

*ASF Submission to
Parliamentary Committee on
Managing Fatigue in Transport*

June 1999

This submission addresses the following issues identified by the House of Representatives Standing Committee in relation to the management of fatigue in transport:

- *Initiatives in Sea Transport addressing the causes and effects of fatigue.*
- *How is Fatigue Managed?*
- *Ways of achieving greater responsibility by Individuals and companies to reduce the problems related to fatigue in transport.*

Members of the Australian Shipping Federation recognise the need to manage the causes and effects of fatigue on seafarers. As distinct from the land transport sector, sea transport arrangements, in relation to working hours and minimum hours of rest, are primarily governed by international obligations. Those international obligations apply both to Australian-crewed vessels and international trading vessels visiting Australian ports. The first part of this submission will discuss the international environment in which major shipping companies operate.

Over and above their international obligations, vessels crewed with Australian seafarers are also governed by Australian domestic law and the Australian workplace relations environment. The second part of this submission discusses the impact of Federal Maritime and Occupational Health and Safety legislation and Human Resource policies at industry and company level, in addressing the personal well-being of seafarers on Australian-crewed vessels. The domestic workplace relations environment, now focused on enterprise based industrial outcomes, has required individual employers and employees to negotiate and develop their own specific solutions to the demands of their enterprise. The development of enterprise bargaining, and systems for consultation within enterprises, have enabled and encouraged employees and employers to identify and address factors leading to fatigue on individual ships and trades.

This submission is set out as follows:

- 1. The International Environment**
 - (i.) Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)**
 - (ii.) International Safety Management (ISM) Code**
- 2. The Australian Domestic Environment**
 - (i.) Industrial Regulation**
 - (a) Occupational Health and Safety (Maritime Industry) Act 1993**
 - (b) Federal Maritime Industry Seagoing Award 1998**
 - (c) Enterprise Agreements**
 - (ii.) Shipboard Support**
 - (a) Shipboard Committees**
 - (b) Shipboard Facilities**

(c) **Seafarers Assistance Service**

3. Conclusion

1. The International Environment

(i) **Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)**

In 1995, the International Maritime Organisation (IMO) *Convention on Standards of Training, Certification and Watchkeeping for Seafarers* (STCW Convention) introduced measures to prevent fatigue among watchkeeping personnel on ships registered in countries which are signatory to the Convention. The *STCW 95* provisions established the principle that national governments shall for the purpose of preventing fatigue ...“*establish and enforce rest periods for watchkeepers*”¹

The *STCW 95* requirements were introduced in Australia in *Marine Orders Part 28* made under the *Navigation Act 1912*.² Therefore *STCW 95* applies both to Australian-crewed vessels and international trading vessels visiting Australian ports. These Orders are made and administered and enforced by the Australian Maritime Safety Authority.

Provision 4 of *Marine Orders Part 28– Fitness for Duty* – inter alia:

- (a) Creates mandatory minimum rest periods for personnel involved in watchkeeping operations;
- (b) Requires operators to arrange for and maintain records of hours of work and rest.
- (c) Highlights the need for everyone involved in ship operations to be alert to the factors that can contribute to fatigue. In that regard, the Marine Orders note that the *IMO* has passed a resolution in relation to fatigue on ships (IMO Resolution A.772(18)).
- (d) Provides guidance in applying *Provision 4*.
- (e) Explicitly notes that “*the frequency and length of leave periods, and the granting of compensatory leave, are*

¹ STCW 95, Regulation VIII/1.

² Order 9 of 1997. This is reproduced in *Appendix 1*.

*material factors preventing fatigue from building up over a period of time”.*³

- (f) States that “*the provisions may be varied for ships on short sea voyages provided special safety arrangements are put in place*”.

It should be noted that individual companies have practices and procedures in place to implement these legislative requirements. For example, certain companies require their masters to prepare and ensure adherence to ship rosters to show periods of work and rest on a ship. The rosters are prepared so that they can be verified by the regulatory authority (the Australian Maritime Safety Authority). An example of a form prepared by one company in this regard is contained in *Appendix 2*.⁴

(ii.) International Safety Management (ISM) Code

At the international level, governments have also introduced requirements for ships to have approved safety management systems in place. This requirement is incorporated in the *International Safety Management (ISM) Code*, which became mandatory for all passenger ships, tankers, bulk carriers and high speed craft of 500 gross tonnes and upwards from 1st July 1998, and will do so for all other cargo ships and mobile offshore drilling units from 1st July 2002.

A fundamental function of the Code is to require ships to have approved instructions and procedures to ensure safe operation and protection of the environment in compliance with relevant international and flag State legislation. This extends to the occupational health and safety of the ship’s crew.

In effect, the *ISM Code* is an “umbrella” regulatory instrument which codifies the need for ship operators to have written safety instructions and procedures that can be audited by appropriate authorities. It is given the force of law in Australia under the *Navigation Act 1912*, via *Marine Orders Part 58*.

2. The Australian Domestic Environment

(i.) Industrial Regulation

³ In relation to Leave, see section 1(iii) on page 3.

⁴ In an effort to maximise compliance with STCW 95, and ensure that the Convention is applied uniformly to international shipping, the International Shipping Federation (ISF) is currently in the process of developing computer software that will allow working hours and rest hours on ships to be recorded in a standard format in accordance with the requirements of STCW 95.

(a) **Occupational Health and Safety (Maritime Industry) Act 1993 (“the Act”)**

The Act creates a general duty on an operator of a ship covered by the Act to protect the health and safety at work of employees (Section 11). Section 11(3) states:

“An operator must provide and maintain a working environment (including plant and systems of work) that:

(a) is safe for employees and without risk to their health and

(b) provides adequate facilities for their welfare at work”

The Act also establishes extensive arrangements for managing health and safety on a ship. For example, the Act provides for consultative “designated work groups” to be established on each ship for consultations between operators and employees about OH&S matters (s 40). The Act also provides a role for shipboard health and safety representatives to promote and ensure the health and safety of employees (ss 48 – 53). Employee / employer health and safety committees also have a formal role under the Act in assisting the operator to develop, maintain and implement measures to protect the health and safety of employees at work (see ss 73-75, 77).

The legislative OH&S regime in the Maritime Industry places a special focus on employee representation and consultation in dealing with shipboard OH&S issues. Current company-sponsored training programs for health and safety representatives improve employee skills in dealing with OH&S problems at shipboard level. The consultative approach adopted by the Act ensures that fatigue-related OH&S issues in the Maritime Industry are able to be addressed at the appropriate “operator” level.

The Act complements international regulations in that it creates processes for dealing with all facets of OH&S on a ship, not merely work and rest hours.

(b) **Federal Maritime Industry Seagoing Award 1998**

The Award governing working conditions in the Australian merchant fleet is the *Federal Maritime Industry Seagoing Award 1998*. The award conditions

with respect to Hours and Work and Leave play an important part in controlling fatigue levels on ships.

The following Award clauses are reproduced in *Appendix 3*:

Clause 32.1 - Hours of Work (operates in conjunction with Marine Orders Part 28 and extends to shipboard personnel other than watchkeepers, colloquially known as “dayworkers”);

Clause 32.2 – Meal Breaks;

Clause 32.3 – Avoidance of physical exhaustion;

Clause 32.4 – Joining a vessel overseas;

Clause 33.1 – Entitlement to Leave

It is also noted that the Award provides for aggregated salaries. It has been observed that aggregate salaries reduce the level of, and the incentive to work, overtime. The Leave entitlement in Clause 33.1 essentially means that seafarers receive one day’s leave for every day of service on a vessel. The contribution of an all-inclusive Leave entitlement to reducing fatigue levels was recognised in *Marine Orders Part 28* (see page 3 above). Standard award grievance / dispute settlement procedures are available to deal with concerns which are not able to be addressed within the *OH&S* framework.

(c) Enterprise Agreements

As noted in the context of Occupational Health and Safety legislation, the Maritime Industry recognises that the parties at workplace level have a critical role in discussing and addressing *OH&S* issues affecting individual operations. The parties are able to assume this role given the established parameters laid out by the dedicated *OH&S* Act and *STCW 95 (Marine Orders Part 28)* regime. In this context, the enterprise level provides the most appropriate forum for dealing with specific workload and fatigue-related problems. This is particularly apt since shipboard fatigue can depend on a multitude of factors, such as:

- The vessel’s trading pattern (eg, short and long sea legs, domestic and international trades, climactic conditions);
- The length of crew “swings” (ie, intervals of work and leave)

- The types and varieties of cargo carried (eg, Is manual securing of cargo required?, Is cargo discharge automated? Is tank/hold washing required?);
- The technology and size of a vessel (eg, the size of the maintenance task);
- The ability to use shore contractors to ease the crew's workload;
- Travelling times between the ship and an employee's home.

(ii.) Shipboard Support

(a) Shipboard Committees

Shipboard management committees have a crucial role in dealing equitably with workload demands. Their role was originally documented in the 1993 *Maritime Seagoing Industry Agreement*, an industry-wide agreement which provided the foundation for subsequent company specific agreements. The relevant provision (which has been transposed into several enterprise agreements) is contained in *Appendix 4*.

(b) Shipboard Facilities:

The recreational facilities and sporting amenities offered by Australian ship operators to their employees are an important element in maintaining the well being of employees. It should be noted that nearly all seagoing vessels in the major Australian trading fleet (2000DWT and over, as defined by the Federal Department of Transport) have fully equipped gymnasiums on board. Many vessels also have swimming pools which can provide an alternative means of exercise and relaxation. For relaxation purposes, crew members have access to ship libraries, TVs, videos and CD players. A number of companies also have computers for use by crew members. Air conditioning is standard on all accommodation blocks within the Australian fleet.

(c) Seafarers Assistance Service:

Shipowners recognise that, while workload management is an important element in dealing with fatigue, personal factors equally contribute to an employee's well being and susceptibility to fatigue-related problems. In that regard, the Maritime Industry has established a free and

confidential counselling service for seafaring and shore-based employees of shipping companies, as well as their families.

The Seafarers Assistance Service (SAS) is run for the Industry IPS Employee Assistance, one of Australia's largest and most experienced providers of workplace counselling services. Through the SAS, Seafarers and their families, who may experience problems such as emotional stress, marital or family difficulties, alcohol problems or other personal problems, may seek confidential assistance at an IPS Counselling Centre near their home or through one of the IPS affiliate centres throughout Australia and New Zealand. Maritime Employers and the Maritime Unions participate in a Steering Committee which, among other functions, directs and develops promotional activities to publicise the service throughout the Industry. The SAS is in its sixth year of operation and has now become an accepted and valued resource for employees who need assistance in balancing their family and work commitments.

3. Conclusion:

This submission has identified the strict (international and national) legal parameters for managing workload and reducing the adverse effects of fatigue within the Maritime Industry, and for managing the health and safety of Australian seafarers. It has also identified the mechanisms available to employees employed on Australian vessels to raise and resolve concerns related to their personal well-being.

Given the existence of these mechanisms, and the diversity of operational circumstances found in the Australian merchant fleet, ASF-affiliated companies believe that the adverse effects of fatigue can and should continue to be managed at enterprise level.

<i>Appendix 1</i>

Marine Orders Part 28:

4 Fitness for duty

Appendices to ASF Submission on Managing Fatigue in Transport

4.1 All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch must be provided a **minimum of 10 hours of rest in any 24hour period.**

4.2 The hours of rest may be divided into **no more than two periods, one of which must be at least 6 hours in length.**

4.3 The requirements for rest periods laid down in 4.1 and 4.2 need not be maintained in the case of an emergency or drill or in other overriding operational conditions.

Note: "Overriding operational conditions" means essential shipboard work that cannot be delayed for safety or environmental reasons or which could not reasonably have been anticipated at the commencement of the voyage.

4.4 Notwithstanding 4.1 and 4.2, **the minimum period of ten hours may be reduced to not less than 6 consecutive hours provided that any such reduction must not extend beyond two days and not less than 70 hours of rest are provided each seven day period.**

4.5 Watch schedules must be posted where they are easily accessible.

4.6 **Companies must arrange for records to be maintained of hours of work and rest.**

Note: Although there is no universally accepted technical definition of fatigue, **everyone involved in ship operations should be alert to the factors that can contribute to fatigue, including, but not limited to, those identified in IMO Resolution A.772(18).**

In applying Provision 4, the following should be taken into account:

- **Provisions made to prevent fatigue should ensure that excessive or unreasonable overall working hours are not undertaken. In particular, the minimum rest periods should not be interpreted as implying that all other hours may be devoted to watchkeeping or other duties.**

- **The frequency and length of leave periods, and the granting of compensatory leave, are material factors in preventing fatigue from building up over a period of time.**

- **The provisions may be varied for ships on short sea voyages, provided special safety arrangements are put in place.**

[MARITIME INDUSTRY SEAGOING AWARD 1998 [M0928]]

PART 5 - HOURS OF WORK

32. HOURS OF WORK

32.1 Hours of work

- 32.1.1** The ordinary hours for operational and maintenance work will be eight hours per day each day of the week.
- 32.1.2** Subject to 32.3, to meet the requirements of the vessel, employees will be required to work in excess of the ordinary hours.
- 32.1.3** In port, cargo duties or gear turns will, except where it is impractical due to crew shortages, be worked in shifts of not more than twelve hours duration.

32.2 Meal breaks

- 32.2.1** An employee will, where practical, be allowed 60 consecutive minutes for each meal. Employees may be required to curtail their meal breaks where operational requirements of the vessel dictate.
- 32.2.2** No employee will be required to work for more than six hours without being allowed a break for a meal.
- 32.2.3** Meal breaks will be provided to employees, with the exception of catering employees, during the following span of hours:

Meal breaks	Span of hours
Breakfast	between 0700 and 0900 hours
Midday Meal	between 1200 and 1400 hours
Evening Meal	between 1700 and 1900 hours

- 32.2.4** Catering employees will take their meal breaks, so far as is practical, within the spread of hours in 32.2.3. Meal breaks may only be curtailed or altered where the master or officer-in-charge deems it necessary to meet the operational requirements of the vessel.

32.3 Avoidance of physical exhaustion

- 32.3.1** **Employees assigned to watchkeeping duties.**

32.3.1(a) An employee who is assigned duty as officer in charge of a watch or as a rating forming part of a watch must be provided a minimum of ten hours of rest in any 24 hour period. The hours of rest may be divided into no more than two periods, one of which must be at least six hours in length.

32.3.1(b) The requirements for rest periods laid down in 32.3.1(a) need not be maintained in the case of an emergency or drill or in other overriding operational conditions.

32.3.1(c) Despite 32.3.1(a), the minimum period of ten hours may be reduced to not less than six consecutive hours provided that any such reduction must not extend beyond two days and not less than 70 hours of rest are provided each seven day period;

32.3.2 Other employees

32.3.2(a) An employee not covered by 32.3.1 must be provided a minimum of ten hours of rest in any 24 hour period. The hours of rest may be divided into no more than two periods, one of which must be at least six hours in length.

32.3.2(b) The requirements for rest periods laid down in 32.3.2(a) need not be maintained in the following circumstances:

32.3.2(b)(i) if the employee is required to carry out work necessary for the shifting , arrival or sailing of the ship and/or essential work which cannot be reasonably deferred; or

32.3.2(b)(ii) in the case of an emergency or drill or in other overriding operational conditions.

32.3.2(c) Despite 32.3.2(a) and 32.3.2(b), the minimum period of ten hours may be reduced to not less than six consecutive hours provided that any such reduction must not extend beyond two days and a compensatory rest period of not less than eight consecutive hours (exclusive of meal breaks) is provided to such employees as soon as reasonably practicable thereafter.

32.3.3 The terms of this clause will not affect the operation of applicable legislation and regulations..

32.4 Joining a vessel overseas

An employee required to travel overseas to join a vessel will be provided with adequate rest before commencing duties.

APPENDIX 4

[MARITIME SEAGOING INDUSTRY AGREEMENT 1993 [M0520]]

**HOURS OF DUTY/ HOURS OF WORK AND SHIPBOARD
MANAGEMENT OPERATIONS**

The parties agree to vary clause 18 of MIMSA, in the terms set out below, to reaffirm the concepts and modern working arrangements introduced by the Maritime Industry Development Committee in respect of hours and duties and shipboard management operations on vessels operating under MIMSA.

Individual operators and the Maritime Unions shall have the responsibility to ensure these provisions are understood and are implemented successfully at shipboard level. Any particular difficulties in this regard will be discussed and addressed expeditiously by the parties at an appropriate senior level.

In respect of any vessels remaining in MISA, the operators concerned may hold discussions with the Maritime Unions aimed at increasing productivity and efficiency at a shipboard level.

"18 - SHIPBOARD MANAGEMENT AND OPERATIONS

INTRODUCTION

The MIDC report "Moving Ahead" made recommendations regarding manning levels and composition of crews for the next generation of Australian vessels, training of existing and future Australian seafarers, shipboard management and social environment.

A shipboard management team will operate in MIDC vessels with a view to enhancing harmonious relationships between shipboard personnel and improving the efficient utilisation of manpower resources and technology to implement the employer's maintenance and operational requirements for the vessel.

A shipboard management team will adopt a plan to meet operational requirements and will allocate crew members to appropriate duties. The objectives of the shipboard management team will include the development of the skills of individual crew members and encouragement of job satisfaction through diversity of tasks.

In applying the terms of this clause, the parties will have regard to the terms of these recommendations.

18.1 MANAGEMENT

Each vessel shall have a shipboard management committee which will consist of, unless otherwise agreed, the Master, 1st Mate, Chief Engineer, 2nd Engineer, Chief Steward and Chief Integrated Rating.

The Master, as the employer's representative, shall be Chairman of the committee and subject to the provisions of any applicable law or award, the vessel shall operate under the overall authority of the Master.

Appendices to ASF Submission on Managing Fatigue in Transport

The Committee will have the responsibility for implementing the employer's management plan and ensuring that the vessel operates in a safe and efficient manner.

The Committee should encourage social integration and the development of individual career paths.

The Committee should ensure that all employees work as a team with each employee working to the level of his/her certification, training and ability in a collective effort to achieve a high level of productivity.

To achieve an efficient allocation and utilisation of employees the shipboard management committee shall discuss instances where employees are frequently required to work in excess of twelve hours per day.

Where the shipboard management committee is unable to reduce the frequency of excessive hours the matter shall be referred to the Employer and the union concerned.

Decisions of the committee shall be achieved by consensus but where consensus cannot be achieved the Master shall make the final decision.

The Master shall if requested by a member of the committee record in the minutes the reasons for his decision.

18.2 OPERATIONS

Each vessel shall have a shipboard operations committee which will consist of, unless otherwise agreed, the 1st Mate, 2nd Engineer and Chief Integrated Rating.

The committee will be responsible to the shipboard management committee for the day to day operation and maintenance of the vessel.

To achieve the maximum operational efficiency the operations committee will be responsible for the programming of working periods, meal breaks and rest periods, in such a manner as is best suited to the operation of the vessel and is consistent with best labour management practices. When the daily work programme and priorities have been determined, the Chief Integrated Rating will allocate duties to the Integrated Ratings.

Any disagreement between members of the operations committee which cannot be resolved shall be in the first instance immediately referred to the Master. Any ongoing difficulties with the functions of the shipboard operations committee may be discussed at the regular meetings of the Shipboard Management Committee.

18.3 HOURS AND DUTIES

To achieve the efficient operation of the vessel employees will be required to perform operational and maintenance duties eight hours per day each day of the week.

To meet the operational and maintenance requirements of the vessel, employees may be required to work in excess of eight hours per day. However, the shipboard management committee in the allocation of these duties will, by the efficient use of human resources, together with a planned system of maintenance and operational duties, endeavour to provide employees with a reasonable and equitable workload and ensure that employees have adequate rest.

In port, cargo duties, gear turns or gangway watching shall, except where it is impracticable due to crew shortages, be worked in shifts of not more than twelve hours duration provided that any employee performing such duties who has been required for other duties shall be relieved by another employee to endeavour to limit an employee's duties to a maximum of twelve hours in any one day.

Watchkeeping duties shall be arranged to ensure that where practicable, the watchkeeper who has had the shorter period of active duty in the preceding sixteen hours will be required to take the first watch on departure.

18.4 **IMPLEMENTATION**

Where a vessel's personnel are having difficulty in understanding and implementing the agreed management and working relationships senior management from the employers and unions will make their resources available to assist in that change."

