



Consultation Feedback Report

Marine Order 58 (Safe management of vessels) 2020

Outline

The Australian Maritime Safety Authority (AMSA) has reissued *Marine Order 58 (Safe management of vessels) 2020*, which is now available on the AMSA website. The commencement date of the reissued Order is 1 July 2020.

The new Marine Order addresses the following:

1. AMSA currently conducts audits and issues certificates in compliance with the International Safety Management Code (ISM Code) and Marine Order 58. Marine Order 58 is being reissued to provide for the delegation of authority to Recognised Organisations to issue:
 - A Safety Management Certificate (SMC)
 - Document of Compliance (DoC) and
 - Interim Document of Compliance Certificate (IDoC).
2. A new division for foreign vessels will provide clarity on what applies to regulated Australian vessels and what applies to foreign vessels.

Consultation Feedback

A copy of the draft of this Marine Order was published on the AMSA website for public comment on 10 February 2020 for a 4 week consultation period. Around 160 stakeholders, including passenger and cargo ship operators, offshore oil and gas installation operators, seafarer representative organisations, classification societies, shipping industry peak bodies and various government bodies were invited to comment. There were two submissions received on the draft Marine Order.

Marine Order 58 – General

Comment	Please note that WE have no specific comments
AMSA's response	Thank you for your response. Your comments have been noted.
Comment	<p>Consultation process</p> <p>This draft Marine Order highlights improvements that could be made to AMSA's consultation process. While the comparison table the AMSA provides is useful in showing what changes are made, it should be accompanied with an explanation of <i>why</i> changes are being proposed, and a risk analysis of the impact of the changes on vessel, port and seafarer safety. If AMSA has control measures place to deal with changes, then these could also be highlighted.</p> <p>At present, AMSA is directly responsible for auditing companies and ships and issuing these certificates. The proposed changes to the Marine Order will allow AMSA to delegate the issue of these certificates to Recognised Organisations (ROs), generally classification societies.</p> <p>The organisation objects to the proposed changes to Marine Order 58, as outsourcing safety management to RO's may well lead to a reduction in standards, will reduce AMSA's oversight of Australian flagged vessels and the companies that operate them, and reduce practical and technical ability within AMSA.</p> <p>Marine Order 58 (Safe Management of vessels)</p> <p>Marine Order 58 deals with the safe management and operation of vessels. The marine order outlines the procedures for obtaining certificates under Chapter IX of SOLAS and the International Safety Management (ISM) Code. Three Certificates are issued under this Code:</p> <ul style="list-style-type: none"> • Safety Management Certificate (SMC) issued to the company, and • Document of Compliance (DoC) and Interim Document of Compliance Certificate (IDoC) issued to the ships within the company. <p>At present, AMSA is directly responsible for auditing companies and ships and issuing these certificates. The proposed changes to the Marine Order will allow AMSA to delegate the issue of these certificates to Recognised Organisations (ROs), generally classification societies.</p> <p>The organisation objects to the proposed changes to Marine Order 58, as outsourcing safety management to RO's may well lead to a reduction in standards, will reduce AMSA's oversight of Australian flagged vessels and</p>

the companies that operate them, and reduce practical and technical ability within AMSA.

Reduction in AMSA oversight

Outsourcing ISM documentation of Australian flagged vessels to Classification Societies/ ROs is a step too far in the reduction of AMSA's responsibility of upholding standards. Outsourcing this responsibility to ROs is characteristic of Flag of Convenience states, and is not carried out by the UK, to name one example. The USA has outsourced this responsibility to ROs, and significant problems have now been identified with this process.

ROs are traditionally involved in the inspection of physical and technical matters, however, Safety Management is a quickly evolving area that is best represented by the consistent standards and culture of the vessel's operating environment. ROs surveyors are many, are spread all over the world and have widely varying training and experience. The safety culture in a company and on board a ship is based around an effective Safety Management System that is constructed not only from the minimum standards and guidelines set by the IMO, but on higher standards expected by the Australian community.

Lack of consistency and verification of ROs

Allowing ROs to issue ISM certification will lead to inconsistency in the application of the ISM code among Australian vessels, a potential decrease in quality of SMSs and company and vessel audits, as ROs will be able to issue certificates based on their own internal class rules, which are then subject to the individual opinion of a surveyor who operates beyond AMSA's oversight.

We understand that there is a Code for Recognized Organizations (RO CODE) ¹ and that AMSA must have an internal process to approve and oversee the performance of Issuing Bodies. However, details of how AMSA implements and monitors these assessments are not available in a transparent way, and have not been provided as part of the consultation.

We note that a RO has less responsibility than a Flag State for vessels inspected under a Port State Control regime. Within the Tokyo MoU, of which Australia is a member, the following rule applies:

"3. A detainable deficiency is associated with the RO if it is:

(vi) a major non-conformity where there is clear evidence of a lack of effective and systematic implementation of a requirement of the ISM Code AND there is clear evidence that it existed at the last audit conducted by the RO provided that the audit took place within the last 90 days. It may also include operational drills and operational control and there is clear supporting evidence of failure;

This means that the responsibility of the RO in issuing these ISM certificates only lasts 90 days after the last audit, and there is no consequence for issuing certificates to unsafe ships.

AMSA resourcing for compliance

AMSA has not explained why they have decided to delegate ISM duties to ROs. Perhaps they are trying to reduce the workload for their qualified and experienced surveyors due to increased responsibilities for Domestic Commercial Vessels. If so, the transfer of expertise to the DCV fleet at the expense of the international fleet is unacceptable. Not only does AMSA charge ship owners for audits and inspections but is also partly funded by revenue from the international fleet. One other organisation has made the point that the international fleet should not be subsidising AMSA's regulation of the DCV sector.

Although the number of Australian vessels that would require ISM certification has not been provided by AMSA, it is estimated that it would be approximately the same vessels that have an annual Flag State inspection. From the previous four AMSA annual reports, from 2016 to 2019, the number of flag state inspections per year averages at 79. For less than 80 Australian flagged vessels,

it cannot be too great an imposition for AMSA to continue to audit these vessels and their managing companies.

It should also be noted that AMSA currently provides for a range of possibilities for compliance with Marine Order 58 and the ISM Code for vessels and companies, including overseas new builds, foreign management companies for Australian ships, and the possibility of extension of some certificates for up to 5 months. This information is not found in the marine order, but in the ISM certification guidance.⁵

If resourcing for ISM audits is an issue, this should be clearly identified, and adequate resourcing should be sought.

Importance of AMSA engagement

Considering the value that can be gained from regular and thorough audits of ships and company offices, it would be remiss of AMSA to give up the opportunity to engage with every level of a shipping company, to build and maintain good relationships with stakeholders and keep abreast of developments and innovation. Good communication is a key component of being an effective regulator, and by removing themselves from direct involvement with Safety Management, AMSA will lose one more connection with a cooperative, engaged regulated community.

ISM is the glue that holds all the components of a ship together; the hull, the machinery, the cargo, the voyage and the crew. By outsourcing ISM to ROs, AMSA is sending a signal that they are no longer interested in regulating a

	<p>safe fleet to Australian standards, but merely administering commercial transactions to the worldwide minimum standard.</p> <p>Maintaining AMSA's reputation</p> <p>Australian flagged ships carry the reputation of Australia's maritime industry to overseas ports. This reputation, carefully cultivated by AMSA in previous years means that overseas students flock to Tasmania to gain certificates of competency from the Australian Maritime College that companies send their best performing ships and crews to trade on Australia's coastline, and that crews are paid properly. It is very easy to lose this reputation, and a single Australian ship that is performing below standard sends a very poor message that may have serious long-term consequences.</p> <p>The detention of the Australian-flagged Lucky Eyre in Yamba by AMSA (February 2020) for a number of ISM-related deficiencies shows that the provisions for ISM inspections must be strengthened, and not reduced.</p>
<p>AMSA's Response</p>	<p>Thank you for your response. Please see AMSA's response against the comments.</p> <p>Three Certificates are issued under this Code: •Safety Management Certificate (SMC) issued to the company, and •the Document of Compliance (DoC) and Interim Document of Compliance Certificate (IDoC) issued to the ships within the company.</p> <p>There are two certificates issued, Safety Management Certificate (SMC) and Document of Compliance (DoC). These can be an interim or full term certificate. A DoC is issued to the operating company and the SMC is issued to each vessel.</p> <p>Reduction in AMSA oversight</p> <p>RO's certification may lead to a reduction of standards is an assumption and would not be evident by most classification societies who have had a very robust training, competence and verification system for many years. The decision of ISM audit delegation to RO's does not remove AMSA's responsibility as the Administration in ensuring, safety standards continue to be maintained on regulated Australian vessels. AMSA, as the Flag State has overall responsibility for ensuring compliance with international regulations. In line with this AMSA provides oversight through its Flag State Inspection regime which ensures that satisfactory safety standards are being maintained on board RAVs. During a Flag State inspection, the entire vessel is subjected to the highest performance related inspection by AMSA inspectors, which also include verification of compliance with all applicable rules and regulations, including ISM.</p> <p>Prior to 1999, ISM auditing and certification functions were initially delegated to ROs along with other statutory survey and certification processes. In December 1999 AMSA took over this function from the ROs.</p> <p>Over the years, AMSA identified that the need for our direct delivery of this service became less of an issue as the Australian maritime industry has</p>

matured and the understanding of ISM Code expectations has become clearer and well established. However, AMSA's oversight on RAV's continues to be maintained through our Flag State Control regime. In effect the delegation of ISM auditing and certification functions to RO's will allow AMSA more capability to provide more scheduled oversight of RAV's with an increase in Flag State inspections across the fleet.

Lack of consistency and verification of ROs. ROs will be able to issue certificates based on their own internal class rules, which are then subject to the individual opinion of a surveyor who operates beyond AMSA's oversight.

Most RO's have very robust training, competence and verification systems, some of which have been in place for many years. Classification societies have been conducting DOC/SMC audits since 1994 and most have very vigorous auditing systems in place, which are in turn externally audited by the International Association of Classification Societies (IACS) and flag states. In effect, some of the classification societies delivered AMSA's initial ISM training. RO's also issue certificates based on the rules set out by the International Maritime Organizations conventions and regulations, not Class rules.

It is also important to note that RO's have no such discretion when acting as representatives of the flag carrying out statutory certification. AMSA have RO agreements and comprehensive Instructions to Class (ITC) that outline what the RO can do on AMSA's behalf and how and when we expect the RO to contact us when they face a situation that is outside of the instructions provided.

Hence, when an RO performs audits on behalf of AMSA, the process and certificates issued must comply with the procedures, required by AMSA.

The Flag state control regime is also intended to not only ensure that RAVs comply with international standards, but outcomes of inspections allow AMSA to identify any issues and gaps with the RO ISM audits. In effect this has been practised in the past. If ISM related deficiencies are identified, AMSA can verify whether this is linked to audit shortfalls and further follow up will be undertaken. . Also noting that AMSA reserves the right to carry out ISM audits if required.

We understand that there is a Code for Recognized Organizations (RO CODE),¹ and that AMSA must have an internal process to approved and oversee the performance of Issuing Bodies. However, details of how AMSA implements and monitors these assessments are not available in a transparent way, and have not been provided as part of the consultation.

AMSA only appoints IACS members as RO's primarily because the IACS member audit process is quite comprehensive. AMSA has an RO agreement with each RO that includes oversight of procedures through regular RO audits. AMSA also maintains a file on each R/O that we populate between audits.

We note that a RO has less responsibility than a Flag State

AMSA is required by legislation through SOLAS Ch 1 Reg. 6 Inspection & Survey, at (D) which states "In every case, the Administration shall fully guarantee the completeness and efficiency of the inspection and survey, and shall undertake to ensure the necessary arrangements to satisfy this obligation."

In simple terms, this means that even when a flag State delegates the survey and certification tasks to an RO the flag remains responsible. The decision of ISM audit delegation to RO's does not remove AMSA's responsibility as the Administration in ensuring safety standards continue to be maintained on regulated Australian vessels.

As the RO are acting on behalf of AMSA they are responsible to AMSA to ensure they adhere to the terms of the ITC. The ITC is very clear in terms of the roles and responsibilities of the RO's in conducting ISM audits.

The investigation into the sinking of the EI Faro shows that Safety Management Systems are important, that they should be externally verified, and that ROs should not be operating as delegates of a Flag State without proper oversight. AMSA must fully apply all the lessons learnt from the EI Faro tragedy.

AMSA considers all of the outcomes of investigations into incidents at sea. AMSA has been involved in a number of discussions at the IMO relating to outcomes and safety improvements as a result of the EI Faro incident. The recommendations in the report from the US NTSB were regarding the overall oversight of the RO's when acting on behalf of a flag, not just in relation to ISM. AMSA's flag State inspection regime and RO audit process is robust and ensures that the required RO oversight across all delegated responsibilities is maintained.

AMSA resourcing for compliance, AMSA has not explained why they have decided to delegate ISM duties to ROs. Perhaps they are trying to reduce the workload for their qualified and experienced surveyors due to increased responsibilities for Domestic Commercial Vessels.

As indicated above AMSA identified that the need for our direct delivery of this service has become less of an issue as the Australian maritime industry has matured and the understanding of ISM Code expectations has become more clear and well established. The delegation of ISM auditing and certification functions to RO's will allow AMSA more capability and resourcing to be directed towards flag State inspections with more scheduled oversight of RAV's and an increase in Flag State inspections across the fleet. The delegation of ISM to RO's will result in an increased safety outcome and oversight across all safety areas through flag State inspections.

The detention of the Australian-flagged *Lucky Eyre* in Yamba by AMSA (February 2020) for a number of ISM-related deficiencies shows that the provisions for ISM inspections must be strengthened, and not reduced.

	<p>An audit is a sampling exercise and it should not be expected that an audit or auditor will ensure that an SMS is fully compliant and effective, especially with the normal audit hours available and suggested.</p> <p>Note that although the overall responsibility for ensuring compliance with international obligations such as the ISM Code belongs to the Flag state (in this case AMSA for RAV's), it is ultimately the company who has the primary responsibility for the safe operations of their vessels.</p> <p>In the case of the <i>Lucky Eyre</i>, the identification of SMS related issues were identified following a flag state inspection in which the vessel was detained due to ISM related deficiencies which actually triggered an additional ISM audit. As such this process, as explained previously, demonstrates that it is an effective safety control measure and provides for ensuring that the vessel's SMS is working effectively.</p> <p>We have noted this point and AMSA will strengthen the inspection regime for RAV's where ISM has been carried out by class. The intention being that, the inspection will be more comprehensive in scope to offset the lack of visibility from losing the ISM audit function.</p>
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