



Australian Government

Australian Maritime Safety Authority

# Compliance and Enforcement POLICY



Version 1: November 2012



## Background

The Australian Maritime Safety Authority (AMSA) is the national agency responsible for maritime safety, protection of the marine environment, and maritime and aviation search and rescue. We are governed by the *Australian Maritime Safety Authority Act 1990* and are a Commonwealth Authority under the *Commonwealth Authorities and Companies Act 1997*.

AMSA actively endeavours to support and collaborate with our stakeholders as a responsible global, regional and domestic partner. We also seek to meet stakeholder and community expectations that:

- seafarer and ship safety standards will be set at appropriate levels and will be effectively enforced;
- there will be an effective pollution response and compensation system with offenders being held responsible for damage from marine pollution;
- a cost effective national network of aids to navigation will be maintained to assist safe navigation of commercial shipping, with damage to such aids being deterred;
- AMSA will continue to provide strong leadership on maritime issues through forums, working groups and provision of resources to assist stakeholders to meet their obligations; and
- regulatory intervention will be purposeful, proactive and appropriate to the circumstances.

AMSA is the national regulator under the following Commonwealth Acts of Parliament:

- *Marine Safety (Domestic Commercial Vessels) National Law Act 2012*;
- *Navigation Act 2012*;
- *Occupational Health and Safety (Maritime Industry) Act 1991*;
- *Protection of the Sea (Prevention of Pollution from Ships Act) 1981*;
- *Protection of the Sea (Powers of Intervention Act) 1981*;
- *Protection of the Sea (Civil Liability) Act 1981*;
- *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008*;
- *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*; and the
- *Shipping Registration Act 1981*.

This list of legislation is current at the time of publication and is referred to as the 'maritime safety legislation' in this document. Please note that, whilst this policy is applicable to ensuring compliance with the *Occupational Health and Safety (Maritime Industry) Act 1991* in general terms, more specific policy and procedures, which have been agreed with the Seacare Authority, apply and are provided elsewhere.

In undertaking its regulatory role AMSA is committed to an active risk management program extending to all aspects of our operations. Our core business is primarily one of risk management and mitigation, requiring constant monitoring of maritime activities undertaken both within and outside of our immediate maritime environment – which extends from coastal waters to the outer edge of the continental shelf.

The constantly increasing volume of international and domestic vessel traffic and offshore activities brings with it an increased risk of incidents. We are conscious of the need to ensure that we have adequate measures in place to prevent and respond to maritime incidents of all kinds, particularly those that could result in injury or loss of life or significant pollution.

However our capacity to deliver regulatory services and to respond to major incidents requires considered allocation of our resources to ensure that we do not over extend.

AMSA is committed to finding the balance between our obligation to disseminate safety information and provide education and compliance assistance to stakeholders and the need to deter unlawful behaviour to the full extent of the law. This Policy addresses that balance.

## AMSA's Compliance and Enforcement Policy

AMSA's Compliance and Enforcement Policy (the Policy) is intended to assist AMSA, industry stakeholders and other parties with duties, obligations and responsibilities under maritime safety legislation to understand the suite of tools available to AMSA to ensure legislative requirements are met.

The Policy is an administrative document that is intended to provide an overview of compliance and enforcement options and information as to when use of those options is appropriate. It does not reduce, extend or modify legislative obligations contained in the maritime safety legislation.

This Policy is expressed in general terms. Maritime operators and other duty holders should not assume that it deals with all operating conditions and environmental circumstances. This will be determined on a case by case basis.

Whilst this Policy assists, it does not control AMSA's compliance and enforcement related decisions. Each decision will take into account all matters relevant to the particular circumstances.

In the event of any inconsistency between this Policy and the legislation under which AMSA exercises a statutory function, power or discretion, the legislation will prevail.

This Policy will be reviewed and amended from time to time to take into account amendments to legislation, feedback from industry as to its usefulness, and changes which AMSA considers desirable.

# 1. Introduction

## 1.1 Objectives

The objectives of this Policy are to:

- support the objectives of the maritime safety legislation;
- encourage maximum compliance with the maritime safety legislation through application of a co operative regulatory approach which builds effective compliance performance capacity; and
- enable AMSA to detect, prevent and manage contraventions of the maritime safety legislation and the associated risks to safety, the environment and Australia's reputation.

## 1.2 Purpose

The maritime safety legislation places obligations on maritime operators and other parties (including those listed below) to ensure safety and protection of the marine environment, in the circumstances and to the standards specified in the legislation.

All persons with obligations under the legislation may be subject to compliance monitoring and investigation by AMSA and, where appropriate, the use of compliance and enforcement measures, including prosecution.

This Policy describes how AMSA may use the compliance and enforcement powers that the maritime legislation provides to achieve the objectives of that legislation. It should be noted that the range of options available to AMSA varies from Act to Act, and not all options are available in all matters.

The Policy applies to all those with obligations under the legislation, including:

- maritime operators – vessel owners and those responsible for day to day operation of vessels;
- vessel's masters;
- seafarers;
- contractors to maritime operators and the employees of these contractors;
- persons who design, commission, manufacture, supply, install or erect plant and equipment to be used as, or in connection with, Australian vessels;
- persons who consign, pack, load or unload cargo;
- coastal pilots and pilotage providers.

In this Policy these persons are referred to as 'duty holders'.

The Policy will be implemented by persons engaged in the administration of the legislation (e.g. decision makers and inspectors).

## 1.3 Scope and content

To achieve its compliance and enforcement objectives, AMSA uses a range of flexible and targeted measures.

Compliance measures such as communication and education activities, timely provision of information and advice, persuasion, cooperative assistance and collaboration are designed to encourage stakeholders to voluntarily comply with legislation.

Where non compliance is detected, enforcement tools may need to be used. AMSA employs a range of responsive enforcement tools that escalate in severity as the need arises. These tools include suspension or cancellation of certificates, fines, issue of directions, imposition of civil penalties, and criminal prosecutions.

AMSA will consider the circumstances of a failure to comply and choose an enforcement tool that is appropriate to those circumstances and in proportion with the risk presented or harm done.

To maintain that proportionate response, most resources will be devoted to preventative compliance measures, with specialist resources assigned to investigate the most serious breaches. It is neither possible nor necessary to investigate all matters of non compliance with the maritime safety laws which are uncovered in the course of AMSA's work with duty holders.

This approach sits within the broader Australian Government law enforcement framework. In this regard the Policy should be read in conjunction with other relevant documents including:

- Prosecution Policy of the Commonwealth
- Commonwealth Fraud Control Guidelines
- Attorney General's Department – HOCOLEA Overarching Principles for selecting cases for investigation and administrative, civil and criminal sanctions.

## 2. Role and Principles

### 2.1 The role of AMSA

AMSA's roles under the maritime safety legislation include to:

- administer Australia's general and international shipping registers;
- act as the inspectorate for occupational health and safety on Australian ships;
- inspect foreign and Australian vessels for compliance with applicable international and domestic standards;
- provide and maintain aids to navigation;
- respond to cases of marine pollution;
- issue certification, including to seafarers;
- collect and publish information relating to vessel safety;
- provide, or facilitate the provision of, advice, education and training in relation to vessel safety; and
- monitor, investigate and enforce compliance with the legislation.

These roles will be undertaken by suitably qualified and supervised persons delegated, appointed or authorised by AMSA to act on its behalf. In some cases the legislation specifically identifies those with compliance and enforcement roles as 'inspectors'.

## 2.2 The role of the inspector

Inspectors may be appointed under the maritime safety legislation or may exercise powers otherwise available to AMSA. They are given wide powers of entry and enquiry for monitoring purposes and are also empowered to undertake enforcement actions. In all cases they will be duly qualified and trained to carry out compliance and enforcement functions.

Inspectors must comply with the legislation under which they are appointed, as well as the internal policies and processes of AMSA when undertaking their functions under the legislation.

The role of inspectors generally includes:

- providing practical, constructive information and advice to duty holders about AMSA's position on legislative requirements;
- conducting audits and compliance inspections to assess compliance with duties and obligations;
- compelling duty holders to undertake remedial action to rectify breaches through the use of statutory instruments such as improvement or prohibition notices; and
- conducting investigations, including those arising from issues identified through audits or compliance inspections.

Depending on the legislation, the inspector may have wide powers to board vessels, detain vessels, require the production of certificates, enter places and require assistance. In other circumstances an inspector may request permission to board and require reasonable assistance to enable the officer to exercise his or her powers. Inspectors may also seek warrants to allow for boarding, search and removal of articles, documents or equipment or the provision of information.

AMSA's managers and the inspectors will work in close collaboration when deciding what compliance and enforcement actions may be necessary or appropriate in a given set of circumstances.

## 2.3 Compliance and enforcement principles

In meeting our compliance and enforcement obligations, AMSA will act in a manner that is coherent and objective and AMSA is committed to having systems and processes in place to support the following principles:

### 2.3.1 Accountability

AMSA's inspectors must be conscious at all times of their role and their accountability for promoting the highest level of statutory compliance.

### 2.3.2 Consistency

Like situations will be treated in a like manner. Duty holders need to have full confidence that AMSA's decision making and actions will be equitable and that comparable situations will have comparable outcomes.

### 2.3.3 Transparency

Duty holders must be in no doubt as to the criteria used by AMSA in coming to a decision. Decisions and their reasons, must be communicated clearly to relevant stakeholders.

### 2.3.4 Impartiality

Decisions made by AMSA must both be impartial and be seen to be impartial. Any potential conflict of interest that might influence a decision must be disclosed. The decision to take action must not be influenced by:

- the personal views of an inspector concerning the non compliant person or corporation;
- possible political or commercial advantage or disadvantage to the Government or any entity; or
- public, industry or political criticism, or the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

### 2.3.5 Proportionality

Decisions made by AMSA will be proportionate to the identified risk to safety or the marine environment, the seriousness of any perceived breach and the level of non compliance with legislative requirements.

### 2.3.6 Fairness

AMSA will seek to strike the right balance between assisting voluntary compliance and undertaking enforcement actions, while responding to the competing interests of stakeholders, government and the public.

## 2.4 Monitoring compliance

An inspector may undertake the following activities on behalf of AMSA to monitor compliance with maritime safety legislation:

### 2.4.1 Audits

An audit involves a review of all or part of a duty holder's general management, risk management or safety management system. It may also involve field inspections to examine the application of these systems in practice.

Audits may be undertaken as part of an annual audit program, and may also be undertaken in response to circumstances arising at other times.

An audit program may focus on one or more of the following:

- particular system requirements;
- particular criteria relating to duty holders;
- particular aspects of maritime safety; or
- particular aspects of maritime operations.

## 2.4.2 Compliance inspections

In addition to audits, AMSA may conduct compliance inspections. A compliance inspection assesses a duty holder's compliance with his/her obligations and responsibilities under the maritime safety legislation. Compliance inspections may be conducted in a range of circumstances, such as in response to:

- a planned risk assessment, including for port State control purposes;
- an occurrence that must be notified;
- advice from another government agency;
- an observation made or information received by AMSA; or
- a request from a member of the public or a person in the maritime industry.

A compliance inspection may also be part of AMSA's ongoing activities which target areas for risk management and prevention, such as when an audit has brought to light specific risk factors or where indicated by incident trends or duty holder specific issues.

## 2.4.3 Investigations

There are broadly two types of investigations – 'no fault' safety investigations and compliance investigations. 'No fault' investigations may be conducted by an authority other than AMSA (for example the Australian Transport Safety Bureau).

In jurisdictions where there is such a separate authority or body, AMSA will enter into a Memorandum of Understanding with that other authority or body to agree on protocols for investigating incidents or occurrences to avoid unnecessary interference and delay for stakeholders.

A compliance investigation is conducted by AMSA for the purpose of establishing whether a breach of the maritime safety legislation has occurred. This Policy only applies to compliance investigations.

A compliance investigation can be conducted in a range of circumstances which include but are not limited to notifiable occurrences, audit outcomes, compliance inspection outcomes, identified trend analysis or other intelligence reports.

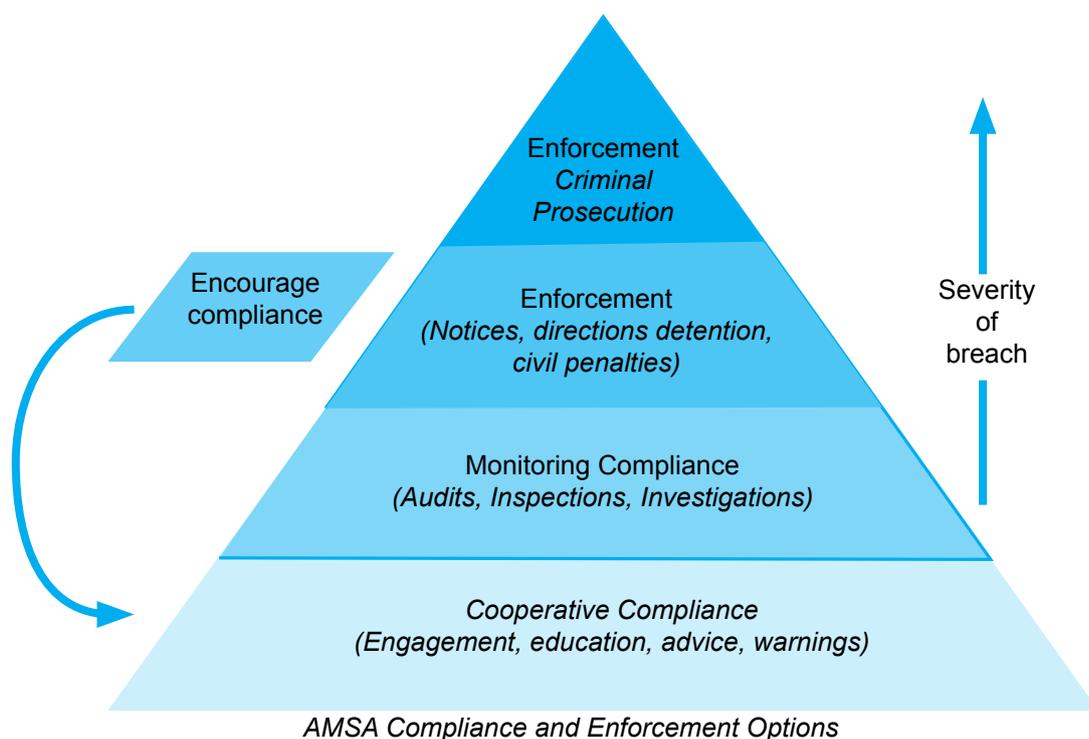
### 3. Compliance and Enforcement Options

In order to make the best use of its regulatory resources AMSA adopts a graduated approach to compliance and enforcement, recognising that both compliance mechanisms and enforcement mechanisms are necessary to provide an effective and flexible regulatory system. In doing so, AMSA will adopt the approach which is most likely to promote the objectives of the maritime safety legislation.

Under the maritime safety legislation a range of options are available. The options may include:

- engagement and education;
- advice and warnings;
- identification of deficiencies and vessel detention;
- infringement notices;
- improvement notices;
- prohibition notices;
- undertakings;
- suspension or revocation of certification, exemptions or licences;
- civil penalties; and
- prosecution.

These measures do not need to be used sequentially. It is not necessary, for example, to give warnings or issue notices before taking prosecution action, if such action is appropriate. AMSA may also choose to use a combination of measures (subject to certain legal restrictions) to facilitate compliance.



Each reported or detected contravention will be subject to an initial assessment to determine how to use AMSA's resources in the most effective manner. An initial assessment will consider the likelihood that a contravention has occurred, its seriousness and its probable consequences. AMSA will then determine the appropriate response, if any.

The following matters may be taken into account in determining the response:

- the extent of the risk to the health and safety of people and the environment;
- the severity of the issue or finding;
- the culpability of the duty holder or other relevant person in bringing about the issue or finding, including whether there was a bona fide mistake;
- the legislative or administrative mechanisms available in the circumstances;
- the compliance history of the duty holder;
- mitigating factors such as self reporting or timely, voluntary steps taken to address the issue;
- the prevalence of the issue in the industry; and
- the need for deterrence.

Each compliance and enforcement activity must be considered in terms of the principles described in this Policy, and in accordance with the relevant legislation, so that the most appropriate option (or options) for the circumstances are applied.

Any decision to take enforcement action must be supported by evidence that is sufficient to substantiate the alleged breach. Such evidence may include field notes, photographs, diagrams, interviews, observations etc.

Many of the options set out below may be subject to external review by a court or tribunal. The right to such review is determined by the relevant maritime safety legislation, and by the general administrative review rights established in Commonwealth law.

To ensure the consistency, transparency, accountability, impartiality and fairness in decision making required by this Policy, all decisions and the reasons for these decisions must be clearly documented.

### 3.1 Engagement and education

AMSA places strong emphasis on engaging with, educating and assisting those with obligations under the maritime safety legislation to meet their obligations. AMSA chooses to administer the maritime safety legislation by placing emphasis on a proactive approach to compliance through the provision of advice, education and training.

AMSA makes comprehensive use of educational campaigns to provide information and advice to stakeholders, and to use persuasion to encourage voluntary compliance with statutory obligations. AMSA takes the firm view that prevention of a breach is always preferable to taking action after a breach has occurred.

AMSA will listen, respond and provide information and opportunities for individuals and groups to ask questions and to discuss issues of concern.

AMSA provides targeted and general publications; it liaises broadly with individuals and businesses about the maritime safety legislation and AMSA's role in its administration.

Communicating its enforcement role is fundamental to the effectiveness of AMSA's information and liaison activities.

These measures help to:

- raise awareness of the benefits of complying with the maritime safety legislation, and the potential consequences of non-compliance;
- remove barriers to compliance (for example, lack of knowledge of requirements or how to comply);
- promote the objects of the maritime safety legislation; and
- overcome factors that might encourage non-compliance.

Provision of such guidance is aimed at helping willing duty holders to improve their processes and prevent or remedy known or likely minor breaches so as to foster cooperative compliance.

### 3.2 Circumstances in which advice or warnings may be appropriate

Provision of advice or a warning may be appropriate in circumstances where there is a lack of awareness about, or misinterpretation of, the law or conditions of certification, licensing or exemption, and the breach or the circumstances surrounding it are minor in nature.

There is no legal obligation for an operator to comply with advice or a warning, as these are only given to facilitate compliance with AMSA's position on the requirements of the law. However, where advice, such as a non compliance report, or a specific warning with regard to non compliant behaviour is ignored, AMSA may consider it appropriate to adopt a different compliance option.

Advice may be given verbally or in writing and is given in good faith, based on the considered view and experience of AMSA. Such advice might take the form of a Marine Notice, an audit finding or compliance assessment.

Warnings will be given in writing. They will outline the unacceptable behaviour and potential future actions if the warning is ignored.

If a decision is made to use advice or a warning rather than a formal sanction, AMSA must document this decision and the reasons for this decision. The type and level of evidence required to guide this decision may vary according to the particular circumstances but must be sufficient to make clear the reasons for the decision.

### 3.3 Circumstances in which detention may be appropriate

Detention is the power to order a vessel not to leave port. It is used when, generally as a result of a compliance audit, a vessel is found to have deficiencies which render it unseaworthy or to have failed to comply with the requirements to hold or maintain statutory certificates. It may also be used where a vessel is being investigated for possible contravention of the legislation.

Given the serious commercial consequences that may arise from detention, inspectors may only exercise this compliance option if specifically empowered to do so. Prior to taking this action inspectors will be required to follow specific procedures, which may include where time permits or the circumstances warrant, discussing the potential detention with supervising officers.

### 3.4 Circumstances under which an infringement notice may be appropriate

The provisions for use of infringement notice schemes vary between the Acts listed in the maritime safety legislation. In general, an authorised person may issue an infringement notice if they believe on reasonable grounds that a person has committed an offence, or a breach for which a penalty notice is allowed, under the maritime safety legislation. An infringement notice may be appropriate where:

- there is a benefit in providing immediacy to the consequences for non compliance;
- there was no attempt to conceal the act or omission from the regulator;
- the act or omission is not ongoing or is able to be rectified quickly;
- the non-compliance can be immediately assessed; and
- where the extent of harm arising from the act or omission is less than that which would warrant pursuit of a civil penalty or a criminal prosecution.

AMSA has determined that in regard to the *Navigation Act 2012* and the *Shipping Registration Act 1981* infringement notices will only be issued for breaches of subordinate legislation.

### 3.5 Circumstances under which an improvement notice may be appropriate

An improvement notice may be issued when an inspector believes on reasonable grounds that a breach of the legislation is occurring or has occurred and is likely to continue or be repeated.

The improvement notice must state the date by which compliance must be achieved.

Improvement notices may be appropriate in circumstances where a breach is not minor in nature, having given consideration to the points provided above at 3.

The improvement notice is complied with when the systemic deficiencies have been remedied. This work may take a considerable period and a compliance date is required to be specified on the notice. In some cases it will be necessary for an Inspector to confirm that the remedies have been applied, and that they are satisfactory.

### 3.6 Circumstances under which a prohibition notice may be appropriate

A prohibition notice may be issued when the inspector believes on reasonable grounds that there is an immediate risk to safety.

The prohibition notice requires the immediate cessation of the relevant activity until the matters that give, or will give, rise to the risk(s) are remedied or removed. A prohibition notice may be issued as an oral direction prior to the service of a written notice.

The decision to issue a prohibition notice is reached after objectively considering and assessing all the relevant facts and issues, including the consequences of not issuing a notice. Evidence must be available to substantiate an opinion of immediate threat to safety, not only that a breach has occurred. Prohibition notices are a tool to achieve compliance with existing legislation. They are not a means of imposing new obligations on a person or the maritime industry as a whole.

A prohibition notice is a tool that is used to achieve action in relation to a specific activity to address its associated risks. Because prohibition notices may only be issued where there is an immediate threat to safety, non compliance with a prohibition notice is a serious breach of safety

legislation and will lead to further action. However, an operator can lawfully fail to comply if a 'reasonable excuse' exists. What constitutes a 'reasonable excuse' may vary depending on the facts.

Mere inconvenience to the duty holder is not sufficient. But if a prohibition was issued directing the operator to immediately cease operating a particular piece of equipment or carrying out a particular process, and this would effectively mean creating another, greater risk, then there may be a reasonable excuse for non compliance.

The inspector issuing the notice must follow up to determine whether the breach has been corrected. As in all cases, evidence collected to support a decision to prosecute for non compliance after a prohibition notice has been issued must be of sufficient standard to be presented to court.

A prohibition notice ceases to have effect when an inspector gives notice that they are satisfied that adequate action has been taken to remove the risk. There is no compliance date specified.

An inspector may issue both an improvement notice and a prohibition notice in relation to an observed breach. The prohibition achieves cessation of the activity constituting the immediate risk to safety, that is occurring at the specific place and time witnessed by AMSA, and for which evidence has been collected. The improvement notice addresses the systemic failures or deficiencies that allowed the breach to occur and that may have relevance to similar activities conducted at other locations and times.

### 3.7 Circumstances under which undertakings may be appropriate

AMSA may consider the acceptance of undertakings from duty holders in connection with a contravention or alleged contravention of a small number of the Acts in the maritime safety legislation, and the circumstances and conditions vary from Act to Act.

In general, acceptance of undertakings may be appropriate where:

- the actions proposed to be undertaken address the matters which have given rise to the perceived breach. They must include firm future actions to prevent a recurrence of the breach;
- the actions proposed to be undertaken can be (and have been) described with sufficient clarity and specificity to enable compliance with the undertaking to be established. The description of deliverables must be precise and detailed; and
- the public interest would be better served by acceptance of an undertaking than proceeding with court action.

A compliance date must be specified and large programs of work may need specific project milestone dates for compliance.

If the duty holder completes the undertaking AMSA cannot take prosecution action for the occurrence of the breach that gave rise to the undertaking.

If the duty holder fails to do what they undertook to do, AMSA may apply to the court to have the undertaking enforced. Alternately, AMSA may rescind acceptance of the undertaking and proceed with other available enforcement action. This decision will depend on the severity of the initial breach and the degree to which the undertaking has been met.

Prior to accepting undertakings AMSA will give due consideration to the nature of the breach (assessing the factors identified in 3 above). Of primary relevance will be assessment of the deterrence factor required.

Careful consideration should also be given to whether a private arrangement between a duty holder and AMSA will meet the principles for accountability, consistency, transparency, impartiality and proportionality detailed in 2.3 above.

### 3.8 Circumstances in which variation of certification, or imposition of conditions or restrictions may be appropriate

The maritime safety legislation empowers AMSA to:

- vary a certificate, licence, exemption, determination or accreditation ('authorisation');
- vary a condition or restriction that has been imposed by the regulator;
- impose a new condition or restriction;
- suspend an authorisation; or
- revoke an authorisation.

Conditions and restrictions may be used to articulate limits to the authorisation. They are not a means of imposing new obligations on an authorised person or the maritime industry as a whole.

Variation of an authorisation, the variation or imposition of conditions or restrictions, or the suspension or revocation of an authorisation, may be appropriate in circumstances where AMSA has formed an opinion that the authorisation holder or the person exercising the authorisation does not have the competence and/or capacity to undertake activities to the extent authorised.

In making a decision whether or not to take such action, AMSA will consider:

- the authorised person's/holder's history of compliance;
- whether maritime operations related to the authorisation are conducted to an adequate standard of safety; and
- whether the authorised person is temporarily or permanently unable or unwilling to undertake any relevant remedial action necessary to satisfy the requirements for accreditation.

AMSA is required to give the authorised person written notice of an impending decision to take such action, and to provide reasons. The authorised person has the right to make written representations about the intended action within the statutory time frame.

AMSA acknowledges the role that the maritime industry performs and recognises the challenge of balancing the need to provide certainty against the need to protect safety and the environment. The suspension or revocation of an authorisation may have serious consequences including adverse 'flow on' effects for employees, other operators, related operations and so on.

AMSA must therefore advise the authorised person of the intention to impose new or altered conditions or suspend or revoke the accreditation and consider representations before this takes place in accordance with the relevant statutory provisions. However, this requirement does not apply in circumstances in which AMSA is permitted to take immediate action.

### 3.9 Circumstances in which immediate suspension of authorisation may be appropriate

AMSA has the power to immediately suspend an authorisation, (or part of an authorisation) if AMSA considers that there is, or would be, an immediate and serious risk to safety or the environment unless the authorisation is suspended immediately.

Immediate suspension of an authorisation is an action of last resort and will not be taken unless there is no other effective means of intervention available to prevent such a threat to safety being realised.

### 3.10 Circumstances in which a prosecution may be appropriate

To determine whether to prepare a prosecution brief of evidence for the Commonwealth Director of Public Prosecution (CDPP) AMSA will take into account all relevant information and apply the following criteria:

- does the breach exhibit a significant degree of criminality;
- is the breach sufficiently serious that the Commonwealth and the community expect it to be dealt with by prosecution;
- has the breach produced significant real or potential harm;
- is it important to deter similar behaviour;
- is there any suitable alternative enforcement option available; and
- will prosecution act as an effective deterrent.

The CDPP will make the decision as to whether to proceed with prosecution after consideration of:

- whether there is sufficient evidence to support a reasonable prospect of conviction; and
- whether imposition of a criminal penalty is in the public interest.

The 'public interest' will be determined by the CDPP after consideration of:

- the seriousness of the alleged offence and whether its nature is of considerable public concern;
- the impact of prosecution related action on general deterrence (i.e. reducing the likelihood that other duty holders will commit similar offences) or specific deterrence (i.e. reducing the likelihood that the duty holder will commit a further breach of maritime safety laws);
- the availability and likely effectiveness of any alternatives to prosecution, such as one of the other regulatory options noted above; and
- whether the operator has repeatedly breached maritime safety laws.

Criminal prosecution may result in the imposition of a fine and a period of imprisonment and the recording of a criminal conviction.

### 3.11 Circumstances in which imposition of a civil penalty may be appropriate

Although civil penalties are set out in a similar way to criminal offences, they do not result in imprisonment or criminal convictions. However, civil penalties are typically of a higher magnitude than those for equivalent criminal offences. This reflects the need for economic deterrence to non compliance in some circumstances.

Civil penalties:

- lend themselves to the sanctioning of organisations, which do not bear the same stigma as individuals as a result of criminal prosecutions;
- are subject to a lower burden of proof; and
- can be commenced by AMSA without referral to the CDPP.

AMSA will determine on a case by case basis whether to pursue a breach, which is both a criminal offence and subject to a civil penalty by civil process, by reference to the Prosecution Policy of the Commonwealth.

## 4 Specific Application of Policy

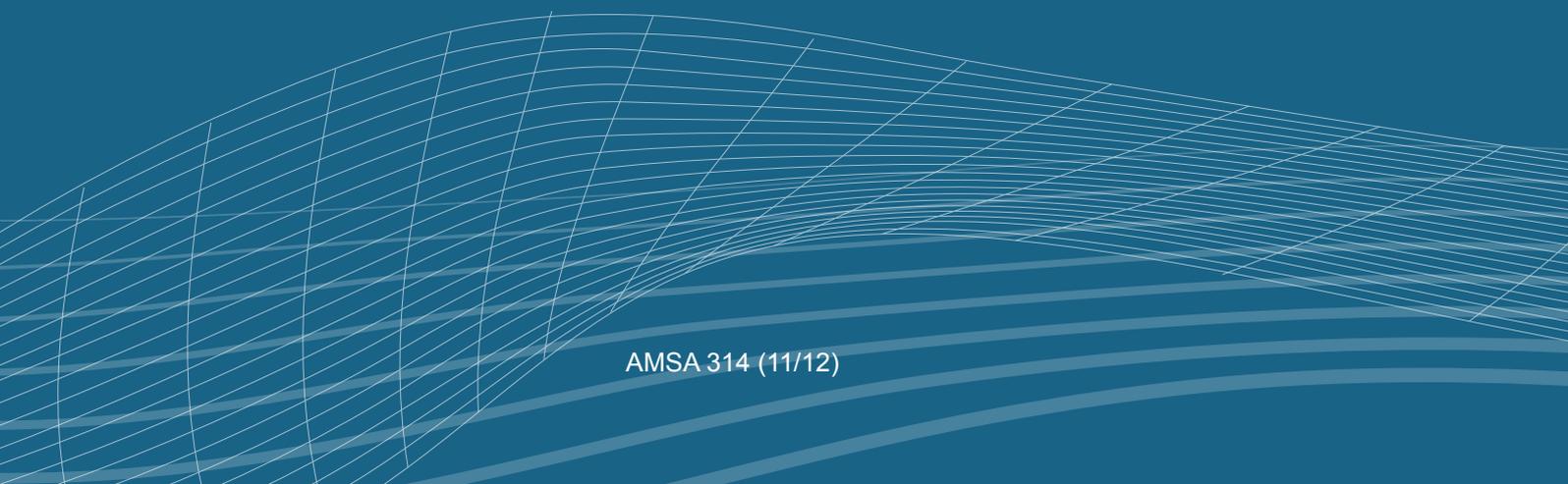
As noted at the outset, this Policy is applicable to all the maritime safety laws administered by AMSA. As also noted, the compliance and enforcement options available under each individual Act varies.

To provide duty holders and inspectors with additional guidelines as to the application of the legislation and of this Policy a Protocol dealing with powers of investigation and compliance and enforcement options under each of the maritime safety laws has been developed, as follows:

Act	Protocol	Commencement
<i>Protection of the Sea (Civil Liability) Act 1981</i>	1	January 2013
<i>Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008</i>		
<i>Protection of the Sea (Harmful Anti fouling Systems) Act 2006</i>		
<i>Protection of the Sea (Powers of Intervention Act) 1981</i>		
<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1981</i>		
<i>Shipping Registration Act 1981</i>	2	January 2013
<i>Occupational Health and Safety (Maritime Industry) Act 1991 (in conjunction with Seacare Authority)</i>	3	January 2013
<i>Marine Safety (Domestic Commercial Vessels) National Law Act 2012</i>	4	March 2013
<i>Navigation Act 2012</i>	5	March 2013







AMSA 314 (11/12)