

CMI International Working Group on the Fair Treatment of Seafarers

**RESPONSE TO QUESTIONNAIRE
in respect of
AUSTRALIA**

PART I (Answers to these Questions are essential)

Question 1:

Who has responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of your State?

Australia has a federal system of government under which responsibilities are shared between the Federal and State governments.

In respect of **maritime safety**, ships on overseas voyages (which are the ships relevant to this questionnaire) are the responsibility of the Federal Government, specifically the Australian Maritime Safety Authority (AMSA) for general safety administration and the Australian Transport Safety Bureau (ATSB) for casualty investigation.

In respect of **marine pollution**, the State/Territory governments have responsibility within ports and the territorial sea, while the Federal Government has responsibility beyond the territorial sea.

For marine pollution prevention (i.e. application and enforcement of MARPOL 73/78), the relevant agencies are:

Federal	AMSA
Queensland	Maritime Safety Queensland
New South Wales	New South Wales Maritime
Victoria	Environment Protection Agency
Tasmania	Department of Primary Industries, Water and Environment
South Australia	Department for Environment and Heritage
Western Australia	Department for Planning and Infrastructure
Northern Territory	Department of Infrastructure, Planning and Environment

For marine pollution control (i.e. responding to incidents), the relevant agencies

are:

Federal	AMSA
Queensland	Maritime Safety Queensland
New South Wales	New South Wales Maritime
Victoria	Marine Safety Victoria
Tasmania	Department of Primary Industries, Water and Environment
South Australia	Department of Transport and Urban Planning
Western Australia	Department for Planning and Infrastructure
Northern Territory	Department of Infrastructure, Planning and Environment

Question 2:

When maritime accidents and/or marine pollution incidents occur within the waters under the jurisdiction of your State, what process of accident investigation is legally required?

In respect of casualty investigation, no investigation is mandatory. Depending on the severity of the incident any one or combination of investigations may take place. The ATSB may undertake a 'no fault' type safety investigation. This does not preclude a parallel investigation by AMSA or a State marine or environmental agency investigating with a view to prosecuting for a breach of the law.

In respect of marine pollution incidents, the only obligation regarding investigation that exists is the general obligation imposed by Article 4 of MARPOL 73/78.

Question 3:

Do your State's maritime accident and/or marine pollution investigative processes contemplate criminal charges against any ships' personnel involved and, if so what action may be involved?

In respect of casualty investigation, the ATSB is specifically precluded from undertaking any investigation in support of civil or criminal investigation. AMSA or State marine or environmental authorities may exercise their jurisdiction, which could lead to the arrest or detention of individuals or the ship.

In respect of marine pollution, yes. Criminal sanctions exist for the requirements of MARPOL 73/78. This is mostly based on monetary penalties of varying amounts, although some State legislation provides for imprisonment in certain circumstances. The Federal MARPOL legislation and some State legislation

provides for criminal sanctions against any crew-member responsible for a pollution incident. Most State legislation is, however, limited to criminal sanctions against the owner and/or master.

Question 4:

If there is no criminal process, what other investigative process is utilized?

In respect of maritime safety, there are parallel processes under which safety investigations and investigating with a view to prosecution are separate processes.

In respect of marine pollution, Australian legislation is based on a criminal process.

Question 5:

Does your State's investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?

Yes. Australia's primary concern is to ensure that a person charged with an offence is present in Court to answer the charges. To achieve this, Australian Courts will set an appropriate bail or bond, or will detain a person in custody if it is considered necessary. In the Australian legal system, seafarers charged with an offence are treated the same as any other person. Court decisions regarding bail, bond or detention are subject to appeal.

Federal and some State MARPOL legislation specifically provides for detention of ships for the purposes of investigating pollution incidents, as provided for in UNCLOS. Vessels are normally released promptly on the posting of a bond.

Question 6:

If seafarers are required to be present for an investigation, trial or other hearing will they be permitted to leave your State until such investigation, trial or other hearing takes place?

In most cases yes, subject to compliance with any bail or bond imposed by the Court.

Question 7:

Does your State require a financial surety to ensure that seafarers return for any subsequent hearing and, if so, how is the amount of such a surety determined and what form is required?

See Question 5.

Question 8:

Is your State's maritime administration or other authority given legal responsibility for the protection, rights and welfare of all seafarers and, if so, how is this responsibility administered?

In terms of living and working conditions on board a vessel, if there are matters that are clearly hazardous to safety or health, detention powers are available under the *Navigation Act 1912* and some issues may be managed under port State control if they are matters that should be covered under a ship's ISM safety management system. There are further requirements for Australian ships concerning the supply of adequate provisions, and the obligation of owner to provide medical attendance in case of injury.

Other serious welfare issues such as physical abuse and non-payment of wages may be addressed under criminal and civil legislation.

In terms of prosecutions of seafarers, generally speaking the criminal legal system in Australia affords certain safeguards.

PART II (Answers to these Questions would be most helpful)

Question 9:

If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process?

If the investigative process involves a violation of MARPOL 73/78, as noted in respect of Question 3 above, Federal MARPOL legislation provides for criminal sanctions against any crew-member responsible for a pollution incident.

Question 10:

If the accident, as outlined in Question 9, is due to negligence but not wilful misconduct by responsible crew members, will your State proceed only with pollution damage claims under the accepted international civil liability and compensation system?

No

Question 11:

If the answer to Question 10 is 'No', what other processes or procedures will be undertaken by your State?

Prosecution as for wilful misconduct.

Question 12:

If the maritime accident outlined in Question 9 occurred outside your State's Territorial Seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different?

In terms of pollution incidents occurring within Australia's EEZ, the procedures would be the same.

Question 13:

Regardless whether your State's investigative process utilizes the criminal justice system or any other system, will the relevant vessel crew members be detained? If so:

- a. What is the legal reason for such detention?*
- b. What rights will the accused/detained crew member have during the process, and do such rights differ from those available to citizens of your State?*
- c. Will full reasons and/or charges be provided to those detained?*
- d. What is the expected length of such detention?*
- e. Where and how will the seafarers involved be detained?*
- f. What access to legal advice and/or defence will such personnel have available to them?*
- g. Will the vessel's representatives, agents, family members, labour organisation representatives, or lawyers be given immediate and full access to those detained?*
- h. Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised?*

In respect of violations of MARPOL 73/78:

- a. Possibly, however in most cases the crew-member would be released subject to bail or bond conditions.
- b. The right of appeal exists, such rights are available to any person charged with an offence.
- c. Yes.
- d. If detained, the period would be until the matter can be brought before the Courts.
- e. This is a matter for the Court to determine.
- f. Full access to legal representation.
- g. Yes.

h. Yes.

Question 14:

Does your Association have any other comments, suggestions or recommendations on this subject?

Not at this stage. Comments and suggestions will be sought from interested parties on any proposals canvassed by the working group.