

JAPAN P&I NEWS

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To the Members

Dear Sirs,

Australia – AMSA Marine Notice regarding refusal of access to Australian ports

The Australian Maritime Safety Authority (AMSA) has issued Marine Notice 03/2015 for ensuring safety of a vessel with regard to the measures which should be taken by AMSA to a vessel approaching or entering Australian waters.

The Notice is to set out AMSA's approach to the enforcement of the measures given under section 246 of the Navigation Act 2012 (the Act). The Act gives AMSA the power to direct a vessel;

- ◆ not to enter any ports in Australia or its Exclusive Economic Zone (EEZ)
- ◆ to comply with specified requirements while it is entering or leaving any ports in Australia or its EEZ

The Act does not specify a minimum or maximum period of refusal to access or details of specified requirements which should be complied with, and AMSA will make those decisions based on the facts and circumstances of each case. In support of the decision making process, AMSA has published the said Marine Notice 03/2015 which provides the guidelines as to how AMSA will generally approach to exercise its power.

[Refusal of vessel's entry]

AMSA will apply the following general principles when they consider refusal of access to Australian ports where a vessel has a poor Port State Control (PSC) record or there are concerns about the vessel's management/operation.

Refusal of access for 3 months

where a vessel is detained and released with conditions to carry out corrective actions, but returns to Australia without rectifying deficiency, or
where a vessel is detained three times in two year period.

Refusal of access for 12 months

where a vessel has been previously issued a direction prohibiting entry, and subsequently detained within two years of the expiry of a previous ban.

Refusal of access for 24 months

where a vessel has been previously issued two directions prohibiting entry, and subsequently detained within two years of the expiry of the last ban.

According to the Notice, AMSA will also consider the overall circumstances regarding the performance of a vessel operation/management and may extend the above periods.

In addition to the above, AMSA may prohibit a vessel's entry where

- ◆ a serious breach of Australian legislation has occurred.
- ◆ deficiencies in the vessel operator's management system is considered to pose a significant risk to safety of crew and Australia's marine environment.
- ◆ as the standard of some vessels' management by an operator is poor, AMSA considers that other vessels managed by the same company also should be banned.

[Direction to comply with specified requirements]

AMSA can also issue a direction requiring compliance with specific requirements while a vessel is entering or leaving any ports in Australia or its EEZ. The special requirements will vary on a case- by- case basis, but AMSA has given the following examples as to the situations where the specific requirements can be applied.

- ◆ Non-compliance with the Maritime Labour Convention (MLC) such as payment of crew wage or welfare
- ◆ poor management of fatigue and rest/work hours
- ◆ failure to comply with mandatory reporting requirements
- ◆ inadequate and out-of date nautical charts
- ◆ poor navigation practices
- ◆ failure to comply with the requirements under MARPOL

By the end of January, four vessels were issued with prohibition directions, one of which has been banned for 12 months.

Members who are considering trade to Australia are reminded to pay attention to the above measures.

Yours faithfully,

The Japan Ship Owners' Mutual Protection & Indemnity Association

Attachment: AMSA Marine Notice 03/2015



Directions and refusal of access to Australian ports

Australia is a signatory to various International Maritime Organization (IMO) and International Labour Organization (ILO) Conventions which aim to ensure ships are safe.

Vessels that are not operated and managed to meet applicable standards and relevant Australian laws pose an increased risk to seafarers, vessels and the environment. The *Navigation Act 2012* provides additional powers so that in some circumstances, AMSA may direct that:

- A vessel must not enter or use any port, or a specified port/s, in Australia or the exclusive economic zone (EEZ) of Australia.
- A vessel must comply with specified requirements while it:
 - is approaching, entering, or using any port, or a specified port or specified ports, in Australia or the EEZ of Australia; or
 - is in or is leaving any port, or a specified port or specified ports, in Australia or the EEZ of Australia.

AMSA's power to give these directions is in section 246 of the *Navigation Act 2012*. This section does not specify a minimum or maximum duration for refusal of access or how long conditions need to be complied with. AMSA will make those decisions based on the facts and circumstances of each case.

In support of that decision making process AMSA intends to take the following general approach to the exercise of this power.

Directions that a vessel not enter or use port/s

AMSA may consider issuing a direction refusing access to Australian ports where a vessel has a poor port State control (PSC) record or there are concerns about the performance of the related vessel operator.

With PSC performance for individual vessels the general principles that will be applied in the making of a decision to issue a direction not to enter or use an Australian port, or ports, are as follows:

1. **Refusal of access for 3 months** – where a vessel has been detained then released with conditions to carry out corrective action, but returns to Australia without the corrective action having been taken; or

Where a vessel has incurred three detentions in a two year period and has not been previously issued a direction.

2. **Refusal of access for 12 months** – where a vessel has previously been issued a direction and is detained within two years of the expiry of the refusal period under that direction (while under the same operator). The nature of previous detentions that resulted in the initial direction may also be taken into consideration.

3. **Refusal of access for 24 months** - where a vessel has previously been issued two directions and is detained within two years of the expiry of the refusal period under the second direction (while under the same operator). The nature of previous detentions that resulted in the initial direction may also be taken into consideration.

Note: When considering vessel performance AMSA will also look at the performance of the company as a whole. Where this is deemed unacceptable the periods detailed in these general principles may be extended.

Additionally, or in combination with the general principles above, a direction to refuse access may be issued where:

- A significant breach of Australian legislation has occurred.
- The effectiveness of the vessel operator's management system is considered to pose a significant risk to the welfare of seafarers, their safety or Australia's marine environment.
- The standards of some vessels managed by an operator are so poor as to cast significant doubt on the standards of other vessels managed by the same company. AMSA may consider directions in respect to other vessels of that operator.

A direction resulting from a new detention in Australia will generally have effect as soon as the vessel leaves the Australian port or anchorage following the clearance of the latest detainable deficiency.

AMSA may vary the direction to allow access to a specific port in the event of force majeure or overriding safety considerations. Specific requirements may be imposed on the owner, operator or the Master of the ship to ensure safe entry in those circumstances.

Directions that a vessel comply with requirements while approaching, entering, using or leaving port/s

A vessel's current circumstances or non-compliance history may result in AMSA issuing a direction requiring compliance with specific requirements while the vessel is approaching, entering, using or leaving any port, or specified port/s in Australia or its EEZ.

These requirements will be applied having given consideration to the nature and level of risk posed to the welfare and safety of seafarers, vessels and the marine environment.

Such directions will be additional to port State control actions and may be applied where it is considered specific action is required by the Master and/or operator in order to address identified risks.

Examples of such situations include:

- Non-compliance with the Maritime Labour Convention (MLC) such as payment of wages, crew welfare or Seafarer Employment Agreements.
- Poor management of fatigue and hours of work/rest.
- Lack of compliance with mandatory reporting requirements such as ReefREP.
- Carriage of inadequate and out-of-date nautical charts and publications.
- Exercise of unsound navigation practices including; passage planning, identification of hazards and lack of understanding of Designated Shipping Areas (within the Great Barrier Reef Marine Park).
- Inappropriate procedures and use of equipment required by MARPOL.

AMSA's compliance and enforcement policy

AMSA will always take into consideration the specific circumstances that exist in relation to the vessel.

The principles AMSA applies to ensure that decision making is accountable, consistent, transparent, impartial, proportionate and fair are documented in AMSA's [Compliance Enforcement Policy](#).

A list of vessels subject to an AMSA direction not to enter or use an Australian port can be found on AMSA's website at www.amsa.gov.au/vessels/ship-safety/port-state-control/refusal/index.asp

Gary Prosser
Deputy Chief Executive Officer
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Australian Maritime Safety Authority
GPO Box 2181
Canberra ACT 2601

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