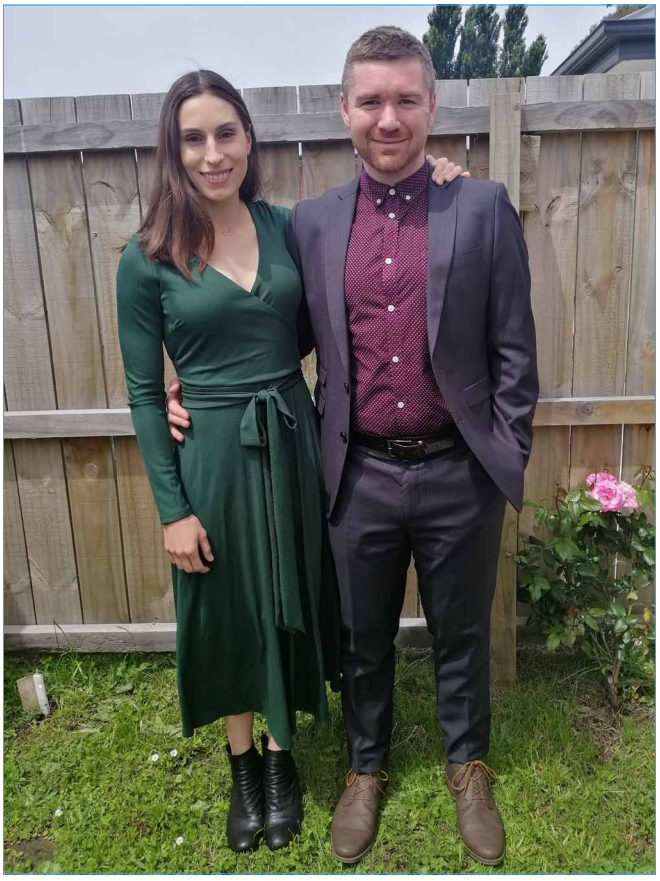
SEMAPHORE

Newsletter of the Maritime Law Association of Australia and New Zealand

Aituā (Accident) – Why TAIC Investigates

On February 16, 1995, the trawler Austro Carina caught fire while moored at the Port of Lyttelton – the vessel's first mate had come back onboard after enjoying a night out and put on a pot of chips to deep fry.

He wouldn't have been the first, first mate to do this, and surely won't be the last. But what happened next? Evidence suggested he fell asleep, and the oil kept cooking and caught fire. Firefighters arriving at the scene found the mate understandably "in a state of confusion".



Patrick Abel with partner, Marie

The Transport Accident Investigation Commission (TAIC) consequently opened its first marine accident inquiry.[1]

It would have been easy to blame the first mate, but TAIC didn't do that. Instead TAIC focused on what could be done in future to avoid similar accidents. In this case, TAIC made recommendations to improve the operator's safety system and safety training.[2]

Fast forward 27 years and TAIC recently published a marine report related to another onboard fire, which readers may be familiar with.[3]

During the morning of December 18, 2020, four people were working in number two cargo hold of the general cargo vessel Kota Bahagio, when a rapidly-evolving fire resulted in immediate evacuation. It took six days to extinguish. There were no fatalities or injuries, but there was extensive damage to the number two cargo hold and some of its high-value cargo.

The direct cause was very likely molten material, ejected during gas-cutting activities, igniting dry sawdust nearby, which created a smouldering fire that ignited the PVC tarpaulins and other combustible components of the fibreglass project cargo.

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1 Transport Accident Investigation Commission Inquiry *Fishing trawler "Austro Carina 100851", fire on board, Port of Lyttelton, 16 February 1995* (MO-1995-201, 6 October 1995).

2 Transport Accident Investigation Commission Related Safety Recommendations, 011/95, 012/95, 013/95, 014/95.

3 Transport Accident Investigation Commission Inquiry *General cargo vessel Kota Bahagia, Cargo hold fire, Napier Port, 18 December 2020* (MO-2020-205, 4 August 2022).

Patrick Abel Bio

A senior solicitor and analyst at TAIC, Patrick Abel provides investigative and administrative advice to the Commission's board, senior management and staff. Although mainly focusing on evidence, process and risk, he also undertakes privacy, procurement and compliance work.

Mr Abel has a background in both private and public practice. He was also an investigator at the Ministry of Business, Innovation & Employment (MBIE) immediately prior to TAIC.

He thinks of TAIC not only as the perfect combination of his past, but a steadfast for his future – and says having an awesome boss is also a big bonus!

The Commissioners found, amongst other things, that not only were hot-work precautions not fully implemented by the ship's crew, but tight stowage of the project cargo also hampered the view and access of the person assisting with the gas-cutting operations.[4] Consequently, in some locations there was no way to control effectively the dispersal of molten material ejected during the gas-cutting.

Again, it might have been easy to apportion blame, but TAIC didn't do that. That is because TAIC is interested in the *circumstances* as well as the causes.[5] So, our investigators looked and looked again and kept asking "why?". This resulted in several other findings related to the operator's safety management system (SMS) and emergency response procedures.[6]

The ability to delve deeper separates us, and is largely thanks to TAIC being a standing Commission of Inquiry with extensive powers to investigate for the benefit of future safety beyond cause.[7] Circumstances are broad and may include the operator's safety system, the performance of regulators such as Maritime New Zealand and WorkSafe, and broader policy and legislative settings.

When conducting an inquiry, the Commission is under a duty to act fairly and in accordance with the principles of natural justice. This means the Commission must engage with all appropriate parties and give those affected by its findings an opportunity to respond before it forms a final view. Part of the Commission's process involves circulation of draft reports to interested persons, as well as considering the submissions of those persons on papers or at in-person hearings.[8] Natural justice considerations are important given the potential adverse effects of Commission findings.

TAIC's successes come from its robust inquiry practices, thorough investigations, accurate final reports, and its no-blame stance. Being a no-blame organisation does not mean we avoid calling a spade a spade. It's just that we are actuarial rather than accusational; we focus more on how to promote future safety than who caused it. That's because the benefits of future safety across the transport system can heavily outweigh any temptation to prosecute individuals.

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4 Ibid, 24.

5 Transport Accident Investigation Commission Act 1990 (TAIC Act 1990), s 4.

6 Above n3, 25-27.

7 TAIC Act 1990, s 11.

8 TAIC Act 1990, s 14(5).

To this, TAIC reports can't be used in regulatory, criminal, or civil proceedings (but can be used in a Coroner's inquiry).[9] And over the 32 years of TAIC's existence, we have found that these protections encourage people to feel comfortable speaking to us and helping us gather evidence for our investigations – evidence and information that also has extensive legal protection from disclosure.[10]

Each TAIC final report explains the relevant evidence (gathered by investigators, received from experts, and invited in submissions from consulted people and organisations). It sets the record about what happened and why, including circumstances. It includes formal findings and safety lessons for the entire sector, where appropriate. It notes changes made to address safety issues, and if more change is necessary, then the Commission makes safety recommendations.

We can't make people and organisations do what we recommend, but our recommendations are reasonable, practicable and shouldn't be ignored. We influence change so you can have your hot chips and eat them too.

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9 TAIC Act 1990, s 14N.

10 TAIC Act 1990, s 14B.