The Maritime Law Association of Australia & New Zealand
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Marine Safety Investigation In Australia
The Past

• In the past the only response to an accident was a regulatory/legal one. In some places that is still the case.
• It salved the community expectation for ‘guilty people’ to be punished.
• The main problem with this approach was that it frequently did not prevent a reoccurrence.
The present

• It is now commonly accepted that a duel and parallel response is the most beneficial.

• The traditional regulatory type response and a newer safety type investigation designed to address the need to improve the system so as to prevent a reoccurrence. This is the area in which ATSB operates.
ATSB Vision and Mission

The aim of the Australian Transport Safety Bureau is to maintain and improve transport safety and public confidence through excellence in

- independent investigation of transport accidents and other safety occurrences;
- safety data research and analysis; and
- safety communication and education.
Legislation

- Locally, TSI Act 2003 and Regulations
- Internationally, the Code for the investigation of Marine casualties and incidents (A849(20) as amended by A884(21)) and others.
- Guidelines on the fair treatment of seafarers in the event of a maritime accident (LEG.3(91))
Australian “No Blame” Transport Safety Investigation

- Transport Safety Investigation Act 2003 reflects current international ‘best practice’ in safety investigations
- Involves transport vehicles (aircraft, ship or rail vehicles) s. 3
- Objective is to improve safety. s. 7
- Powers are limited by the Constitution – but includes any operator that is a constitutional corporation or Commonwealth entity. s.11
- The Executive Director is not subject to directions from the Minister or Secretary in respect of the exercise of powers under the Act. s.15
Australian “No Blame” Transport Safety Investigation

- All powers vested in the Executive Director who reports directly to the public. s.12

- Executive Director’s powers delegated. s.13

- Obligation on a responsible person (reg 3.4) to report an immediately reportable matter (regs 3.3) s.18 & s.19

- Reports made to a responsible official s.20 (regs 3.6, 3.7)
Australian “No Blame” Transport Safety Investigation

- Executive director must issue a report. s.25
- Reports are not admissible as evidence. s.27
- Directly interested party process. Draft reports. s.26
- Executive Director may require somebody to attend and answer questions. s.32
- **Restricted information – not admissible as evidence in legal proceedings**
  - Applies to any person interviewed on ‘special premises (i.e. at an accident site)s.33,34,35,36
  - Applies to a person summoned under s.32
  - Quid pro quo is that a person is not excused from answering on the grounds of self incrimination. s.47
  - However, certain restricted information may be released to a coroner. s.61, Reg 5.8
Australian “No Blame” Transport Safety Investigation

• Restricted information – not admissible as evidence in legal proceedings s.3 & s.60
  - all statements obtained from persons by staff member
  - all information recorded by staff member
  - all communications with a person involved in the operation of a ship
  - medical or private information regarding a person
  - information recorded for monitoring or directing the progress of a ship
  - records of the analysis of information or evidential material acquired during the investigation
  - information contained in a document produced to a staff member
Australian “No Blame” Transport Safety Investigation

- A protection order is issued to cover accident site evidence S.43
- An investigator has the power to enter a ‘special premises’ without a warrant. S.33
- An investigator may only enter any other premises with permission or with a warrant. s.34
- At the premises an investigator may make recordings and operate or remove evidential material. s.34
- An investigator has the power to stop and detain a transport vehicle. s.39
• There is an increasing public expectation that significant transport accidents should be subject to an independent safety investigation.

• Australia does not have the critical mass to create multiple, independent safety investigation authorities.

• The Transport Safety Investigation Act 2003 provides the tool to meet this expectation and the ATSB the vehicle.