



29 March 2019

Senate Rural and Region Affairs and Transport Legislation Committee

RE: Inquiry into the Performance of Australian Maritime Safety Authority

Please find the Tasmanian Seafood Industry Council's submission into the Performance of Australian Maritime Safety Authority (AMSA) .

Yours sincerely

Julian Harrington





Tasmanian Seafood Industry Council Submission to the

Senate Rural and Region Affairs and
Transport Legislation Committee

Inquiry into the
Performance of Australian Maritime
Safety Authority

Executive Summary

On the 1 July 2018, the Australian Maritime Safety Authority (AMSA) took full responsibility for the delivery of the Maritime Safety (Domestic Commercial Vessel) National Law Act 2012 (National Law) in Australia.

From 1 July 2013 to 30 June 2018, delivery of the National Law was the responsibility of the States. During this time, Marine and Safety Tasmania (MAST) was responsible for the delivery of the National Law in Tasmania.

Under MAST, Tasmania was the only State to fully comply with the National Law, inclusive of a full cost recovery levy system. MAST developed a personal delivery model, which assessed and mitigated risk at the scale of the vessel, its operation and the operational environment of that vessel. Under this model, MAST delivered real and relevant safety outcomes for the Tasmania seafood industry. The MAST model was a cost effective, gold plated and accepted delivery model which had enviable safety outcomes.

Leading into the 1 July 2017 (eventually 2018) transition, AMSA promised reduced costs, reduced red tape and improved safety outcomes. Instead, AMSA has delivered a more costly and complex system that does not address real safety risk in Tasmania. AMSA are unable to provide approvals in appropriate timeframes, meaning that Tasmanian DC vessels are held up on land at great cost to the owners, instead of being on the water.

The AMSA delivery model and decision making process has created significant burden on the Tasmanian seafood industry, and grass roots fishers have completely disengaged from the AMSA and the AMSA delivery model.

On behalf of our members, TSIC asks “Why should Tasmanian seafood operators pay more, be subjected to greatly increased and irrelevant red tape which is fraught with significant delays in approval, all for a reduction in meaningful safety outcomes?”

The Tasmanian Seafood Industry Council, with the full support of the Tasmanian seafood sector associations, want a return to a State based delivery model to ensure the ongoing viability of the Tasmanian fleet, and more importantly, to ensure real safety outcomes for Tasmanian operators.

About TSIC

The Tasmanian Seafood Industry Council (TSIC) is the peak body for the Tasmanian seafood industry. TSIC represents the interests of approximately 550 wild catch fishers, 75 marine farm businesses and 60 seafood processing businesses. These members produce in excess of \$1 billion GVP value per annum, with the industry also supporting a multitude of subsidiary businesses that wholly or partially rely on the seafood industry.

Our industry stakeholders

TSIC works closely with all Tasmanian seafood sector Associations:

- Oysters Tasmania
- Scallop Fishermen's Association of Tasmania
- Tasmanian Abalone Council
- Tasmanian Abalone Growers Association
- Tasmanian Commercial Divers Association
- Tasmanian Rock Lobster Fishermen's Association
- Tasmanian Salmonid Growers Association
- Tasmanian Scalefish Fishermen's Association

Tasmanian Domestic Commercial Vessel (DCV) Fleet

There are approximately 1,250 domestic commercial vessels operating in Tasmania (most recent figures provided by Marine and Safety Tasmania in 2018). Of these vessels, approximately 850 operate in the Tasmanian seafood industry. These vessels cover a significant diversity of sizes, from small 6m open dinghies; to large (>30m) vessels operating in the salmon industry. Vessels utilize a diverse range of gear types and operations, and can be found in sheltered and smooth waters, right out to the openness of the continental shelf.

Majority of seafood businesses are small, single person owner operator businesses. If an operator is lucky, they may have a partner or family member who helps with finances and other paperwork. They certainly do not have the support of an HR or WHS team to assist with the requirements of AMSA or to wade through the complexity of the ASMA website and forms.

In general, Tasmanian DC vessels operate in Tasmanian waters only.

The Transition to the AMSA delivery model

Pre 1 July 2018 – the MAST delivery model

On the 1 July 2013, AMSA took over responsibility as the National maritime regulator, with Marine and Safety Tasmania (MAST) being responsible for delivery of the National Law in Tasmania.

MAST rapidly transitioned the Tasmanian DCV fleet to conform to all National maritime safety requirements, inclusive of operating under a full cost recovery model. This was achieved through the collection of a MAST Administrative Fee and Fee for Service arrangements. Tasmania was the only State to achieve full compliance with the National Law.

The MAST delivery model was based on knowledge and understanding of the Tasmanian DCV fleet (vessels), their operations and the locations and conditions they operate in. This enabled MAST to make common sense decisions, relevant to vessels and their operations, but without compromising safety outcomes. This delivery model and decision making approach benefited all.

Paperwork (red tape) was minimized and when required was relevant and understandable, with costs realistic and accepted. MAST had an end user driven communication strategies in place to ensure understanding and compliance.

The most effective strategy under the MAST delivery model was to have decision making expertise available to industry. The ability for industry to walk into or call the MAST office and directly engage with staff who were able to make decisions and provide consistent advice relevant to their operations meant decisions were relevant and made quickly. This allowed seafood vessels to be where they needed to be – on the water.

The MAST delivery model and decision making process achieved real safety outcomes for the Tasmanian seafood industry. The relatively low number of significant accidents and fatalities in Tasmania (11 since 2001) is evidence of this.

Although TSIC and the Tasmanian seafood industry strive for zero deaths in our industry, the unfortunate reality is that accidents will and do happen, and no amount of regulation will prevent some incidents. Regardless, MAST would learn from each accident, with recommendations from coronial investigations always implemented in the interest of safety.

In summary, MAST developed and delivered an industry accepted, 'gold plated' model for compliance with the National Law and more importantly, the delivery of maritime safety outcomes in Tasmania.

Transition to the AMSA delivery model

AMSA were aware for many years that they would assume ownership for delivery of the National Law from 1 July 2017. AMSA were also aware that some states were far from complying with the National Law, while Tasmania was fully compliant. AMSA was certainly aware of the challenges that this would create.

In the lead up to the 1 July 2017 transition to the AMSA delivery model, it became obvious that AMSA was not adequately prepared to take on the responsibility for delivery of the National Law. In acknowledging that AMSA was not in a position to perform as the single point deliverer of the National Law, the Federal Minister announced a 12 month extension before the full transition to an AMSA delivery model, with the new transition date being 1 July 2018.

AMSA took responsibility for delivery of the National Law on the 1 July 2018.

The AMSA delivery model

The AMSA delivery approach has been to take the systems and approaches developed for managing the world of big ships and transpose this into the Domestic Commercial Vessel world. Under this model, the rules are delivered as legalistic documents, such as Marine Orders; while the preferred communications channels for support are via an online portal or a call centre system.

Although this system may work within the big ship world, where the large integrated companies employ safety officers and HR staff to assist with red tape, it is a complete failure for the Tasmanian seafood fleet, which in large are single person owner operator businesses. Since the 1 July 2018 it is obvious that the AMSA performance and delivery model has completely failed for the Tasmanian DCV fleet.

Measuring AMSA performance

Under COAG agreed and supported principles, harmonisation of maritime safety under an AMSA single point delivery model would deliver reduced costs, reduced red tape and improved safety outcomes. There is no doubt that such outcomes would have significant benefits for the Tasmanian seafood industry.

The key measure to test the performance of AMSA is to determine whether the AMSA delivery model has in fact reduced costs, reduced red tape and improved safety outcomes.

In evaluating against these measures, it is important to determine whether the AMSA delivery model has provided at very least the same level of service, decision making, cost and safety outcomes when compared to the Tasmanian State based delivery model provided by MAST.

To summarise now, the AMSA delivery model has been a complete failure in Tasmania, with AMSA delivering a costly system, full of red tape and complexity, which has resulted in a reduction in safety outcomes in Tasmania when compared to the MAST delivery model.

AMSA performance against reducing costs

The total cost to industry under the AMSA single point delivery model is complex and involves the combination of a cost recovery levy, fee for service arrangements, shifted costs to private service providers and indirect costs. At present, it is not possible to compare all these costs between the AMSA and MAST delivery models.

The easiest way to evaluate AMSA performance against cost is to compare the revenue that is required under the different AMSA proposed full cost recovery levy models with that implemented successfully by MAST.

The following analysis compares the calculated AMSA revenue requirements under the different proposed cost recovery levy models (without subsidy) with the MAST cost recovery model (indexed to match relevant years).

2016 AMSA full cost recovery levy model

In 2016, AMSA presented two cost recovery levy structures for industry consultation. These were termed the proportional model and progressive model. The information below provides a comparison of the proposed AMSA revenue under each model compared with the equivalent MAST fee. It must be noted that MAST has retained a commercial fee to continue providing services to the commercial fleet that are not provided by AMSA. This continued MAST fee is approximately $\frac{1}{3}$ of the full MAST fee. As such, the MAST fee equivalent to the AMSA levy is determined as $\frac{2}{3}$ of the MAST fee.

The AMSA proportional cost recovery levy model would collect on average 113% more revenue from Tasmanian fishing vessels compared to the MAST levy structure.

The AMSA progressive cost recovery levy model would collect on average 104% more revenue from Tasmanian fishing vessels compared to the MAST levy structure.

In summary, AMSA require more than double the income from Tasmanian fishing vessels under the two proposed AMSA full cost recovery model structures delivered in 2016.

2017 AMSA full cost recovery model

The AMSA full cost recovery levy model tabled in 2017 provided a far better outcome for Tasmanian Class 3 (Fishing) vessels, but there was still an average 17% increase compared to the MAST levy structure. It must be noted that under this proposed levy structure, some individual Tasmanian operators will pay less compared to the MAST fee, and others more.

It also needs noting that other classes of DC vessels did not fare so well, with Class 1 (Passenger) and Class 2 (non-passenger) vessels paying significantly more under the 2017 AMSA cost recovery levy model.

Although benefiting the fishing industry, this disproportionate model is viewed as inequitable by other vessel classes, and there is significant and justifiable angst from these classes and a call

for a more equitable levy model to be developed. This would see a significant increase in the 17% increase previously mentioned.

Final AMSA cost recovery levy structure

AMSA have admitted they are uncertain of the true and full costs of delivering the National Law to DCV operators. As such TSIC remains uncertain of many aspects of the AMSA delivery model and budgeting, in particular:

- What the final levy structure will look like, noting there is lobbying from Class 1 and 2 Vessel operators for a more equitable structure that does not favor fishing vessels;
- Uncertainty over the actual number of DCV vessels throughout Australia;
- A decline in the number of vessels operating in the seafood industry;
- Total value of shifted and indirect costs to operators;
- Uncertainty about whether AMSA has adequately budgeted factors such as enforcement and compliance.

There is a real fear that all these factors will significantly increase costs for Tasmanian operators.

Despite AMSA's continued promises for cost savings with streamlining and efficiencies of delivery, TSIC is yet to see any evidence or strategic proposals that identify and deliver any savings. To date, there have only been additional costs associated with all aspects of operating a DCV in Tasmania.

Conclusions:

- 1. ASMA has failed to deliver cost savings for Tasmanian DCV operators.**
- 2. MAST was able to deliver the National Law under a State based delivery model cheaper than AMSA.**

AMSA performance against red tape

The primary objective of the AMSA maritime safety system is to transition their 'one size fits all' operational and delivery system developed and delivered to the large ship world into the DCV fleet. This has resulted in a complex, legally written regulatory framework with no industry level communication or guidance.

Under this delivery model, the primary communication platform with AMSA is an online portal and phone based service delivery platform. Such communication platforms are not compatible with the Tasmanian seafood industry needs, and ultimately result in delays, and delays ultimately mean that vessels are tied to the wharf and not out fishing / working on marine farms.

To expect a fisher to wade through the complexities of the AMSA webpage, find the appropriate forms and paperwork, and then understand what it all means is unrealistic. When

AMSA staff are engaged, advice is often inconsistent. This also applies to different businesses tasked with delivering aspects of the National Law, such as surveyors. Advice from real people (via phone or email) very often consists of links to 'legal speak', complex marine orders or other documents that describe the requirements in a way that is near impossible for grass roots fishers to understand.

Add into the mix the complexity of grandfathering clauses and the unknown number of exemptions in place, it should be obvious that AMSA has created an exceptionally complex and burdensome system, which has lost any common sense approach to decision making. Even worse, some AMSA proposals and decisions are creating excessive regulatory burden and red tape for no safety outcomes for Tasmanian vessels; while other decisions appear to be aiming for complete deregulation, which will result in the complete erosion of safety outcomes and in some instances the removal of requirements implemented in Tasmania to address coronial recommendations (see examples below).

It should be obvious that a one size fits all approach to regulation cannot be applied to the diversity of vessels, operations and environments that the Australian DCV fleet operate in. Furthermore, AMSA seem to have lost sight of the fact that majority of seafood businesses are single owner operators, which do not have the time or capacity to know or understand the legalistic AMSA system, but instead will rely on easy to read guidance notes which to date AMSA has been unwilling to produce.

It is clear that grassroots Tasmanian seafood operators have minimal knowledge or understanding of the current and proposed requirements for being compliant with the National Law, and there is no appetite or desire to engage with AMSA or the AMSA delivery model.

This has created complete disengagement by grass roots fishers and marine farmers from the ASMA system, a conclusion that was also reached by Dr Kate Brooks in her research into the barriers to the adoption of safe work practices in wild catch fisheries (<http://www.kalanalysis.com.au/assets/Uploads/2017-046-FG-Findings-Report-50321.pdf>).

Examples of unnecessary red tape (bureaucracy)

Inefficiencies, complexities, uncertainties and excessive red tape (bureaucracy) exist within all aspects of AMSA operations, decision making and delivery model, from vessel surveys, skills and training through to general safety obligations. Examples are many, and generally relate to AMSAs desire for a one size fits all approach, inability to assess risk at the relevant scale of vessel, operation and operational environment, and lack of application of common sense in decision making.

The example of a new boat build in Tasmanian

A regionally based Tasmanian boat building company is the main builder of new aquaculture vessels in Tasmania (and Australia). They have a proven track record of delivering reliable and safe vessels for the oyster and salmon aquaculture world, with the company delivering a significant number of oyster barges under the MAST approval and delivery model.

The first 9 m oyster barge that needed approvals directly through AMSA required an additional 14 variances compared to MAST approvals. Keeping in mind that the vessel would operate in smooth waters, in a short transit between a land base and a designated marine farm, these 14 variances simply do not improve safety outcomes but instead increase cost of production and in this instance, a significant delay in delivery of the vessel to the buyer. Variances included:

- Binoculars – noting you can see the lease from the land base and the land base from the lease!
- Radar reflector – noting the vessel operates in smooth waters and being aluminum is actually one big radar reflector!
- Code flags N and C – what for?
- A torch for each crew member – for what purpose
- A copy of a certified vessel weight – why
- Nautical publications – in an oyster barge with limited to no dry storage?
- Coastal lifejackets – for use within sheltered inshore waters. Such lifejackets are cumbersome, more costly and do not promote use.
- VHF radio

These additional requirements came at a cost of approximately \$4,000 to the builder.

The process to sort final approvals for this new vessel meant the vessel stayed at the boat building yard for an extra 4 weeks, noting that the boat could actually be built in this amount of time.

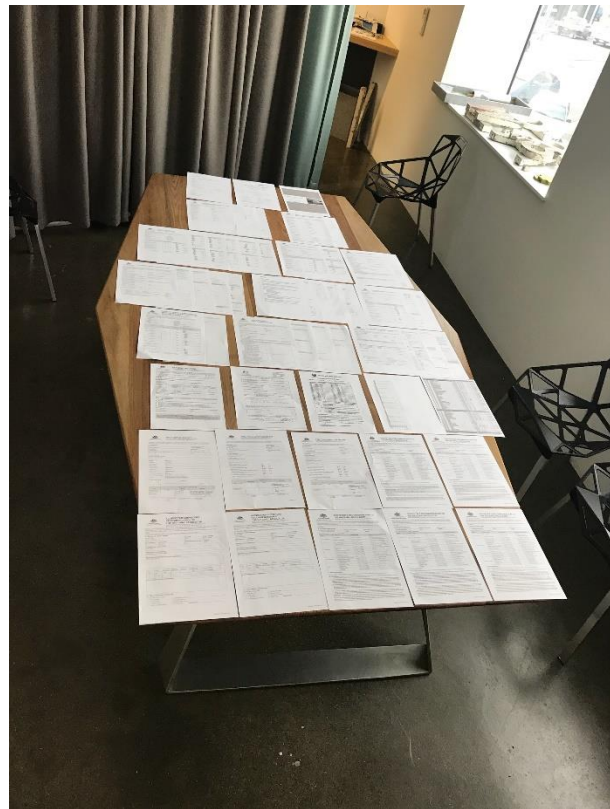
The vessel could eventually be delivered to the customer; however, here the vessel was land bound for a couple of weeks awaiting final AMSA paperwork and approvals. The new owner was eventually told he could apply for an exemption to get the boat on the water while he awaited final AMSA approvals, but that he had to pay a fee for service (about \$200) for the exemption. Or in other words, he needed to pay more because of AMSAs poor performance.

During this process, the private surveyor who oversaw the boat build provided the following photos, which show the paperwork for a boat build under the MAST state based delivery model (left) and the paperwork required by AMSA for the same boat (right).

The owner of this boat building company has become so frustrated, angry and anxious about AMSA and the AMSA process that he made the decision not to deal directly with AMSA or any

one inside AMSA. Instead, he pays a third party surveyor to conduct all dealings with AMSA as this is the only way he could keep his sanity and business open.

This is not an isolated example. At the time of writing this submission, another oyster grower phoned to vent his frustration that he had spent 4 months waiting for final AMSA approvals to get a new oyster barge onto the water. He has also submitted the paperwork for a temporary survey approval (exemption) 4 weeks prior to contacting TSIC, but has not heard from AMSA. This has forced him to hold onto his old oyster barge, for which he has a buyer. These delays not only create mental angst and frustration, but are also costing a small business money.



Conclusions:

- 1. ASMA has failed to reduce bureaucracy and red tape, and has instead made a hugely complex system with multiple tiers of paperwork and approvals which result in significant delays.***
- 2. MAST was able to deliver the National System under a State based delivery model with a commonsense decision making process that involved significantly less paperwork (and frustration) compared to AMSA.***

Safety Outcomes

There is no doubt that the Tasmanian seafood industry strives for a zero fatality / major incident outcome. However, the reality is that the marine environment is an unpredictable and dangerous work environment, and unfortunately accidents will and do happen. Regardless, the track record for safety within the Tasmanian DCV fleet under the State based delivery model implemented by MAST can only be described as highly adequate.

Addressing and meeting safety outcomes in a meaningful, cost effective and simplistic manner is the key outcome for an effective and efficient safety system. Increased red tape, combined with a complex online platform, and phone system for dealing with AMSA and delays in approval processes, is not conducive to meaningful safety outcomes and there is no evidence of improved safety outcomes in Tasmania under the AMSA delivery model.

Given that the Tasmanian seafood industry has become disengaged with AMSA and the AMSA delivery and decision making system, it is easy to argue that under the AMSA delivery model, Tasmania has gone backwards with respect to safety outcomes. This is because grassroots fishers do not know or understand the requirements or their obligations under the AMSA delivery model. If they are not ignorant of the requirements, then they are blatantly ignoring the National Law and AMSA system requirements as they are too complex and difficult, and are instead just getting on with business. This opens up a diverse range of issues and concerns for TSIC.

Under a one size fits all approach to regulating the DCV fleet throughout Australia, AMSA has been required to balance the different requirements and operations in each State. This is very difficult given that many States did not conform to the National Law, while Tasmania was fully compliant. In appeasing the lower end of this spectrum (States with poor safety practices) AMSA has been forced to compromise safety outcomes to ensure minimizing costs and improving the acceptance of proposed change. This has significantly eroded safety outcomes and AMSA delivery performance in Tasmania.

A current AMSA proposal that significantly erodes safety in Tasmania

As a member of the AMSA Fishing Industry Advisory Committee, TSIC is aware of a proposal that falls within the Review of Marine Order 505. The proposal is for the establishment of a Coxswain 3 Certificate of Competency. Although TSIC does not oppose the creation of another lower lever Certificate of Competency, the current proposal is simply trying to appease several States which have allowed the operation of a commercial vessel using only a Recreational Boating Licence. If passed, a person holding a recreational ticket could be in command and operate engines of a commercial vessel <12m long, within restrictions that include: carrying no more than 6 persons, in smooth waters and within 1 Nm of shore or an aquaculture lease or while in transit to a marine farm lease.

It is the view of TSIC that if adopted, this AMSA proposal will significantly degrade near coastal crew competency for commercial vessel operations in Australia! When combined with the capacity for some types of <12 m vessels to not have to undergo a third party survey (they are simply self-declaration vessels), then the proposed AMSA system, if implemented, would completely fail to uphold a measurable minimum standard for maritime safety and vessel safety. The dilution of the standard only serves to increase the risk to workers who already operate in a volatile, unpredictable work environment throughout Australia.

This dilution of safety is even more concerning for Tasmania given that of the 11 fatalities in the fishing industry since 2001, 80% were less than 2 nM from shore and 50% were in dinghies, meaning that this size and use of vessel is a high risk operation.

The proposal also defies the logic of AMSA's responsibility statement: "The National System for Domestic Commercial Vessel Safety provides a consistent approach to safety for owners, operators, and crew of commercial vessels working in Australia" as there are no consistent processes across states for obtaining a Recreational Boating Licence and there is no National Training Framework governing recreational licencing. For example, there is no requirement for a Recreational Boating Licence in the Northern Territory, and you can obtain a SA licence in 7 minutes online. In some States a recreational licence can be obtained at the age of 12.

How can AMSA recognise, adopt, and endorse a State based licencing system they have no governance over, knowledge of, or an ability to withhold licencing if they believe an applicant is unsafe to operate a commercial vessel?

Furthermore, recreational vessel licencing regimes do not address essential areas including but not limited to; Survival at sea, Safety Management Systems, the Marine Pollution Act, Operating in Restricted visibility (Rule 19), and Incident Reporting Obligations for a commercial vessel master.

Coronial findings handed down by Mr S Carey in 2008 as a result of a death to a near coastal commercial fisherman operating in Tasmania found the following training deficiencies, all of which are not covered through recreational licencing;

"Certificate required persons to undertake an extensive course in the elements of shipboard safety which included:

- Comply with emergency procedures on board a vessel.
- Observe safe working practices and procedures on board a vessel.
- Fight and extinguish fires on board a small vessel.
- Survive at sea in the event of a vessel abandonment.
- Minimise the risk of fire and maintain a state of readiness to respond to emergency situations involving fire.

AMSA propose to remove Survival at Sea training from the requirement/licence/qualification, showing they have little regard or knowledge of the recommendations put forward by the Coroner.

The Safety Management System approach to managing risk at sea serves as an administrative control, based on the 'maximum reasonable outcome'. Taking away baseline safety training from recognised training providers and negating any need for the master to have prior experience places themselves and those under their command at significant risk. Safety management plays a vital role in the maritime sector, however it was not designed to remove experience and competency, its role was to compliment the standard and drive a safer standardised process. Furthermore, AMSA cannot ignore the outcomes and recommendations of previous coronial investigations, especially in light of State based WHS agencies requiring such recommendations be addressed.

If AMSA acknowledged the risks of this proposal and was to act in the best interest for the safety and welfare of those operating in the Tasmanian seafood sector, they would not even consider discussing such a proposal, let alone have a draft document ready for broader consultation.

Conclusions

- AMSA has failed in all aspects of their performance.
- Their one size fits all, complex and convoluted approach to addressing DCV maritime safety has increased costs, created significant complexity and regulatory burden and compromised safety in Tasmania.
- The AMSA delivery model does not address risk at an appropriate scale.
- To effectively mitigate risk you must have a deep understanding of vessels, their operations and the conditions they operate in.
- Addressing risk at this level can only be achieved under a State based delivery model, such as that delivered by MAST.
- AMSA have proven they do not have the capacity or capability to effectively deliver a cost effective maritime safety system to the Tasmanian DCV fleet.
- Why should Tasmanian DCV operators pay more for a complex delivery model that does not address safety outcomes and is being delivered by an underperforming AMSA, which is based in Canberra and completely disjointed from industry?
- **The TSIC Board and TSIC Sector Groups FULLY SUPPORT THE RETURN TO A STATE BASED DELIVERY MODEL SUCH AS THAT DELIVERED BY MAST.**

Julian Harrington – Chief Executive TSIC

On Behalf of the Tasmanian Seafood Industry Council

With very short notice, this submission has been fully endorsed by:

The Tasmanian Abalone Council
Tasmanian Rock Lobster Fishermen's Association
Tasmanian Commercial Divers Association
Australian Rock Lobster Exporters Association
Tasmanian Rock Lobster Processors Association
Oysters Tasmania

Dean Lisson - CEO
John Sansom - CEO
Renison Bell - Chair
Michael Blake – Chair
Michael Blake – Chair
Sue Grau – Chief Executive