



Australian Government
Australian Transport Safety Bureau

ATSB

INDEPENDENT REVIEW OF DOMESTIC COMMERCIAL VESSEL SAFETY LEGISLATION AND COSTS AND CHARGING ARRANGEMENTS

AUSTRALIAN TRANSPORT SAFETY BUREAU
MARCH 2022 SUBMISSION

[Abstract](#)

This submission is a response to the consultation aid, released in February 2022, prepared for phase 1 of the independent review. The ATSB's submission outlines matters for the reviewers to consider in relation to expanding the ATSB's role.

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1 Introduction

- 1.1.1 The terms of reference for the *Independent Review of Domestic Commercial Vessel (DCV) Safety Legislation and Costs and Charging Arrangements* include consideration of:

...whether expanding the Australian Transport Safety Bureau's (ATSB) role to include domestic commercial vessel safety could support substantially improved safety outcomes for industry, as well as regulators and policy-makers.

- 1.1.2 Also:

...if a role for the ATSB is recommended, how this role could be implemented in an efficient, cost-effective manner, with due regard for the independence of the ATSB and its existing multi-modal responsibilities and funding arrangements

- 1.1.3 This submission responds to the first of these two aspects, with the understanding that there will be an opportunity to respond to the second aspect in the second phase of the review.
- 1.1.4 The ATSB has prepared this submission consistent with the Minister for Infrastructure, Transport and Regional Development's expectation that the agency provide input into government inquiries reviewing the ATSB's jurisdiction across different modes of transport¹.
- 1.1.5 Any changes to the ATSB's jurisdiction are a decision for the Australian Government.

¹ See: https://www.atsb.gov.au/about_atsb/ministers-statement-of-expectations/

2 About the ATSB

2.1 ATSB jurisdiction

- 2.1.1 The ATSB is Australia’s national independent, no-blame transport safety investigator.
- 2.1.2 The ATSB’s function is to improve transport safety in aviation, rail and interstate and overseas shipping. The ATSB does this through:
- 2.1.2.1 the independent investigation of transport accidents and other safety occurrences
 - 2.1.2.2 safety data recording, analysis and research
 - 2.1.2.3 influencing safety action.
- 2.1.3 For further information about independent no-blame safety investigations in transport systems, see the ATSB’s post-draft submission to the *Productivity Commission’s inquiry into national transport regulatory reforms* (submission DR58), and the Productivity Commission’s final report. Both documents are available at:
<https://www.pc.gov.au/inquiries/completed/transport#report>
- 2.1.4 The ATSB’s current jurisdiction covers accidents and incidents in a range of transport modes as outlined in Table 1:

Table 1: ATSB jurisdiction

Aviation	<ul style="list-style-type: none"> • Civil aircraft in Australia (registered or unregistered) • Australian-registered civil aircraft overseas • Foreign-registered civil aircraft operating in Australia
Rail	<ul style="list-style-type: none"> • Rail vehicles in Australia
Marine	<ul style="list-style-type: none"> • Civilian interstate and overseas shipping involving: <ul style="list-style-type: none"> ○ Australian-registered ships anywhere in the world ○ Foreign ships in Australian waters ○ Foreign ships en route to Australian ports

2.2 A role for the ATSB in DCVs

- 2.2.1 The ATSB does not have an agreed role in relation to DCVs.
- 2.2.2 Although early discussions included consideration of establishing the ATSB as the national DCV investigator, the ATSB was not part of the national maritime safety regulatory reforms.
- 2.2.3 While COAG decided to expand AMSA’s role and establish a funding model for national DCV regulation, it never made an equivalent decision for no-blame investigations and the ATSB.
- 2.2.4 The ATSB understands the difference between ATSB’s and AMSA’s jurisdiction in relation to maritime activities is confusing and unclear for industry and governments.

3 Independent no-blame investigations of DCVs

3.1 ATSB DCV investigations

- 3.1.1 Over many years, the ATSB has investigated incidents and accidents where a DCV has interacted with a larger vessel conducting interstate or overseas shipping activity.
- 3.1.2 Through this work, the ATSB has engaged with the DCV industry directly to improve safety. For example, two safety bulletins have noted issues related to interactions between fishing vessels and large trading ships:
- 3.1.2.1 https://www.atsb.gov.au/publications/2004/fisherman_safety/
 - 3.1.2.2 https://www.atsb.gov.au/publications/2004/ships_fishing_vessel/
- 3.1.3 The ATSB has also conducted a limited number of DCV-only investigations, by diverting resources from other modal activities, in the interests of improving safety and demonstrating capability. These investigations yielded safety messages relevant to the DCV sector. See Table 2 for examples.

Table 2: Safety messages from ATSB DCV investigations

Investigation	Safety messages
331-MO-2017-004 Foundering of Venessa S, Cabbage Tree Island, New South Wales, on 20 June 2017	<p>The effect of a loss of propulsion should be among the factors taken into account when planning approaches or manoeuvring close to navigational hazards. Mariners need to consider the possibility of machinery failure as an ever-present hazard and have appropriate contingency plans in place. The use of the anchor, especially if it is prepared and ready, should be among the options considered to slow or stop a vessel running into danger.</p> <p>The safe abandoning of the vessel highlights the importance of a thorough safety induction for new crew. In emergency situations, valuable time may be lost trying to find or operate life-saving appliances under trying circumstances. A well familiarised crew, proficient in the use of the ship’s life-saving appliances, increases the likelihood of a successful abandoning after an accident.</p>
MO-2019-004 Suspected engine room fire and passenger evacuation involving domestic commercial vessel Fitzroy Flyer, 13km ENE of Cairns, Queensland on 29 March 2019	<p>This occurrence highlights the importance of vessel operators having robust procedures and training for responding to fires and other emergencies on board, and for crewmembers to follow procedures and training in such situations. In particular, if a fire is suspected in an engine room, and further assessment is not possible, then crews should deploy the available suppression systems and transmit an urgency message.</p>

- 3.1.4 The ATSB is not in a position to continue conducting DCV-only investigations or taking on a new role in DCVs in future unless new resources are made available for this purpose. The ATSB's financial position is already under strain in relation to its current jurisdiction. The majority of the ATSB's investigations are into aviation occurrences. As an indication, in 2020-21, 85 per cent of the investigations the ATSB initiated were into aviation accidents and incidents.
- 3.1.5 However, even with that level of activity, the ATSB did not investigate enough accidents and incidents to fully meet the international standards and recommended practices for aircraft accident and incident investigation outlined in *Annex 13 to the Convention on International Civil Aviation*. In the rail sector, the ATSB is critically underfunded to conduct rail investigations across Australia. The Productivity Commission inquiry into national transport regulatory reform noted some of the challenges of the current rail funding arrangements for the ATSB and recommended the Australian Government provide sufficient annual appropriation to enable to ATSB to carry out its existing functions².

3.2 DCV investigations by other investigators

- 3.2.1 The New South Wales Government retains some capacity for independent no-blame investigations through the Office of Transport Safety Investigation (OTSI) as does the Victorian Government through the Chief Investigator Transport Safety (CITS). However, neither OTSI or CITS are formally part of the national safety system for DCVs.
- 3.2.2 There is no collaboration between the ATSB and these state government agencies on DCV investigations in the same way that there is for rail under the national transport safety system.
- 3.2.3 The ATSB outlined some of the challenges of the rail arrangement with OTSI and CITS in its initial submission to the Productivity Commission inquiry into national transport regulatory reform. See paragraph 6.5.11 of submission 39³.

4 Improving safety through investigations

- 4.1.1 The review's consultation aid posed one question relevant to the ATSB:

Would expanding the ATSB's role to include domestic commercial vessel safety support substantially improved safety outcomes for industry, as well as regulators and policy makers?

²<https://www.pc.gov.au/inquiries/completed/transport#report>. See section 9.5, 'Funding of no-blame investigations' and recommendation 9.4

³<https://www.pc.gov.au/inquiries/completed/transport#report>

- 4.1.2 With further resources, the ATSB could prepare a considered answer for this question. Specifically, with additional resources, the ATSB could conduct a regulatory impact assessment to evaluate various policy options and their respective impacts on safety.
- 4.1.3 The ATSB's view is this policy work would greatly assist this review. This policy work would also assist the Australian Government in its response to two recent inquiries recommending that the ATSB's role be expanded to include DCVs:
 - 4.1.3.1 Productivity Commission inquiry into national transport regulatory reform⁴
 - 4.1.3.2 Senate inquiry into policy, regulatory, taxation, administrative and funding priorities for Australian shipping⁵.
- 4.1.4 In general terms, ATSB investigations in other transport modes improve transport safety by:
 - 4.1.4.1 identifying systemic factors that other entities, including other investigating entities, cannot or do not consider. The ATSB is able to consider systemic factors as it is independent from transport activities.
 - 4.1.4.2 uncovering information others cannot. The ATSB has legal powers to require people to answer questions and provide evidence, even if that information could incriminate that person. The ATSB is trusted with these powers because of its no-blame approach.
 - 4.1.4.3 being defensible and persuasive. As the ATSB is independent from the Minister, industry, regulators and policy-makers, it avoids conflicts of interest in the conduct of its investigations.
 - 4.1.4.4 being shared publicly. The ATSB shares the findings of all its investigations. To ensure this information reaches the people who can improve safety by taking action, the ATSB produces several different products, including print reports, social media content, and video summaries.
 - 4.1.4.5 keeping entities accountable. The ATSB issues safety findings and recommendations, and reports on what safety action is taken to address those findings and recommendations.
- 4.1.5 If the ATSB's role expands to include DCVs, the following factors will be critical:
 - 4.1.5.1 appropriate and sustainable funding including additional funding for implementation
 - 4.1.5.2 appropriate implementation timeframes
 - 4.1.5.3 opportunities and support to improve the DCV sector's awareness of the ATSB's role and benefits.

⁴<https://www.pc.gov.au/inquiries/completed/transport#report>

⁵https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Shipping

5 Related matters

5.1 Learning from other transport modes

- 5.1.1 As a multi-modal agency, the ATSB is active in multiple transport modes. In each transport mode, there are differences in how the ATSB is funded, how it receives occurrence notifications, how it engages with industry stakeholders, and more.
- 5.1.2 The ATSB's post-draft submission to the *Productivity Commission's inquiry into national transport regulatory reforms*⁶ outlines some of the concerns the ATSB has about current arrangements in rail. The current rail funding arrangements:
- 5.1.2.1 do not meet the ATSB's resource requirements
 - 5.1.2.2 limit the ATSB's independence
 - 5.1.2.3 are inconsistent between states and with the regulator
 - 5.1.2.4 are inefficient and administratively burdensome
 - 5.1.2.5 lead to reduced safety outcomes.
- 5.1.3 Should the ATSB's role be expanded to include DCVs, there is an opportunity to learn from the ATSB's experience in other transport modes, particularly in rail, and ensure better practices are adopted.

⁶ Submission DR58, available at: <https://www.pc.gov.au/inquiries/completed/transport#report>

5.2 Coordination

5.2.1 As the reviewers are aware, several recent reviews and inquiries have considered and recommended changes to the ATSB's jurisdiction:

5.2.1.1 The 2019 *Review of Road Safety Governance Arrangements* noted the opportunity to consider the utility of a no-blame investigator, such as the ATSB, in road safety.

5.2.1.2 The 2020 *Productivity Commission inquiry into national transport regulatory reform* recommended formalising the ATSB's role in rail and expanding the ATSB's jurisdiction to include DCVs, heavy vehicles and autonomous vehicle technologies. In its response, the Australian Government committed to consult with state and territory governments, regulators, the ATSB and industry on these recommendations.

5.2.1.3 The 2020 *Senate inquiry into policy, regulatory, taxation, administrative and funding priorities for Australian shipping* recommended expanding the ATSB's jurisdiction to include DCVs. The Australian Government is yet to respond.

5.2.1.4 The 2021 *Senate inquiry into the importance of viable, safe, sustainable and efficient road transport* recommended expanding the ATSB's jurisdiction to include commercial heavy vehicles. The Australian Government has noted this recommendation and acknowledged it is consistent with the recommendation from the Productivity Commission.

5.2.2 Any recommended change to the ATSB's role should be considered in the context of any other jurisdictional expansion. Appropriately coordinated policy development and implementation will be critical for success.