**Response to request dated 9 June 2011 from the
Joint Select Committee on the
Christmas Island Tragedy**

**by the
Australian Maritime Safety Authority
June 2011**

On 9 June 2011 the Chair of the Joint Select Committee on the Christmas Island Tragedy requested the Australian Maritime Safety Authority (AMSA) to provide an “explanation of why AMSA is unable to provide advice to the Department of Regional Australia, Regional Development and Local Government on the type(s) of vessel it considers fit for rescue purposes from the island, to assist that agency to obtain appropriate equipment and minimise the chance of public funds being expended on vessels not fit for their role”.

To assist the committee, AMSA provides the following response to the request. This response outlines:-

1. Summary
2. AMSA’s statutory responsibilities;
3. AMSA’s role relating to search and rescue;
4. AMSA’s role relating to survey, including survey of Commonwealth ships;
5. the potential for AMSA to provide advice to Commonwealth departments, including DRA, on the types of vessels AMSA considers fit for rescue purposes.

1. Summary

1. AMSA can and does provide advice to Commonwealth agencies seeking to purchase vessels for a variety of uses in Australian waters and overseas. This may involve representation of AMSA requirements in the case of vessels that might be used by multiple jurisdictions, and technical advice in regards to standards, survey, certification and manning. Since the incident on 15 December 2011 both the Department of Regional Australia and the Australian Federal Police have consulted with AMSA about vessels to replace those currently on Christmas Island which failed survey inspections in 2010. The Australian Customs and Border Protection Service frequently consults with AMSA about the standards to be met by vessels it is proposing to acquire and the AFP has consulted with AMSA about its response vessels over many years. AMSA is unable to advise any Commonwealth agency or member of the public seeking to acquire a vessel which *specific* vessel would be “fit for rescue purposes” or fit for any other purpose.

Such procurement will be the result of an open tender process in accordance with Commonwealth procurement guidelines.

With regards to the VMR vessel purchased for Christmas Island, this vessel was found not to comply with the standards specified, which is a procurement issue.

2. The statutory responsibilities of the Australian Maritime Safety Authority

2. The Australian Maritime Safety Authority (AMSA) is established by section 5 of the *Australian Maritime Safety Authority Act 1990* (Cth) (AMSA Act).
3. Section 2A of the AMSA Act sets out AMSA's main objects, which include the promotion of maritime safety (section 2A(a)), the provision of a search and rescue service (section 2A(ba)) and the promotion of the efficient provision of services by AMSA (section 2A(c)).
4. AMSA's functions are set out in section 6(1) of the AMSA Act. The functions relevant to this inquiry are :

The functions of the Authority are:

- (a) ...; and
 - (b) to provide a search and rescue service; and
 - (c) to provide, on request, services to the maritime industry on a commercial basis; and
 - (ca) to provide on request services of a maritime nature, on a commercial basis, to:
 - (i) the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or
 - (ii) an authority or agency of the Commonwealth, a State or either of those Territories; and
 - (cb) ...; and
 - (d) to perform such other functions as are conferred on it by or under any other Act; and
 - (e) to provide consultancy and management services relating to any of the matters referred to in this subsection; and
 - (f) to perform any other prescribed functions relating to any of the matters referred to in this subsection; and
 - (g) to perform functions incidental to any of the previously described functions.
- (2) The Authority may provide its services both within and outside Australia.
 - (3) Subject to section 8, the functions to provide services may be performed at the discretion of the Authority.
 - (4) The Authority must not perform any of its functions otherwise than for a purpose in respect of which the Parliament has the power to make laws.

5. The Emergency Response Division in AMSA executes AMSA's search and rescue function. The Maritime Operations Division executes functions vested in AMSA under the *Navigation Act 1912*, including responsibility for the survey of vessels within AMSA's jurisdiction in accordance with the Navigation Act.

3. AMSA's Search and Rescue function

6. The function relevant to AMSA's search and rescue service is set out in section 6(1)(b) of the AMSA Act.
7. In relation to provision of a search and rescue service, section 6(5) of the AMSA Act provides that this must be conducted in a manner that is consistent with Australia's obligations under the Convention on International Civil Aviation done at Chicago on 7 December 1944, with relevant protocols and annexes (the Chicago Convention), the International Convention on the Safety of Life at Sea 1974, as amended (the SOLAS Convention) and the International Convention on Maritime Search and Rescue 1979 done at Hamburg on 27 April 1979 (the SAR Convention).
8. AMSA's Emergency Response Division operates the Rescue Coordination Centre Australia (RCC Australia) at AMSA's head office in Canberra.

Commonwealth/State responsibilities – inter-agency coordination

9. In Australia, the response to a maritime casualty is generally a joint effort between the relevant Commonwealth and State Government agencies reflecting the division of powers flowing from the Australian Constitution and inter-governmental agreements, and the complementary nature of response capabilities that the Commonwealth and State Governments provide for their own purposes.
10. RCC Australia meets its obligations under the AMSA Act and Conventions for coordinating maritime and aviation search and rescue operations through joint use of State and Commonwealth resources in accordance with the National Search and Rescue Manual. The manual sets out the arrangements for joint use of resources.
11. When a number of search and rescue authorities contribute to a search and rescue operation, one search and rescue authority will have overall coordination

responsibility and the others will act in support in accordance with the procedures established by the manual. In Australia the Commonwealth civil search and rescue authority is AMSA and the State / Territory civil search and rescue authorities are the Police services.

12. The National Search and Rescue Manual notes these cooperative arrangements for support between search and rescue authorities in Australia. Any search and rescue authority may make a reasonable request for assistance of another while retaining overall coordination responsibility. Typically, this involves AMSA providing assistance to a state or territory search and rescue authority by coordinating the air search element of the total search and rescue operation, undertaking maritime communications (such as issuing a broadcast to shipping) and giving specialist advice such as calculating drift plans, advising of satellite detections of distress beacon positions and making survivability estimates of persons in a particular distress situation. It also involves state and territory search and rescue authorities providing assistance to AMSA with on-scene activities such as intelligence gathering, interviews, seeking local specialised knowledge and with the conduct of surface searches. Typically it is the combination of action by AMSA and the state or territory search and rescue authority that produces the optimal search and rescue operation.

13. For the purposes of the National Search and Rescue Manual, the Australian Federal Police perform the functions of the local search and rescue authority for the external territories (including Christmas Island), under contract to the Department of Regional Australia, Regional Development and Local Government.

Search and rescue assets

14. AMSA has in place a range of measures to enhance access to assets for search and rescue purposes. As well as agreements with existing State-funded operators of emergency medical services helicopters, and commercial helicopters and fixed wing aircraft, AMSA has contracted AeroRescue Pty Ltd to provide five dedicated Dornier 328 turboprop aircraft for search and rescue incidents. These aircraft are based in Darwin, Perth, Cairns, Melbourne and Brisbane. The aircraft have been specially converted to undertake search and rescue operations with a suite of

electronic sensors, an in-flight opening door to deploy emergency supplies and two large flat panel windows to enhance visual search operations.

15. The Dorniers are routinely made available to State/Territory Police services on request for search and rescue operations at no cost. Other aircraft may also be chartered by AMSA and flown in support of Police search and rescue operations when a wide area search is required, at no cost to Police.
16. AMSA has in place maritime communications systems to allow contact with ships in the vicinity of a distress incident to request assistance with the search and rescue response. In circumstances where the Navy assets or other Commonwealth assets are best placed to respond, AMSA will request assistance by these assets.
17. RCC Australia is a 24-hour fully staffed operations centre capable of maintaining a high level of activity for extended periods in comparison with the search and rescue coordination arrangements operated by many of the Police search and rescue authorities. AMSA makes this coordinative capacity available to support Police in their search and rescue operations on request.
18. On the other hand, it is the Police search and rescue authorities and volunteer marine rescue services provided by the State/Territory governments that supply vessels for coastal search and rescue operations around Australia. Water Police routinely operate vessels in coastal waters for multiple roles including search and rescue, as do the volunteers. AMSA may access these vessels on request along with Police capacity to coordinate their efforts at no cost to AMSA.
19. Similar arrangements apply to support from the State Emergency Services, for overland search operations or for logistic support to an air search, provided by the State/Territory agencies at no cost to AMSA.
20. It is this combination of Commonwealth and State/Territory action on request to each other, without the requirement to negotiate costs, that gives the Australian search and rescue arrangements their rapidity of response and flexibility of action. It also avoids duplication of resources between the two levels of Government.
21. As a consequence, AMSA does not retain a full suite of search and rescue capabilities or expertise relevant to the specification of small vessels for coastal

search and rescue, such as at Christmas Island. AMSA will and does provide advice about how such vessels might be equipped to best enable them to work in the national search and rescue system. For example, a vessel intended for a coastal search and rescue role should be equipped with specialist search and rescue communications, to be able to communicate with aircraft, and with capabilities to locate distress beacons.

22. However, AMSA does not operate small vessels for search and rescue purposes or contract such a service, relying on State/Territory agencies to do so. AMSA regards both the Australian Federal Police and the Western Australia Fire and Emergency Services Authority as being significantly more expert than AMSA in the operation of small vessels, particularly in the context of Christmas Island with its particular difficulties with launching and recovering them. Consequently, AMSA would not provide authoritative advice of the type described in the Committee's question, i.e. "... *on the type(s) of vessel it considers fit for rescue purposes from the island ...*" as we do not consider ourselves adequately expert.

4. AMSA's role relating to survey, including survey of Commonwealth ships, under the Navigation Act

23. The functions relevant to AMSA's role relating to vessel standards and survey are set out in section 6(1)(d) and, where requested, section 6(1)(c) and (ca) of the AMSA Act.

24. AMSA exercises functions under the *Navigation Act* as Australia's national marine safety agency. As such, it is responsible for ship safety regulation and for navigational services.

25. RCC Australia, which operates the 24 hour Australian Rescue Coordination Centre providing search and rescue services, also maintains maritime distress and safety communications services that meet the requirements of the SOLAS Convention.

26. AMSA is responsible for ensuring that Australian registered vessels that are subject to the *Navigation Act* meet the international standards as agreed ('flag State' responsibility), or relevant national regulations for domestic operations. AMSA also ensures compliance by the foreign vessels visiting Australian ports

with the international standards to a level that protects Australia's interests (e.g. prevention of pollution) through ship inspections ('port State' control).

27. The Commonwealth shares responsibility for regulating shipping with the States and Northern Territory. This division of powers is defined in the 1979 Offshore Constitutional Settlement (OCS) where the Commonwealth agreed to share powers with the States over a range of matters.
28. The OCS gave States jurisdiction over coastal waters encompassing internal waters and the territorial sea up to the first three nautical miles seaward. It made provision for the sharing of responsibility for the regulation of vessels. The Navigation Act gives effect to this division of powers.
29. The vessels for which AMSA is responsible as set out in the Navigation Act are (in general terms) interstate and overseas trade vessels, fishing vessels going on overseas voyages and Commonwealth owned vessels. In Australia, the States and Territories are responsible for the standard of other vessels, including vessels engaged in intrastate trade, Australian fishing vessels and leisure craft.
30. As the Commonwealth (through AMSA) is responsible for the regulation of all Commonwealth vessels, these voyage based application limitations are not applicable to Commonwealth vessels, which fall within AMSA's regulatory responsibilities regardless of area of operation.
31. Neither the Commonwealth (through AMSA) nor the States/Territories has jurisdiction over foreign-owned vessels that are not within an Australian port.
32. Australia is actively involved in developing measures within the International Maritime Organization (IMO) to encourage the implementation and enforcement of its maritime safety and pollution prevention conventions by all flag States. As well as setting standards for hull and machinery and carriage of appropriate life rafts, life jackets and communications equipment, the IMO has adopted standards for contemporary safety management systems that encompass not only the ship and its crew, but also the overall management system at sea and on shore. Standards relating to safety for international trading ships are contained in the SOLAS Convention.
33. Where a vessel falls within State/ Territory jurisdiction, the standards are usually those set out in the Uniform Shipping Laws Code (USL Code), being replaced by

the National Standards for Commercial Vessels (NSCV), but application is based on the date of construction. The current standards are a combination of the USL Code and the NSCV and are referred to as the USL/NSCV Code

34. For smaller vessels under AMSA's jurisdiction, the Marine Orders made under the Navigation Act adopt the standards in the USL Code and NSCV, as appropriate. For many of the Commonwealth vessels under AMSA's survey, the USL/NSCV Code is the applicable standard, rather than those set out in the SOLAS Convention.

5. The potential for AMSA to provide advice to Commonwealth departments, including DRA, on the types of vessels AMSA considers fit for rescue purposes

35. The Chair has commented that "the committee also learned that AMSA is unable or unwilling to specify the type of craft it considers fit for rescue purposes prior to its purchase, and which would be certified as such by AMSA".

36. AMSA is willing to and does provide assistance to all Commonwealth agencies which request it, both in relation to search and rescue capacity of their vessels and in relation to compliance with the standards set out in the Navigation Act.

37. AMSA would expect to provide these two aspects of maritime services within AMSA's capability at different stages during any procurement process undertaken by a Commonwealth agency proposing to acquire new vessels.

38. At the early stage during any procurement process when an agency is identifying the operational requirements of vessels to be purchased, AMSA's Emergency Response Division is in a position to provide advice about the search and rescue capacity of a vessel from AMSA's view of what would be suitable. Regardless of the purpose that the agency proposes for the vessel (e.g. whether it is for surveillance, enforcement or as a rescue vessel), AMSA is able to provide advice on the search and rescue considerations that it considers would be beneficial, as described earlier in this submission. . AMSA is, for example, able to provide advice on the appropriate communications to be carried to maximise search and rescue response in an emergency.

39. The operational requirements for any agency's vessel will depend on the local circumstances in which the agency proposes to operate and AMSA does not have the local knowledge to provide any particular advice on these issues around

Australia, e.g. AMSA would not be able to advise on local issues such as launching and recovery arrangements, or safety requirements to cross local river bars. Safe operation of any vessel will be subject to sea and weather conditions of the day and the intended nature of those operations.

40. Assistance regarding search and rescue capabilities was not sought during the purchase of the VMR vessel on Christmas Island.
41. At a later stage in the procurement process, when options for suitable vessels to meet its operational requirements and specifications for the agency's purposes have been identified, the Maritime Operations Division in AMSA is also able to provide advice as to the safety standards that are to be met by any vessel so identified.
42. This assistance is frequently sought and provided as a routine matter. As the vessels on Christmas Island were initially certified under State survey, AMSA was not asked to take any role in this process. Had it been requested, advice would have been provided about the survey requirements for any vessel proposed to be purchased.
43. Further, in accordance with its functions, AMSA offers a service of surveying vessels to ensure compliance with the relevant SOLAS or USL/NSCV requirements. Whether a particular vessel is suitable as Class 2C will depend on its construction and proposed use.
44. AMSA is not aware of any Australian standard for a vessel to be "fit for rescue purposes for land-based coastal search and rescue operations". Under the SOLAS Convention there is a standard for rescue boats to be launched from a ship. Whether the vessel is "fit for purpose" depends on that purpose, as identified by the relevant agency. For rescue purposes, this will vary on whether the agency proposes to provide a service close to shore, out to Australia's 200 nautical mile EEZ limits, or somewhere between these. It will also depend on whether the service is proposing to assist people in need of rescue from a vessel or actually in the water, whether the vessels assisted will generally be small fishing vessels in distress or large commercial vessels in distress and whether the capacity is intended to provide search and rescue for one or two people, a dozen people or hundreds of people.

45. The Chair has commented that “the committee also learned that AMSA is unable or unwilling to specify the type of craft it considers fit for rescue purposes prior to its purchase, and which would be certified as such by AMSA”. In the case of the VMR vessel on Christmas Island, the difficulty arose because the vessel did not, in fact, meet the standards that it had been surveyed to. AMSA was not aware of this until the vessel was, in fact, surveyed by AMSA. Even if AMSA had advised the agency to purchase a vessel suitable for survey at the standard of USL 2C, in this case, where the vessels were presented as meeting that standard, it was not until concerns were raised by the AFP and AMSA and the vessels were actually surveyed that it became known that the vessels did not, in fact, meet the standards which had been specified.
46. AMSA provides a service of undertaking surveys before the purchase of a vessel, both to commercial operators and to Commonwealth agencies. If an agency requests AMSA to undertake a survey before purchasing a vessel AMSA would and does provide that service.