



AUSTRALASIAN INSTITUTE  
OF MARINE SURVEYORS

# Shipshape

December 2023

- **MAKING A DIFFERENCE**
- **RECREATIONAL VESSEL MAINTENANCE**
- **MANAGING RISKS AS A CONSULTANT**



# Avoid that sinking feeling.

# Pick the right marine surveyor.



### The wrong surveyor could cost you more than a new boat.

Getting out on the water is a favourite Aussie past-time and we want to help you make sure that the boat you purchase is suitable for you and what you want it to do.

Engaging a Certified Commercial Marine Surveyor™ to help you buy a boat with a quality condition survey is the best investment that you will make as part of the buying process.

### So how do you choose a surveyor that is right for you?

There are no Government controls that regulate the minimum qualifications or experience required by a marine surveyor in the recreational boating industry.

Check your marine surveyor's qualifications yourself or talk to us before you purchase a boat or engage a marine surveyor.

Getting it right the first time may just save your life.

### It's our profession, not our part time job.

To become a Certified member of the AIMS, surveyors must provide evidence of their qualifications and experience that support the areas of specialisation they advertise.

AIMS Surveyors also commit and adhere to the AIMS Code of Professional Practice giving you, the boat owner, greater peace of mind.

To find a qualified surveyor visit: [www.aimsurveyors.com.au/Find-a-Surveyor](http://www.aimsurveyors.com.au/Find-a-Surveyor)

## Become a marine surveyor

Diploma courses start from just AU\$544 per unit

In the Australasian region, private commercial marine surveyors work across the entire spectrum of shipping, encompassing all categories of surveys from cargo, insurance, salvage and towing, domestic working vessels to recreational vessel insurance and pre-purchase surveys. Units delivered by distance learning. Online study, including prescheduled tutorial webinars, and 1:1 sessions with assessors and industry experts. You may also be required to undertake practical survey tasks. If you are working in the industry, we can tailor practical tasks to suit your workplace environment, however you must organise your own access to a vessel.



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Front Cover: Maritime surveying in New Zealand. (See page 8.)

(This photo was taken in Doubtful Sound, in Fiordland in the south-west of the South Island.)



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### ADVERTISING AVAILABLE

Advertising is now available in *Shipshape*, the official journal of the Australasian Institute of Marine Surveyors (AIMS). For all the information about advertising in our quarterly magazine, contact AIMS CEO Eric Perez at [gm@aimsurveyors.com.au](mailto:gm@aimsurveyors.com.au) or on +61 492 881 737.



# Making a difference

THE AIMS Board is tasked with serving our members through the development of policy, strategic planning, connecting with industry and government, improving membership benefits, and growing the Institute to support members across the broad spectrum of marine surveying in Australia and the Asia/Pacific region. The members of the Board strive to ensure their decisions are always in the best interest of the AIMS and its members.

It is also the role of the Board to consider, advise and adjudicate on matters of marine surveyor standards, practices, and conduct that are brought forward via the AIMS management team or through direct approaches to Board members. Although these matters vary greatly in their content, application, and effect, they are on occasions, difficult waters to navigate, requiring critical thinking, establishing the facts, and seeking the truth, just as our members are expected to do in their daily roles as marine surveyors.

Learning and developing skills to become experienced, competent marine surveyors is one thing, but applying that knowledge and experience honestly, ethically, and professionally can be challenging.



In an increasingly demanding business environment where both potential customers and competitors alike seek to disrupt accepted practice and due process, many of the issues raised concern practices that may not align with the AIMS Code of Conduct. Unfortunately, bad behaviour is rarely called out through official channels because many have witnessed the poor treatment of ‘whistle



blowers’ that has been widely reported by Australian media.

Many of our members are happy to complain privately, but few are willing to engage the official AIMS complaints handling process. A strong moral and ethical stance is core to AIMS membership and fundamental to maintaining long-term professional standards.

Although the age-old adage that a good reputation takes time, but a bad reputation is immediate, online tools now available to shrewd operators can promote a good reputation in stark contrast to their actual performance. The rise of AI language models such as Chat GPT or Bard present challenges to our members and clients that may eventually reach a point where an impressive report may not reflect the requisite skills to write one.

The skills developed as a marine surveyor gains experience across a variety of surveys should always demonstrate professionalism through factual accuracy that considers the big picture but focuses on the appointed task.

Using AI to help deliver a well-presented report may become mainstream; however, it should not be used to produce the factual content. It should not replace critical thinking. As marine surveyors, we are trusted advisors to our clients and must remain focussed on that as we go about our daily work.

Stand up for what is right, call out what is wrong and, above all, remain professional always!

As 2023 draws to a conclusion, it is nice to reflect upon our challenges, our achievements, and our goals. Like me, many of my marine surveyor peers are challenged by the prospect of retirement,

something that starts to come into focus as we move into our 60s.

I still thoroughly enjoy the interaction with people that comes through my job; however, I do not necessarily enjoy it so much at two in the morning. After twenty-two years, I am finding a normal overnight sleeping pattern now suits me far better – I am currently working towards increasing that trend. Personal achievements this year have been many and in the most part, successful. Goals – well I believe I have already hinted at that. I am starting to realise the potential of other things in my life; nonetheless, I grapple with what retirement will look like.

So it is for the AIMS Board. Challenges to face, achievements to celebrate and goals to strive for. But now is the time for new blood – future board members who can take on the challenges and achieve the goals.

I would be keen to hear from any members with the drive and commitment to consider a Board position over the next two years as some of us look to slow down a little.

I wish all members a culturally appropriate greeting as we say farewell to 2023. I hope to catch up with some of you in 2024.

All the very best to our members, their families, and loved ones.

**John Holden**  
Chairman of the AIMS Board

## PROFESSIONAL INDEMNITY INSURANCE SCHEME DESIGNED FOR MARINE SURVEYORS

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# Year ending on a positive note

THE year is ending, and it has been a productive time for AIMS.

I am enjoying learning and engaging on a range of issues critical to the long-term agenda of AIMS.

## Industry engagement

As I noted in our previous newsletter, I met members in Sydney and Melbourne, and I am planning meetings in South Australia, Western Australia and Queensland in the early New Year.

## New Zealand industry visit

I would like to thank Greg Marsden for organising a productive trip to New Zealand (NZ) in October and his insights as a NZ-based marine surveyor.

I was provided with a unique opportunity to understand the key marine surveyor organisations and the legislative architecture in which they operate.

Greg and I met with the following organisations and individuals:

- ❑ NZ Marine Industry Association;
- ❑ NZ Brokers Association;
- ❑ Maritime NZ;
- ❑ NZ Recognised Surveyors Association; and
- ❑ NZ-based marine surveyors.

The trip provided an important learning opportunity for AIMS as well as helping to increase AIMS' presence and create long-term relationships with the NZ marine industry.

The meetings form a solid strategic connection between industry, government and AIMS that will lead to building our profile and securing new members, and solidify our status as a key industry organisation in NZ.

## Industry workshops

### 1. October workshop 2023

#### Workshop: Mike Smith, 2 October 2023

Mike led the workshop and presented the following topic: "Aspects of recreational vessel maintenance versus seaworthiness, and considerations with regards to survey inspections and potential insurance cover exclusions".



## Background

Mike works as a marine surveyor, insurance assessor and technical / project marine consultant, and is a service provider to Marine Leisure Assess. The confluence of his extreme interest in boats, his broadcasting electronics training and project management in telecommunications product development led to an exacting CE technical compliance role for the Robertson and Caine Leopard 63-foot sailing catamaran.

The Technical File preparation resulted in appointment to Marine Surveyor with ECB, a Dutch Notified Body. He has spent time as project coordinator at Boatspeed for production of several high-end carbon fibre advanced composites race boats. Experience with a TAFE Cert 4 Composite Boatbuilding and many years of boat building have resulted in a pragmatic understanding of the trade.

His experience goes beyond marine composites and includes several years working in a technical / project / inspector role in Industrial Composites (including manufacture of large GRP piping to exacting standards for the Exxon Mobile refinery in Singapore). His current consuming passion is designing and building a 32-foot Suhaili Replica Ketch to allow him to compete in the Golden Globe Race 2026.

### 2. November workshops

I recorded a podcast with Eric McIlwain, AIMS

Secretary, discussing the issue of contract law from a marine surveyor perspective.

The topics discussed included:

- ❑ Basics of contract law;
- ❑ What elements make up a contract;
- ❑ Steps in the process;
- ❑ Where things can go wrong; and
- ❑ Tips for consideration.

Eric commenced his surveying career in 2014. He became an accredited surveyor with Maritime Safety Queensland in 2014, which then transferred to the Australian Maritime Safety Authority (AMSA) in 2015.

As an AMSA-accredited surveyor, he is accredited for extra low voltage initial surveys and periodical surveys, initial surveys for construction and alterations for hull, deck and superstructure, machinery, equipment, and commissioning; periodic surveys, periodic surveys for loadline and safety equipment.

#### Workshop: Dominique Lamb, 20 November 2023

Dominique is the current Queensland Small Business Commissioner and presented on the following topic: "The role of the Queensland Small Business Commissioner and support services available to small businesses".

## Background

Dominique is an experienced stakeholder advocate. Previously, as CEO of the National Retail Association (NRA), Dominique advocated on all areas of policy at Federal and State Government levels. For instance, she played an integral role in the development of the federal leasing code throughout the COVID lockdown period with industry organisations representing landlords and tenants.

Before this, Dominique was Director of NRA Legal, providing industrial relations and employment law advice. Dominique has been recognised for her outstanding contribution to the industry with multiple awards and finalist nods.

#### Workshop: Greg Hansen, 24 November 2023

Greg Hansen is a Director at Austbrokers Countrywide, an insurance broker who specialises in managing professional indemnity and public liability insurance facilities for professional associations. He presented the following topic: "Claims examples against marine surveyors".

## Background

For over 25 years, Greg has focused on professional risks for clients, acting for both insurance companies and for insurance brokers. He regularly delivers talks to associations and company boards on professional and director liabilities.

Austbrokers Countrywide manage several professional indemnity schemes for a number of national associations, including the Australasian Institute of Marine Surveyors. This offers great insight into the claim experience and often the contractual pitfalls which can be faced by marine surveyors.

The workshops and any topic specific podcasts will be converted to AIMS members-only video and audio podcast content. In the New Year, I will reach out to members interested in accessing the audio version of the workshops.

## Sanctuary Cove International Boat Show



We will once again be hosting a stand at the Sanctuary Cove International Boat Show from 23 to 26 of May 2024. In early 2024, we will ask for members interested in spending a few hours or a day at the stand over the four days, and I encourage anyone who is interested to come along.

The event is a fantastic opportunity to promote AIMS and to speak with the boating community regarding the importance of engaging an AIMS member to undertake surveying work. All volunteers are provided free access to the show for the full day.

AIMS Board members will be in attendance at the stand, providing a wonderful opportunity to meet and speak with them in person.

## Your Institute

Please contact me on +61 2 6232 6555 or send me an email with feedback and ideas at [gm@aimsurveyors.com.au](mailto:gm@aimsurveyors.com.au).

Dr Eric Perez  
Chief Executive Officer



# Maritime surveying in New Zealand

SURVEY of ships in New Zealand is a critical component of the regulatory framework for commercial ships. The survey will take care of design, construction, and equipment for the physical aspects of the ship. (The operational controls are taken care of by auditing the operator under the Maritime Operator Safety System [MOSS]).

Surveys are undertaken by third-party surveyors who have entered the commercial survey system and been recognised by the Director of Maritime New Zealand as technical experts, capable of undertaking the requisite surveys, depending on construction material and the size of the ship, along with the operating limits and the type of operation.

The rules that the surveyors are verifying compliance with – the 40 series – are complex and, in some cases, out of date, inconsistent and confusing. There is currently a significant project being run by Maritime NZ to update these rules, and surveyors have been actively engaged in bringing their views and expertise to the table.

The goal for the project is to provide a suite of rules to operators, naval architects, design approvers and surveyors to ensure that risks are covered, and that there is consistency and understanding throughout the industry. In a nutshell, they need to be practical and relevant, with a system enabling future amendments to be easily installed and implemented.

However, despite the general increase in AI and autonomy in the world, we still need people to undertake the surveys and we need to acknowledge that we have an aging workforce not only isolated to surveying, or even to New Zealand. We need to

be ready for the challenges that this poses, particularly relating to the question of how we can attract younger surveyors into the industry, how they get the training and gain the experience needed, and how we retain them in the system.

This is a challenge not limited to us, but is something that we have heard from our surveyor cohort for some time now. It appears that there are no easy and quick fixes to this issue but Maritime NZ has a renewed

focus around workforce, which includes surveyors.

Whether this is training New Zealanders or adjusting immigration settings to permit foreign maritime people into New Zealand, these are just a couple of options and levers that may be considered to ensure a sustainable maritime industry for the future.

**Kenny Crawford**  
Deputy Chief Executive  
Technical Advice and Support  
Maritime New Zealand



## A marine surveyor's journey

I AM Benjamin Samuel, studying for an Advanced Diploma in Commercial Marine Surveying, with over 15 years of operational experience in the maritime industry. My journey to becoming a marine surveyor started with gaining experience in the industry.

I have worked in various roles, such as Chief Officer, Operations Manager, and Enforcement and Compliance Officer. These roles have helped me develop a deep understanding of the industry and the skills required to become a marine surveyor.

To pursue my passion for the maritime industry, I am pursuing relevant qualifications, such as the Advanced Diploma in Commercial Marine Surveying from the Australasian Institute of Marine Surveyors, and a Diploma in Leadership and Management.

I also obtained several professional certifications,

including a Deck Watchkeeper (Unlimited) Certificate of Competency from the Maritime Safety Authority of Fiji and an Integrated Watch Rating from the same authority. These certifications demonstrate my high level of competence and knowledge in the maritime industry.

I have developed areas of expertise in project management, operational management, logistics and planning, leadership, and stakeholder management. These areas of expertise are essential for becoming a successful marine surveyor. I am also a member of professional organisations such as the Australasian Institute of Marine Surveyors and the Institute of Maritime Officers Guild (Fiji). Joining these organisations has helped me network with other professionals in the industry and stay up-to-date with the latest developments.

In my previous roles, I consulted clients on technical projects and found solutions. I also ensured compliance with relevant maritime authorities, maintained cohesive relationships with all relevant maritime stakeholders, and reviewed and updated internal operational policies and procedures.

I am responsible for planning and carrying out vessel maintenance and ensuring proper records management systems are in place.

In conclusion, my journey to become a marine surveyor is a fulfilling one. It requires a combination of experience, qualifications, certifications, areas of expertise and networking.

I am proud to become a marine surveyor and look forward to continuing to contribute to the maritime industry.

**Benjamin Samuel**  
AIMS Member



# Recreational vessel maintenance vs seaworthiness, and considerations with respect to insurance cover exclusions



ON 2 October 2023 AIMS member Mike Smith led an industry workshop focusing on recreational vessel maintenance. The AIMS Board thanks Mike for his time and insights. Mike undertakes marine pre-purchase and condition surveys of recreational vessels and is an insurance assessor.

## 1. Introduction

In the work I do, I very often see boats that are very poorly maintained. I find boat owners often have only a very limited idea of what is necessary for effective preventative maintenance to ensure reliable vessel operation. Often, we see an insurance claim where lack of vessel maintenance can be considered a contributing factor.

Buyers generally appoint a marine surveyor to identify any major problems before purchasing a boat so that they know it is safe; that is, it's seaworthy. The problem is the buyer does not want to hear there is work to be done and dollars to be spent. However, insurers do need to know the vessel does not present as a potential risk.

When assessing insurance

claims and reviewing recent survey reports, the term "The vessel appears well maintained and in good condition" is so often written even when the vessel is clearly in need of some care.

As surveyors, we should at least include a vessel maintenance log review when conducting inspections. Without evidence of regular maintenance, I would say we cannot say the vessel is seaworthy or safe to use.

## 2. Can a vessel that is not maintained be seaworthy?

In my opinion, the survey report should identify any lack of maintenance concerns. The

problem is that inspections are mainly visual. Without a maintenance schedule and log, can we say the vessel appears in good condition and is well maintained? In general, I find boats are not maintained well and there is very seldom a maintenance log to which the surveyor can refer. The typical 18-month-old invoice for oil and filters just does not cut it.

Critical parts at the end of service life are likely to fail. A small cheap part failing may result in the vessel losing power or steerage, unable to operate, and typically lying broadside to seas and rolling heavily. Even



*A vessel burnt to the gunwale. The forensic investigation identified the fire as likely to have resulted from leaking fuel lines. Reinforced rubber fuel lines are considered to have a service life of 10 years. The burnt vessel is 25-years-old and should ideally be on its third set of replacement fuel hoses. Without a maintenance log, how can we know? By the time visual inspection determines a fuel hose is brittle and is delaminating, the risk of failure is imminent.*

with the replacement part, tools and skills, the repair may take some time and not be well done. So often, a failure seems to occur at the worst time, putting the vessel and persons on board at risk.

## 2.1. Maintenance

The Australian Maritime Safety Authority (AMSA) website does provide information on maintenance plans for commercial vessels. The recommendations are a little high level without detail IMO. They do include the following.

- ❑ Reduced maintenance costs – By outlining a preventive maintenance plan, small problems can be caught before they turn into big failures and costly repairs.
- ❑ Extended asset life – Maintaining equipment and keeping it operating in good condition may extend its operational time, so it won't need to be replaced as often which can help save you money.
- ❑ Increased workplace safety – There is less chance of equipment failure which could harm someone or cause damage to other equipment.
- ❑ Improved workplace culture – Involve your crew in developing and implementing a maintenance plan, as well as undertaking preventative maintenance tasks.
- ❑ Decreased downtime – Unexpected machinery and equipment failures or accompanying crew injury can put your vessel out of operation, and you out of business.

Equipment and systems comprise many different parts. Some parts wear out or have a service life, either in operational hours and/or exposure to the elements. Parts wear out through abrasion, or rubber seals and hoses harden and become brittle, oils become acidic, metals corrode, sealants dry out. If parts are not replaced at a scheduled time, the chance



*Very corroded seacocks attached to old and brittle reinforced hose. Should either seacock or hose fail, the vessel may experience downflooding. If the bilge pumping system is not spec'd for continuous pumping, water ingress may result in partial or full sinking.*

of failure increases. Ultimately, the system (including critical systems such as propulsion or steering) may become unreliable or fail catastrophically. The result is a vessel that may no longer be capable of navigation, secure or able to protect the crew.

Inspection and replacement of parts at the end of their service life is recommended by manufacturers or by general marine industry standards. It is reasonable that inspection and maintenance should be done by a competent person. (This does not necessarily exclude the owner or operator.)

Definition of "competent" varies with the level of work activity. Levels of maintenance as part of a maintenance are a method of determining who does what; for example:

- ❑ Level 1 – field maintenance by the vessel operator;
- ❑ Level 2 – Routine logbook maintenance; and



*A very corroded anchor chain. It cannot reasonably be relied on to provide a secure anchoring. Failure of the anchoring system can result in vessel and third-party vessel damage, can result in injury. Basic owner routine inspections should have identified the problem and recorded it in the maintenance log as an urgent repair.*

- ❑ Level 3 – Refit replacement of end of service life equipment, say at 10-year intervals.

Marine surveyors need to identify any major problems and they generally expect that there will be some maintenance required. Of course, this will depend largely on the age of the vessel. And there is some expectation that the surveyor will identify maintenance items as well as any major defects. The problem is that we only see what we can see, inspections are visual and, unless there's some form of maintenance log and service history, it's very difficult to identify maintenance needs.

Equipment suppliers generally provide a maintenance schedule which identifies parts to be replaced after a certain number of operational hours or perhaps a number of years. The intention is that the equipment or system will run reliably and that preventive maintenance – including replacement of parts that wear



or degrade – will allow the vessel to continue reliable operations. What happens when a critical part or equipment fails on the boat? One cannot simply pull over and call the roadside-assist tow truck: the vessel may be days from a safe haven.

## 2.2. Seaworthy

Commonwealth Numbered Acts / NAVIGATION ACT 2012 (NO. 128, 2012) - SECT 23

Definition of seaworthy: A vessel is seaworthy if, and only if:

- a. it is in a fit state as to the condition of hull and equipment, boilers (if any) and machinery, the stowage of ballast or cargo, the number and qualifications of seafarers, and in every other respect, to:
- b. encounter the ordinary perils of the voyage undertaken; and
- c. not pose a threat to the environment; and
- d. it is not overloaded; and
- e. the living and working conditions on board the vessel do not pose a threat to the health, safety or welfare of the vessel's seafarers.

So, reading the above and anticipating the vessel was initially built to relevant marine standards, it appears reasonable the owner needs to ensure that the hull, equipment and machinery are maintained to the original build standards for the vessel to remain seaworthy.

## 3. Why does a recreational vessel need to be seaworthy?

Offences on New South Wales waterways – The registration of a vessel may be suspended or cancelled if the vessel is:

- unsafe or unseaworthy;
- found not to be a true vessel, and is being used as a wharf or pontoon; and
- deemed environmentally hazardous.



*A gooseneck fitting on a sailing catamaran mast. The rivets attaching it to the mast are failing. This is something that needs to be addressed before the vessel sails in strong winds. Regular Level 1 maintenance (ie, a deck walk inspection by the master) should have identified the problem. Should the fitting become detached, the vessel mainsail may become difficult to control, further damage to the sail, mast and rigging can occur, and crew or passengers can be injured.*

Mooring – visual suitability of vessels on moorings. Vessels moored on a private mooring are subject to a number of conditions.

Your vessel must be visually suitable for the bay and in a seaworthy condition, which means being capable of undertaking a voyage. Your vessel will only be deemed to be in a seaworthy condition if it is capable of undertaking a voyage.

## 4. What about Insurance: Can an unseaworthy vessel be insured?

### 4.1 Cover Exclusions

Insurance policies generally include cover exclusions if a vessel is not maintained in a seaworthy condition. Without appropriate maintenance, and when a failed part has led to further damage, the insurer may decline cover.

### 4.2. Service Life Adjustments

Where a claim is accepted, insurers generally loss adjust for

older items. The loss adjustment is based on the depreciation value based on industry knowledge and history of typical life expectancies for different categories. Knowing the life expectancy provides the owner with an expected service life and a time frame for replacement of critical items.

## 5. Responsibilities of the Master / Owner

AMSA provide general safety duties for domestic commercial vessels owners:

- Provide and maintain the vessel so that it is safe.

Should these duties be applied to recreational vessels in the form of recommendation?

Maintaining a vessel in a seaworthy condition is a legal requirement for the vessel owner and is required by the State Authorities and insurers.

Determination of “seaworthy”



*A very corroded regulator and hose for the gas system. This is a good example where surveyors can see a potential problem and advise the owner to seek specialist advice. Gas regulators are generally considered to have a marine service life of approximately 10 years and gas hoses five years.*



*A bulging cooling hose with a very corroded hose clamp well past its replacement date. Should the hose fail, the engine cooling system may fail and engine damage occur, resulting in a loss of power. A maintenance plan to inspect and replace could ensure that these items are in better condition.*

is often beyond the knowledge of the owner or operator.

The determination of seaworthy should ideally be independent and decided by a competent registered surveyor during a survey inspection to ensure no conflicts of interest. Surveyors then recommend further assessment by a specialist in the survey report should a potential problem be identified.

## 6. How does the boat owner maintain a vessel to ensure it is seaworthy?

The owner should ensure an appropriate scheduled maintenance plan and log. Repairs after equipment fails is reactive – they do not prevent failures. A marine surveyor, in consultation with specialist trades, can be engaged to provide a detailed maintenance plan.

The maintenance plan log needs to be managed by the owner and should include regular review, particularly prior to offshore

vessel operation. A vessel should be operated within its limitations, which may be imposed resulting from inadequate or pending maintenance repairs.

## 7. Service Life

Original equipment manufacturer (OEM) recommendations, based on experience and best practice, should be followed for reliable operation, along with specialist repairer advice, as they are familiar with which parts fail.

Let's look at insurer statistics from failure of equipment leading to a claim. Here are some examples of service life.

- Spars – 40 years.
- Standing and running rigging – 10 years.
- Sails – five to 20 years.
- Railing – 40 years; wires - 10 years.
- Canopies / Clears / Covers – seven to 10 years.
- Electronics – eight to 10 years.



*A very brittle and UV-damaged skin fitting long overdue for replacement. It is a potential source for down flooding. Defective items such as this should be identified from both deck inspections and 10-year haul-out refit.*

- Motors, components, ancillary equipment – 20 years.

Appropriate Marine Standards (eg. AS1799).

When a part or installation no longer complies to the vessel construction specification marine standard, it should be replaced or repaired; eg, corroded seacocks would no longer comply to the original specification.

## 8. Maintenance Items

Typical items for inclusion in a maintenance plan would include:

- Hull and Structure.
- Hull / Deck / Cabin – Structural Integrity and Corrosion / Hatches.
- Motors / Drive / Fuel / Cooling / Exhaust.
- Steering / Rudder / Thruster / Keel.
- Mast / Rig / Sails / Deck Gear.
- MOB / Lifelines / Boarding Ladder.
- Electrical / AC & DC / Genset / PV Solar.
- Gas.
- Plumbing / Bilge Pumping / Tankage.
- Instruments / Radio.
- Anchoring / Mooring.

## 9. Maintenance schedule and log

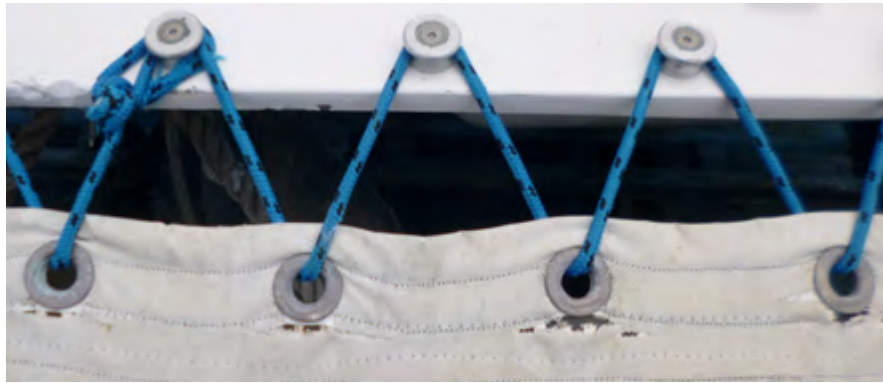
1. What does it look like?
2. Who can compile the schedule?
  - Vessels have complex systems.
  - What about OEM service bulletins?
  - Co-ordination of OEM servicing.
  - Standard format easy to review.
3. How is a Maintenance Log managed?

These are questions for members to consider and provide recommendations.

## 10. Responsibilities of the marine surveyor

Boat owners and buyers rely on the surveyor's report to





A trampoline deck on the full deck of a sailing catamaran. Here we can see the cringles pulling through the fabric and tearing at the stitching. The trampoline is clearly in need of repair to ensure it can be used safely. Failed trampolines have led to drownings.



The chain plate bolts on a sailing yacht with some visual signs of corrosion. We can be pretty sure there's some crevice corrosion happening along the shank of the bolt. Deck fastenings should be re-bedded every 10 years to ensure the stainless steel is sealed from water ingress and potential corrosion.



A battery with multiple connections to the terminals. Marine surveyors may be aware that this is not good practice and would recommend a specialist marine electrician be consulted.



A power boat that is partially sunk due to an exhaust hose being incorrectly fitted.

identify issues that could result in the vessel being not seaworthy. Inspections are visual. Surveyors need to include a review of the maintenance log before advising the vessel appears in good condition and well maintained.

### References

- ❑ AMSA planned maintenance guidelines

<https://www.amsa.gov.au/planned-maintenance-DCV>

- ❑ Commonwealth Numbered Acts

[http://www5.austlii.edu.au/au/legis/cth/num\\_act/na2012123/s23.html](http://www5.austlii.edu.au/au/legis/cth/num_act/na2012123/s23.html)

- ❑ NSW State Regulations

<https://www.nsw.gov.au/driving-boating-and-transport/using-waterways-boating-and-transport-information/mooring-type-licence-and-fees/suitable-vessels>

<https://www.nsw.gov.au/driving-boating-and-transport/waterways-safety-and-rules/rules/offences>

- ❑ AMSA General safety duties for domestic commercial vessels

<https://www.amsa.gov.au/vessels-operators/domestic-commercial-vessels/general-safety-duties-domestic-commercial-vessels>

**Mike Smith**  
Marine Surveyor / Assessor  
Marine & Leisure Assess  
Australia P/L

# The life of a seafarer

THE life of a seafarer is a unique and often challenging journey that takes individuals far from the comforts of land into the vast expanse of the world's oceans.

Seafarers play a crucial role in global trade, transportation and exploration, yet their experiences are often shrouded in mystery. In this article, we will explore the life of a seafarer, shedding light on the demands, rewards and adventures that come with a career at sea.

The challenges of life at sea include:

- ❑ Isolation: Seafarers spend extended periods at sea, often far from land and loved ones. This isolation can be both mentally and emotionally challenging;
- ❑ Watchkeeping: Seafarers must maintain a constant watch to ensure the safety of the ship and crew. This can be physically and mentally demanding, especially during bad weather or in high traffic areas;
- ❑ Cramped living conditions: Seafarers must adapt to living in small spaces with limited privacy and amenities; and
- ❑ Weather: Seafarers must be prepared to face extreme weather conditions, including storms, high winds and heavy seas.

The rewards of life at sea:

- ❑ Adventure: Seafarers have the opportunity to explore the world and visit exotic locations that are inaccessible to most people;
- ❑ Camaraderie: Life aboard a ship is a world unto itself, with its own routines, challenges and camaraderie. Seafarers form close bonds with their fellow crew members and develop a strong sense of teamwork;
- ❑ Personal growth: Seafarers must be self-reliant and

adaptable, which can lead to personal growth and development; and

- ❑ Career opportunities: Seafaring offers a wide range of career opportunities, from entry-level positions to senior management roles.

In conclusion, the life of a seafarer is not for everyone, but for those who are drawn to it, it can be a rewarding and fulfilling career. Seafarers face unique challenges and adventures that are not found in any other profession.

They form close bonds with their fellow crew members and develop a strong sense of



teamwork. Seafaring offers a wide range of career opportunities, from entry-level positions to senior management roles.

The life of a seafarer is a journey that is both challenging and inspiring.

**Benjamin Samuel**  
AIMS member





# Managing your risks as a consultant

THE transition from an employee to an independent consultant can be an exciting one: new opportunities, independence and control over your working future. But it can also be a daunting one: new risks, signing contracts, personal accountability and personal liability.

A range of new questions arise:

- can I be sued?
- do I fully understand what I am signing?
- what happens if I get sick?
- is my house safe?
- how can I protect myself?
- what about when I retire?

Insurance is one of the key pillars of risk management, allowing a consultant to transfer their risk away from a personal liability to their insurer. With this in mind, the primary value to the consultant is protection. Insurance is the one component of your business you always want to have but never want to use. This becomes even more important in consulting practices, especially for sole traders or small businesses, where it is not just the business that needs protection but also the personal assets of the individual consultants.

In addition to your own protection, more and more frequently insurances are also becoming a commercial reality. In an increasingly litigious society, many businesses are quite staunch in their insurance requirements for all third parties they engage and will not even allow you on their site without proof of insurance. So, irrespective of your personal view of your risk profile, to be in business and to win contracts there is an underlying commercial reality that insurance is going to be a requisite item.

As a profession, however, it is

prudent for all businesses to carry insurance. To operate without insurance cover is to expose your clients to unnecessary risk, which may deter them from using your services. As a consultant, your utilisation of appropriate insurance offers risk management and protection to your client as well. In the event of a claim arising, both you and your client would much prefer an insurer involved and able to settle a claim, than civil litigation that involves whether or not you have to sell your house to pay for the loss you allegedly incurred.

For a profession as a whole to carry insurance adds a level of accountability and credibility, to ensure the protection of the client or consumer, and this is why a range of other consulting professionals (eg, Marine Surveyors, Accountants, Real Estate Agents and Mortgage Brokers) actually have insurance as a compulsory part of their licensing regime.

## What insurance?

Especially when starting a new business, keeping costs down is always important, so understanding the priority insurances to consider will assist in best allocating your expenditure. Insurance for consultants come under two key areas:

- third-party covers that are designed to indemnify someone else if you cause them to suffer a loss (eg, design errors); and
- first-party covers that are designed to indemnify you if you suffer a loss (eg, someone steals your laptop).

Third-party covers are often mandatory in consulting contracts and the products that are key to a consultant's business include:

- professional indemnity – the

key product; your advice is your core business and therefore your core risk; and

- public liability – required to get on site, for accidental bodily injury or property damage.

First-party covers usually are not large or complex, as consulting businesses are generally portable and asset-light but some key areas for a consultant to be aware of as the most frequently required insurance products are:

- portable property – can include laptops and cameras, as well as surveying equipment;
- corporate travel – both interstate and overseas, includes medical as well as luggage;
- workers compensation – statutory product for injury to employees;
- office insurance – if you do have a static location that you work from; and
- income protection – consultants do not get sick leave so this becomes more important.

## Signing contracts

Will your professional indemnity insurance offer cover when it counts? This can all boil down to what you sign. Insurance does not offer cover for any assumed or contractual liabilities where you may sign up to additional risks above and beyond common law provisions – and to be fair to the insurance industry that is not an unreasonable stance to take.

There are some key areas of risk to keep a look out for where businesses attempt to create one-sided contracts that pass off a disproportionate level of risk on to the consultant:

- any contract that assume “all” risk and “all” losses;
- waiving subrogation rights;



Greg Hansen.

- waiving proportionate liability rights;
- “hold harmless” clauses;
- a failure to limit liability to the actions of the consultant;
- clauses requiring work to be completed to a “high” or the “best” standard;
- warranty and guarantee clauses.

Not only are these contracts not fair and equitable between a consultant and their client, but also create a significant commercial risk to the consultant. If a breach of contract is alleged above and beyond what your insurance may cover, the



Are you insured for theft of laptops and cameras?

additional liability goes back to the consultant directly and will be coming out of their own pocket.

Things like hold harmless agreements, or waiving subrogation or proportionate liability rights, all prejudice your insurer as they cannot pursue any contributory negligence, which will impact the extent to which your insurance policy is able to adequately protect you. Consultants are often providing a part of a much larger contract with many parties involved, so the difference between you only being required to pay for your percentage of the loss versus being required to pay for the entire loss can easily be tenfold.

When reviewing a contract for potential conflicts with insurances, it is always also advisable that the consultant seeks independent legal advice as to the actual interpretation and application of the contract terms.

## Sub-contracting and insurance

If you are being engaged on a sub-contract basis to work

with your client jointly on a larger project, never assume you are being covered by their insurance. Their insurance will likely protect them for the work you are doing on their behalf, but it may not extend to cover you personally. The risk is not that you will be sued by the end client (as they will likely engage the principal contractor), but that the principal contractor's insurer will bring you into a claim via a subrogation action where they believe you have contributed to the loss.

It is possible for insurances to extend to cover sub-contractors, but if your client offers this always seek confirmation in writing. A common misconception is that if your client does not require you to have insurances this is because you are being protected by their insurance – this is rarely the case so beware.

Turning this scenario around, if you need to engage a sub-contractor to assist you on a large contract or contribute additional services outside of your area of expertise, always be aware of the risks associated. Your contract with your client may require you to guarantee any sub-contractors you use have the same level of insurance as you, and to mitigate any risk to your business it is advisable that you seek evidence of your sub-contractor's insurance policies just as you are required to evidence your own.

When a large loss arises, courts can often look to whoever has insurance in place to pay for a loss so ensuring that your sub-contractors carry their own insurance is a critical component of your own risk management strategy, as you do not want to be left having to pay for the loss caused by someone else.

## Retirement risks?

A common question is “Once I stop working, can all my insurances be cancelled?”

The correct answer is that most



policies can but professional indemnity cannot.

Professional indemnity works on a “claims made” basis which means you require active insurance at the time the claim is made as opposed to when you gave the advice. This differs from most other insurances which work on an “occurrence” basis and your insurance just needs to be active when an event occurs. As a result, in the situation that you cease consulting, whether through returning to employment, retiring or selling the business, consideration has to be given to the potential longevity of the risk attached to your advice.

Businesses are aware of this too, though they also know professional indemnity works on a claims made basis and consulting agreements will not only say that professional indemnity is required but it will also stipulate a duration after the completion of the contract that cover must be maintained for. This duration is often

between three and seven years (using statute of limitations as a benchmark), however durations as long as 10 years have been seen in client contracts. This is a really important planning piece, especially if you are only intending on doing one or two short term contracts as you might be signing up to a requirement to purchase a minimum of four years’ cover. If you are planning on costing insurance into your fees for the job, or if you are planning on ceasing consulting soon, be especially wary of these clauses and factor in added costs accordingly.

Thankfully, however, the insurance industry does handle these risks well. When no active advice is being given and cover is only required for past work, insurers will offer discounted coverage to reflect the decreasing risk and will also allow clients to purchase a single policy that runs for multiple years – an especially helpful offering if you are selling your business, as you will have access to a cash flow to fund the multiple-year coverage.

### Managing your risk

As a consultant, clients will engage you to offer them a specialist service they cannot do themselves. Insurance is no different. There are too many areas that can cause issues to consider arranging your own insurance as being effective risk management.

A good insurance broker should not only be able to arrange you appropriate policies that cover your business activities, but they should also be able to explain why the insurance is appropriate, understand the key risks to your industry, review your contracts to identify any gaps or uninsured risks and be a trusted advisor to your business.

Do not hesitate to contact Greg on 03 9835 1310 or by email at [greg@abcountrywide.com.au](mailto:greg@abcountrywide.com.au) with any questions or queries in relation to your insurance needs.

**Greg Hansen**  
Director  
Austbrokers Countrywide

## The significance of self-regulation in professional fields

IN Australia, the realm of professional practice is governed by a dual framework, incorporating legislative regulation and self-regulation.

Government-mandated regulation provides licensed professionals with exclusive privileges, permitting only those affiliated with recognised bodies to engage in their respective fields, thus safeguarding professional titles.

Simultaneously, self-regulation extends the advantages of regulation to government, regulatory bodies and consumers without the necessity of legislative intervention. Self-regulation, while a privilege, places a unique responsibility on overseeing organisations: their commitment to act in the best interests of the public rather than solely championing the profession itself.

The overarching objective of regulation, whether through legislation or self-regulation, is to guarantee public safety, sustain public trust in the profession and establish rigorous professional standards. It distinguishes true professionals from mere practitioners.

Entities entrusted with the self-regulation of a profession must ensure the establishment of a robust regulatory framework that remains agile in adapting to evolving landscapes, preferably benchmarked against external standards. A failure to fulfil this responsibility may necessitate government intervention through legislative regulations. Recall the media attention surrounding sports scientists in professional sports following the Australian Crime Commission’s year-long investigation into organised crime and drug use in

sports. This inquiry underscored the absence of quality assurance and regulation within these professions, ultimately leading to the implementation of self-regulating mechanisms to bolster the industry.

Self-regulation entails the implementation of standards for the profession, encompassing criteria such as entry-level competencies, the development and enforcement of codes of conduct and professional practice, complaints and disciplinary processes and requirements for ongoing professional development, recency and resumption of practice, in addition to maintaining indemnity insurance. Furthermore, it provides guidance on appropriate professional practice, possibly through a scope of practice.

It is important to recognise that regulation, whether legislated or self-imposed, is a costly endeavour due to the governance and oversight mechanisms required. While economies of scale naturally emerge as a profession expands, individuals often scrutinise the necessity and cost of these mechanisms. It is pertinent for professionals to perceive registration as a form of insurance; one might not realise its value until a situation necessitates it.

Another advantage of self-regulation is that professionals can actively participate in shaping the rules and standards of the registration scheme. Government regulation remains under the complete jurisdiction of governmental bodies and their authorised entities, with rules and standards aimed at representing the public’s interests rather than those of the profession.

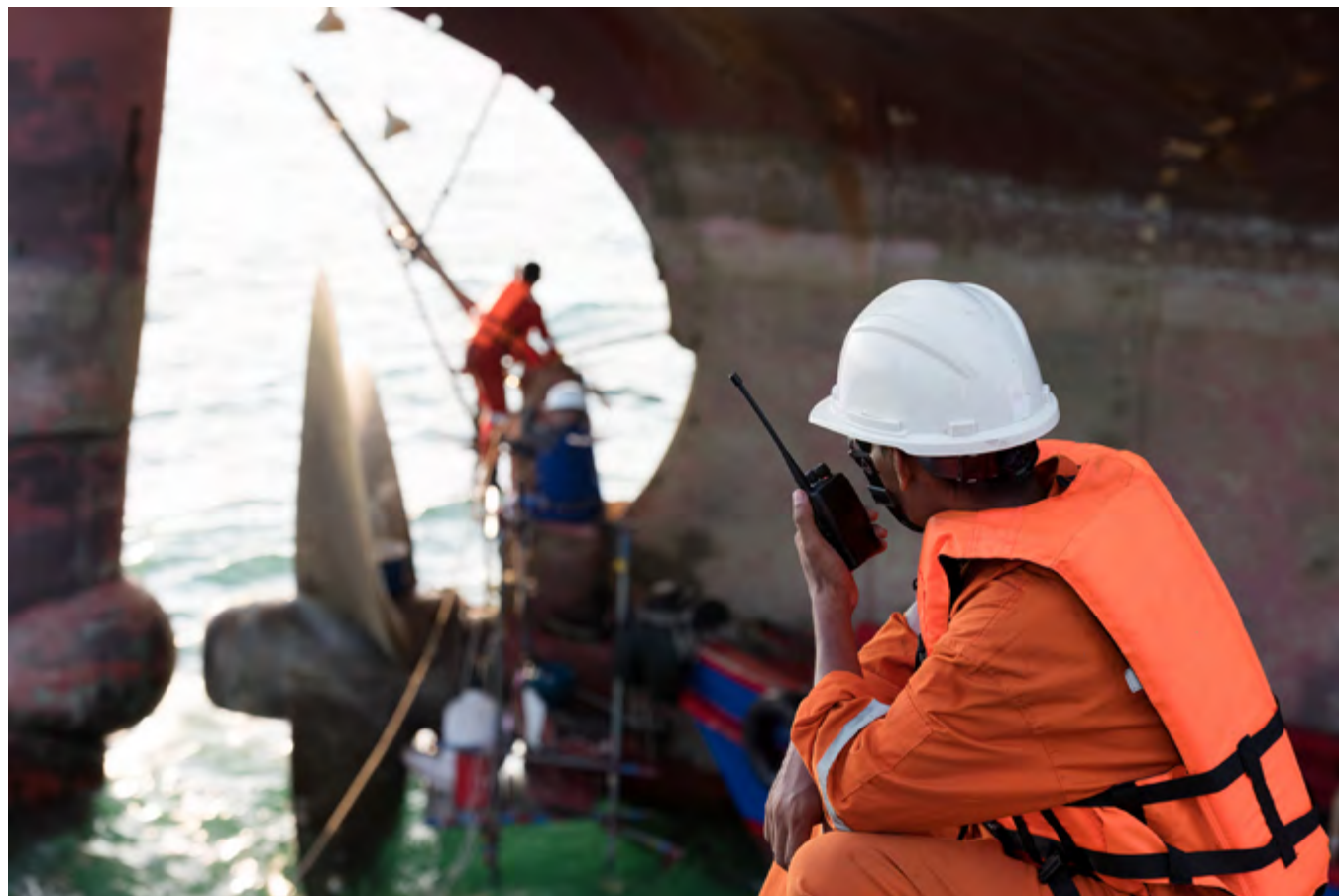
The employment prospects of many professionals, as well as their access to contracts, funding, and insurance, may often hinge on their professional accreditation, certification or registration. As public awareness and expectations grow, they increasingly assume that professionals operate under some form of quality assurance – much like their doctor’s registration, their accountant’s CA qualification, a builder’s license or their child’s teacher being registered with the relevant board.

For numerous associations, providing a registration scheme has been considered a member benefit. Nevertheless, it does not restrict an individual’s freedom of association. Over the past decade, professional associations have begun to decouple their regulatory schemes from membership, enabling non-members to participate in an industry registration scheme.

Many professionals may question or fail to grasp the necessity of personal registration under any such scheme. To underscore the importance of regulation, one must contemplate the potential consequences of the absence of a registration scheme in their profession. Would employment opportunities remain as extensive? Might the profession become susceptible to rogue practitioners? Could the profession’s reputation experience an upswing?

Regulation, whether through legislative mandates or self-regulation, plays an indispensable role within the professional realm. It serves as the cornerstone for ensuring that professionals remain accountable for their actions and conduct, ultimately upholding and elevating public confidence in the profession.

**Anita Hobson-Powell**  
Chair  
National Alliance of Self-Regulating Health Professions





# Australia's ageing workforce

AN ageing workforce is a cross-industry concern and worth consideration. The Australian Research Council Centre of Excellence in Population Ageing Research (CEPAR) is a unique collaboration between academia, government and industry, committed to delivering solutions to one of the major economic and social challenges.

Older Australians are a critical part of the workforce and economy. The share of workers aged 55+ has more than doubled between 1991 and 2021 – from 9 per cent to 19 per cent – led by women re-entering work in mid-life and delaying retirement. The ageing of the workforce is expected to continue, but at a slower rate. In fact, without further interventions, workforce ageing will be slower than that of the overall population.

This is partly because the large cohort of Baby Boomers will retire and partly because increases in the labour force participation of older workers is decelerating. More ambitious mature-age participation rate targets are possible, could largely offset declines in labour supply and could be expected to yield economic gains.

Older Australians are ready. Defined here as those age 55 – 64 or 55+, older Australians today are healthier and more educated than ever and willing to work. This vast resource of potential workers needs to be well deployed. Compared with leading countries, the Australian labour market scores poorly on mature worker outcomes.

Employers need better strategies to seize the opportunities that an older workforce presents and turn it to their competitive advantage. Failing to adapt would be costly to individuals, firms and society. Governments can help with a more strategic approach, continuing to support health, mainstream lifelong learning, and address shortcomings related to regulation, incentives and labour market programs.

You can access the CEPAR brief here: <https://cepar.edu.au/resources-videos/research-briefs/australia-ageing-workforce-research-insights>

Below are some key findings from the CEPAR research brief.

An untapped talent pool that is older, healthier, and more educated: By 2050, those aged 55+ are expected to make up about 40 per cent of the adult Australian population. If they are to thrive and prosper in the labour market, then Australia needs to do better to dismantle remaining barriers related to health, care, training, discrimination and work conditions, and to ensure that employers have the right strategies to recruit, deploy and retain them.

Historic surge in participation rates has its genesis in the past and holds lessons for the future: A greater potential supply of labour from older people is not enough. It also requires an increase in demand for such labour. Historic increases in mature-age labour force participation were driven by favourable economic conditions, which saw people both re-enter

work in mid-life and, decades later, delay their retirement. This was particularly the case for women. It indicates that: (1) labour demand is important; and (2) pathways to recruit and retain workers from mid-career are important.

As rates of increase in mature-age labour force participation slow, ambitious targets are needed: The rate of increase in participation has more than halved since the mid-2000s. Without interventions, the ageing of the workforce will be slower than ageing in overall population. If participation rates resembled those of New Zealand and 55 to 64-year-olds had similar hours to 45 to 55-year-olds, declines in share of workers per capita would moderate and GDP increase by 2050 could be equivalent to raising productivity by 0.3 per person.

Older workers remain exposed to employment risks: Short-term shocks such as the pandemic recession can affect older workers disproportionately: they don't lose jobs as readily as the youngest workers but they tend to take longer to find work after job loss. Again, low labour demand means more of them retire. Long-term structural change can also raise the risk of leaving older cohorts behind unless they receive the right support, including lifelong learning.

Health and education has improved but older Australians continue to face training, care and ageism barriers: Nearly 80 per cent of people aged in their early 60s said that their health was good or excellent –



equivalent to people in their 40s thirty years ago. And a quarter of 55 to 64-year-olds hold a degree, more than double the rate of 45 to 54-year-olds thirty years ago. But work-related training peaks in mid-career and then declines.

Employers need better strategies to respond: An expanding literature provides guidance on how employers can better recruit, deploy and retain older workers. This includes the helpful 3i framework, developed by CEPAR researchers, which proposes a series of strategies to help employers better include workers over the life cycle, individualise their responses to different circumstances and set up processes that better integrate workers of all ages in an organisation. Governments need to support employers with their own multi-pronged, cohesive strategy.

Explaining the surge and slow-down in mature employment since 2000: Mature-age employment change was driven by a cohort effect, with nearly 800,000 additional workers aged 50+ between 2000 and 2015.

Age-biased technological change: Such change can affect older people negatively to the extent that skills aren't updated. But even with updated skills, they face negative tech-related stereotypes.

This is positive, because historic data shows age affects impact of retrenchment: 22 per cent of those aged 55+ gave up looking for work one year after an unemployment spell compared with 7 per cent of 20-year-olds.

Economic impacts: Demographic change could see declining workforces across APEC, including in China. The Chinese economy may not catch up to the United States. There is evidence that older economies are more productive.

Discrimination: 15% of older Australians with a disability reported discrimination. Almost half of people indicated that ageism is common and that, in the workplace, older workers were more likely to be made redundant and less likely to be promoted. Older workers are often excluded from knowledge-sharing processes, so companies lose their intellectual capital. Almost 40 per cent of respondents aged 55 to 64 reported that their organisation offered little or no skill training, regardless of age. This contrasted with the 23 per cent of workers aged 18 to 44. Various statutes prohibit workplace age discrimination. But tick-box compliance may not be enough.

Care responsibility and flexible work: One third of people aged 60 to 64 and half of women that age were involved in some type of caregiving. The most significant recent policy to help workers over 55 is the establishment of a new right to request flexible working arrangements. Two thirds of participants reported involuntary career interruptions due to caregiving. Caregiving and career interruptions are also common for single women without children. A customised approach to flexible work is required.

Insecure work and involuntary retirement: Chronic job insecurity leads to an increase in neuroticism and a decrease

in conscientiousness and agreeableness, even after testing for reverse causality. Insecure work and involuntary retirement are shown to be related.

Employer strategies: A series of evidence-based strategies, summarised in the new 3i model (include, individualise and integrate), are available to help employers manage a multi-generational workforce. This includes ways to design jobs to be more Stimulating, Mastery-oriented, Agentic, Relational and Tolerable.

Include: Many employers fail to create an age-inclusive climate. For example, compared with younger workers, those aged 55 to 64 did not believe HR practices were age-inclusive, thought training was not provided regardless of age, and report that their employer did not offer adequate leave for caring for older adults.

Individualise: Perceived availability of individualised HR practices is low, particularly for workers aged 55+. Older women rated their job quality well but marked down their jobs for restricting their ability to act with agency. Older men didn't think their workplace had "challenging and meaningful new roles or work assignments".

Integrate: Workers reported low to moderate levels of integrative practices. Older workers said they were less likely to be the source of knowledge and found it hard to obtain knowledge and advice from co-workers.

CEPAR research brief: <https://cepar.edu.au/sites/default/files/cepar-research-brief-ageing-workforce-australia.pdf>

Rafal Chomik and Fatima Jamal Khan  
ARC Centre of Excellence in Population Ageing Research



# Managing psychosocial risks: How do you identify them?

AS we navigate the challenges of the modern workplace and the new changes in Australian Workplace Health and Safety jurisdictions – such as in Queensland with Managing the risk of psychosocial hazards at work, Code of Practice (2022) – managing the psychosocial risks has moved from something that was “sort of covered” under workplace health and safety laws (and other jurisdictions) to a direct and primary obligation for employers.

## Psychosocial Risks

Psychosocial risks are risks that arise from the interaction between people and their work environment.

It is defined as a risk to the health or safety of a worker that:

- ❑ arises from or relates to:
  - the design or management of work;
  - a work environment;

- plant at a workplace; or
- workplace interactions or behaviours; and
- may cause psychological harm, whether or not the hazard may also cause physical harm.

Some examples of what may result from these risks include but are not limited to:

- ❑ work-related mental illness and stress potentially caused working long hours and workload pressure;
- ❑ workplace bullying and harassment caused by physical or verbal abuse; and
- ❑ discrimination and differential treatment on factors such as age, race, gender, disability or sexual orientation.

For more information, check out [Psychosocial Risks A New Dawn For Work Health and Safety In Queensland](#).

## How to identify them?

The Managing the risk of psychosocial hazards at work, Code of Practice (2022) provides some guidelines to employers to assist in identifying psychosocial risks and hazards. These are based around the notion of consultation and this can be extrapolated to a number of practical steps, including:

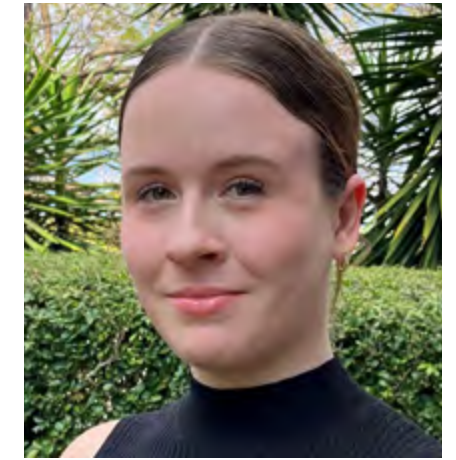
- ❑ increasing communications from manager to staff members;
- ❑ observing behaviour of employees, especially in areas where traditionally the employer has had a lot of complaints, staff turnover and retention problems;
- ❑ undertaking a staff survey to identify hazards to psychological wellbeing and safety – data can be useful in the identification process;
- ❑ undertaking position reviews;
- ❑ undertaking work environment assessment;
- ❑ reviewing policies and procedures;
- ❑ review absenteeism and



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- employee leave and identify any patterns that may emerge from the analysis.
- ❑ reviewing external provider programs such as employee assistance programs and counselling services to ensure they are fit for purpose;
- ❑ undertake training for people managers; and
- ❑ overall executive priorities being commitment by leadership and management psychosocial safety teams to wellbeing.

## Some examples of psychosocial risks (6 of them)

Psychosocial risks are those that relate to the psychological and social environment in which employees work. These can include factors such as:

1. High time or low job demands – unreasonable pressures, unachievable deadlines, demanding work hours or shift work.
2. Poor or lack of support – poorly maintained or inadequate access to supervisory support, limited opportunities to engage with co-workers during the work shift.
3. Low role clarity – a worker being given work conflicting information about standards and performance expectation.
4. Low reward and recognition – no fair opportunities for career development.
5. Remote or isolated work, fly-

in, fly-out (FIFO) workers and workers who spend a lot of time travelling, workers working alone from home or socially isolated away from home over lengthy periods of time.

6. Bullying – repeated incidents of practical jokes, belittling or humiliating comments.

These risks can have a negative impact on employee wellbeing and lead to increased stress levels, anxiety, depression, and other mental health illness and problems. Identifying that the workplace has a lack of psychological safety will likely lead to higher risks.

If not managed effectively, psychosocial risks can also result in absenteeism, presenteeism and turnover from a practical commercial level.

From a legal perspective, this can include prosecutions leading to fines being sought and even potentially used as a “workplace right” being utilised in other jurisdictions, the main one being General Protections.

Once potential psychosocial hazards have been identified, there are a number of steps that can be taken to manage them. These include:

- ❑ developing policies and procedures on managing psychosocial risks and hazards at work;
- ❑ providing training for

managers on how to identify and support employees who are at risk; and

- ❑ identifying suitable third parties to assist with identifying the risks and taking the next steps to assess, review and put control measures in place.

This area is relatively new and will require some forethought on what steps need to be taken right now. There is major difficulty in managing psychosocial risks and assistance may be required.

Jonathan Mamaril leads a team of hand-picked experts in the area of employment law who focus on educating clients to avoid headaches, provide advice on issues before they fester, and when action needs to be taken, and there is a problem mitigating risk and liability.

With a core value of helping first and providing practical advice, Jonathan is a sought-after advisor to a number of employers and as a speaker for forums and seminars where his expertise is invaluable as a leader in this area as a lawyer for employers.

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# A new era of industrial law is upon us: Deciphering the “Closing Loopholes Bill”

THE federal Labor Government is bringing in a new age of industrial law, bringing in substantial changes to the *Fair Work Act 2009* (Cth) (FW Act) through the proposed *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (Cth) (Bill). In summary, some of the proposed changes include:

- ❑ amending the definition and some terms and conditions for casual employees;
- ❑ “same job, same pay” provisions for labour hire providers;
- ❑ the test to decide whether a person is an employee versus a contractor;
- ❑ regulating the gig economy and transport workers; an expansion on multi-enterprise agreements; introducing a federal wage theft regime;
- ❑ changes to the federal work health and safety regime;
- ❑ increased civil penalty provisions for any breaches of the FW Act; and
- ❑ increasing delegates rights.

In this article, we will take a deep dive into some of these proposed key changes and what you as an employer may want to be aware of.

## Casual employment

If the Bill passes in its current form, then starting 1 July 2024 the definition of a “casual employee” will be altered. Employers will need to consider all aspects of the working relationship to decide if the employment is truly characterised as casual.

The employment contract will now be only one factor to be considered when deciding if an employee is truly casual. Factors such as likely continuity of service, consistency of hours, nature of the business, the work performed and working patterns are just a few of the factors to be considered.

Casual conversion will be applicable after a six-month period as opposed to the existing 12-month period. This is except for small businesses (less than 15 employees), which are exempt from this rule.

Any disputes relating to casual employments can be referred to the Fair Work Commission (FWC) for arbitration or in small claims proceedings. Unreasonably mischaracterising an employment relationship as casual (and related conduct) will be subject to civil penalties for a breach of the FW Act.

Employers are encouraged to be mindful of the length of service of their employees and the nature of the work performed as 1 July 2024 approaches.

## Labour hire: same job, same pay

This Bill will require labour hire providers to pay employees at minimum and equivalent rate of pay as the host business’ own employees. There are limited exemptions to this requirement, namely:

- ❑ labour hire agreements for three months or less; and
- ❑ small labour hire businesses (less than 15 employees).

If these requirements are not followed and the employer is not subject to an exemption, employees and their unions may apply for a “regulated labour hire arrangement order” in the FWC.

Penalties may apply if an employer does not comply with an order, a host fails to provide pay information to the employer or if an employer attempts to avoid the application of an order (such as new labour hire arrangements every three months, changing employees to independent contractors, etc).

## Employee vs contractor

In determining whether a person is an employee or contractor, the totality and substance of the relationship needs to be examined or applying the previous “multi-factor” test. This is to remedy the recent High Court authority which provided that the written contractual terms take supremacy of the form and substance of the relationship in situations where there is an absence of any alleged sham arrangements.

Whether an employment relationship exists will be defined not only by contractual terms but also by looking at how the employment is performed in practice.

Building from this, the test for misrepresenting employment (sham contracting) has been changed against the employer’s favour, from “recklessness” to the new test of “reasonableness”. The burden of proof will now be on the employers to establish there was a “reasonable belief” the relationship was a true contracting arrangement. These changes will be in effect from the day following the royal assent of the Bill.

Employers are encouraged to be wary of the nature of their contractors’ work and seek legal advice if there are concerns the new changes may affect their business.

## Transport workers and the gig economy

The Closing Loopholes Bill further delves into the realm of independent contractors, particularly those working within road transportation and digital platforms, aka the “gig economy”.

If the Bill as proposed passes, from 1 July 2024 the terms “employee-like worker” (for gig



economy workers) and “regulated road transport contractor” for the transport industry will be introduced, creating a class of workers who can fall under a “minimum standards guideline” that may be made by the FWC.

Under these proposed amendments, the FWC will be empowered to:

- ❑ make orders setting minimum terms and standards to these workers (such as working hours, payment terms and record keeping, etc); and
- ❑ approve collective agreements for gig economy and transport workers.

Additionally, wider workplace rights protections would become available to these workers and potential reinstatement and compensation may become available to workers earning less than a high-income threshold.

## Enterprise agreements

Enterprise agreements are to replace a multi-employer agreement during its nominal term if, under a modified better-off-overall-test (BOOT), employees are better off overall, under the new agreement than the old multi-employer agreement and the underlying award/s.

## Wage theft

From the outset, it is important to note that the offence of wage theft would apply to amounts that are due under the FW Act and

industrial instruments and not under contracts of employment.

Queensland and Victoria currently have wage theft laws, however this offence will be made federal, with substantial penalties under this Bill. If found guilty, offending corporations are liable to incur a fine of (whichever is the greater amount):

- ❑ three (3) x underpayment amount; or
  - ❑ \$7,825,000 fine.
- Offending individuals may face:
- ❑ \$1,565,000 fine; or
  - ❑ maximum 10 years’ imprisonment.

It is imperative to keep in mind that the wage theft offence will only arise if the underpayment is intentionally done by the employer. Moreover, the “Voluntary Small Business Wage Compliance Code” offers small businesses some aspects of protection. If signed up to and complied with, the Fair Work Ombudsman (FWO) will be unable to pursue further regulatory action against the employer.

The FWO will also have authority to set up “cooperation agreements” with employers to incentivise them to voluntarily disclose any under-payments. During the duration of the agreement, the FWO is prohibited from pursuing criminal charges against the employer or the

specific misconduct that is the subject of the agreement.

## Civil penalty provision increases

The maximum civil penalty that would apply to a single contravention of the FW Act, such as for a breach of a modern award or enterprise agreement, would increase to \$939,000 for a corporation and \$93,900 for an individual. This is a significant increase on the current maximum penalties that apply for a single contravention.

## Rights of union delegates

The rights of union delegates in the workplace are set to expand if the Bill is given royal assent.

Namely, union delegates within the workplace will be given the express rights to:

- ❑ represent the industrial interests of current and potential union members;
- ❑ have reasonable communication with current and potential members;
- ❑ gain access to the workplace and its facilities; and
- ❑ have access to paid delegate training during work hours. (Note: small businesses are exempt from this requirement.)

It is prohibited for employers to deny interactions with union representatives at the workplace, provide them with false or reckless information intentionally or without care, or impede, hinder or prevent a delegate’s right to carry out their responsibilities. Violation of these rules can result in civil penalties.

Employers are encouraged to remain wary of these new obligations towards union delegates and seek legal advice where needed.

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