

### DCV Safety Management Systems: Practical guidelines or rigid edicts?



Every Domestic Commercial Vessel (DCV) in Australia must have a Safety Management System (SMS) for that vessel. The creation and ongoing management of the SMS provides a brilliant opportunity for vessel owners and operators to think systematically about safety, before there is an incident to be managed.

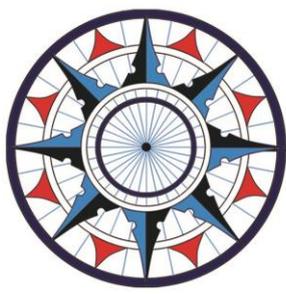
Under s.16(2) of the [Domestic Commercial Vessel National Law](#), Ship's Masters are required to comply with the ship's SMS. However section 16(1) and 17(1) impose on Masters the broader, and more traditional, duty of care for the vessel and all those aboard (or affected by the vessel's operations).

What happens if those duties require the Master to act outside the SMS? Consider the following hypothetical:

*Dean was the master of the catamaran Pop the Cork which, together with its sister ship Sip the Bubbles, were used for commercial cruise charters around the harbour. Today, the charter was a large one and the vessels were travelling together (line astern) with the intention of rafting up at lunch time.*

*The morning was going well – blue skies, no wind or chop, a perfect day on the water. Dean was at the helm just enjoying the cruise when a call rang out from a stewardess:*





*"Man overboard!"*

*There was a safety management system (SMS) in place for the vessel and initially Dean followed the SMS procedure for Man Overboard to the letter. He marked his position on the GPS by pressing the MOB button, throttled back to idle, reminded the stewardess to keep the person in sight, and confirmed that a lifebuoy had been thrown.*

*The next step in the SMS was for him to commence a 'Williamson turn' with the intention of returning to the person overboard. However Dean knew Pop the Bubbles was right behind him. Rather than turning, he got on the radio and spoke to Macca, the skipper behind him.*

*"Macca, we have a passenger overboard, in the water, can you see him?"*

*"Yep, got him."*

*"Can you throttle down and fish him out?"*

*"You got it. Be on him in maybe thirty seconds."*

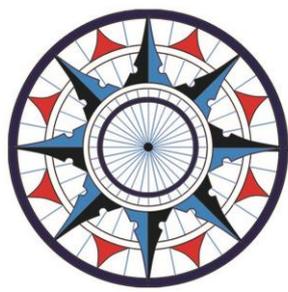
*Dean remained at idle and observed as Macca and his crew drew alongside to leeward of the person in the water, and recovered the passenger. It was a great job, and the passenger was more embarrassed than anything else. They continued the cruise, and Dean made an incident report, verbally at first and then by email from the wheelhouse.*

*A week later, Dean was astounded when he was met at the marina by officers of AMSA who charged him with failing to follow the ship's safety management system because he allowed Macca to pick up the passenger instead of turning back as required by the Man Overboard procedure in the SMS.*

Sound implausible? Not really.

Recently, AMSA charged the master of the charter vessel *Spirit of 1770* under s.16 of the Marine Safety (Domestic Commercial Vessels) National Law Act 2012, for failing to follow the vessel's safety management system. The defendant, having received initial crew reports of a possible engine fire, made a Pan Pan call but noticed the power light on the radio flickering as though losing power. Improvising (and knowing from experience that he was within mobile phone range of the shore), the Master cut short the Pan Pan call and advised Volunteer Marine Rescue that he would call his office on his mobile phone. He did as he said, provided his precise location to the Designated Person Ashore, which was then relayed to VMR (who were magnificent) and then to all ships. Use of the mobile phone also allowed him to move about the vessel and take responsibility for the evacuation of passengers, rather than becoming trapped in the wheelhouse, which soon filled with smoke. Ultimately all





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passengers were safely evacuated to life rafts and the first rescue vessel (with a paramedic aboard) arrived 45 minutes later. The skipper, in accordance with the sea's oldest and finest tradition, was the last person off the vessel.

Despite the success of this evacuation, AMSA in their investigation focused on the Master and his compliance with the letter of the SMS, rather than looking to the root cause of the fire. In reality, the performance of Master and crew was nothing short of heroic.

Ultimately (after two years and considerable financial expense) the Master was acquitted, but the case raises some serious problems about AMSA's technical interpretation of the obligations to follow and SMS in an emergency, and when a Master might properly depart from strict compliance with an SMS in order to save life and protect the marine environment.

On one interpretation of the law, the broad duties in sections 16 and 17 of the national law should take precedence, and the SMS should be followed unless the immediate implementation of those duties require otherwise. This would be a sensible interpretation. Essentially, it would mean that section 16(2) imposes the duty to have an SMS, and to conduct drills and briefings and to systematically think about safety; but that this is subordinate to sections 16(1) and 17, which preserve the Master's responsibility to exercise their best possible judgment in the event of an emergency.

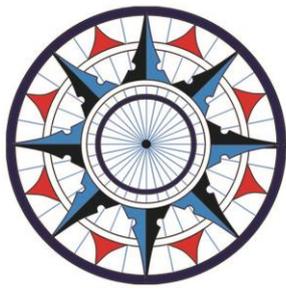
Unfortunately, that is apparently not AMSA's interpretation of the legislation. It would appear, from the *Spirit of 1770* case, that AMSA is prepared to prosecute the Master of a DCV for not following the SMS to the letter, even in emergency circumstances, and even when the Master's decision-making results in a successful outcome. In our view, this could lead to disaster, because no emergency goes according to plan ... if things went according to plan, there wouldn't be an emergency.

We call on AMSA to issue formal guidance to DCV operators and Masters on this point. In the meanwhile, we urge all DCV operators to review your safety management systems, keeping in mind that AMSA may in future continue to closely read each SMS as law binding upon your master and crew.

One potential step may be to include, in the SMS itself, a statement along the following lines:

*This safety management system is intended to safeguard against, and prepare for, emergencies. Professional and enthusiastic compliance with the SMS in all respects is expected by the owners and by the law. However it is recognised that individual emergencies may include factors that cannot be foreseen during the development of the SMS, and that emergencies often unfold so rapidly that detailed reference to the SMS is not possible. As a result, nothing in this SMS over-rides the Master's overriding authority to do everything in their power to preserve the life and safety of everyone aboard, or affected by, this vessel, and to protect the marine*





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*environment. The Master should prefer compliance with this SMS where reasonable to do so, but the Master is authorised to depart from the SMS where the circumstances of an emergency require it.*

The ideal combination is to have the structure and preparation associated with an SMS, combined with the experience and flexibility of the vessel's master who is able to respond to circumstances on the spot. AMSA is right to take safety management systems extremely seriously. However, they should not be followed with absolute rigidity.

To do so may result in tragedy.

~ Dr. Anthony Marinac, Pacific Maritime Lawyers and Consultants

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Header picture from the Gladstone Observer article [here](#)

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**Written by:**

Anthony Marinac  
Pacific Maritime Lawyers  
Solicitor / Advocate

