MARITIME INDUSTRY AUSTRALIA LIMITED

Independent Review of Domestic Commercial Vessel Safety Legislation and Costs and Charging Arrangements

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Phase 2 – Cost and Charging Arrangements

Draft Report and recommendations consultation

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About MIAL

Maritime Industry Australia Ltd (MIAL) is the voice and advocate for the Australian maritime industry. MIAL is at the centre of industry transformation, coordinating and unifying the industry and providing a cohesive voice for change.

MIAL represents Australian companies which own or operate a diverse range of maritime assets from international and domestic trading ships; floating production storage and offloading units; cruise ships; offshore oil and gas support vessels; domestic towage and salvage tugs; scientific research vessels; dredges; workboats; construction and utility vessels and ferries. MIAL also represents the industries that support these maritime operators – finance, training, equipment, services, insurance and more. MIAL provides a full suite of maritime knowledge and expertise from local settings to global frameworks. This gives us a unique perspective.

We work with all levels of government, local and international stakeholders ensuring that the Australian maritime industry is heard. We provide leadership, advice and assistance to our members spanning topics that include workforce, environment, safety, operations, fiscal and industry structural policy.

MIAL's vision is for a prosperous Australia with strong sovereign maritime capability.

MIAL's overarching position concerning maritime policy in Australia is that we ought to have a sustainable, viable maritime industry. This activity can occur anywhere – coastal, offshore and international. This maritime activity should encompass anything – freight, tourism, passenger movement, port and harbour services, offshore oil and gas, construction, scientific/research, essential services, and government services.

MIAL is an advocate for a fiscal and regulatory regime that makes it attractive for shipping and maritime businesses to exist in Australia and affords those Australian businesses every opportunity to compete for work and participate in maritime activity worldwide.

Executive Summary

MIAL appreciates the opportunity to comment on Independent Review of Domestic Commercial Vessel Safety Legislation and Costs and Charging Arrangements (Phase 2 – Cost and Charging arrangements) and to meet with the panel for discussions around the consultation.

As we have emerged from the transition period to a wholly nationally regulated maritime industry, the funding requirements of the regulator come into account; how much do they need? Who should pay? How many staff do they need to adequately conduct the business of the regulator?

MIAL has formed the view, that:

- parity with other national regulatory regimes such as aviation;
- the role of the DCV industry in the community and the public good that a thriving industry provides
- the level of costs being incurred that are specific to government and accordingly are not reflective of genuine market costs,

justify the position that the recovery of regulatory costs should be partial, with the remaining appropriation reflecting the benefit that the industry provides to the Australian community.

Under this principal there is a reasonable expectation that all domestic commercial vessel operators will to a degree contribute to the funding of the regulator in respect to its regulation of the domestic commercial vessel industry. MIAL also recognises the government is obligated to abide by its Charging Framework, with the framework helpfully set out in the consultation aid.

To some degree, it is difficult for MIAL to advocate for a specific framework in the absence of phase one of this independent review being finalised. There are a number of proposals within that review which may, structurally determine one cohort of domestic commercial vessels being subject to greater regulatory oversight than others. Based on a user pays principle, this would then entail such a cohort paying a higher proportion for the resourcing of the regulator.

Introduction

The Australia Government has committed to an independent review of Australia's domestic commercial vessel safety legislation and its costs and charging arrangements (Review). The review will by necessity examine the National System for Domestic Commercial Vessel Safety (National System) and the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law). The independent Review has advised stakeholders that the review consists of two distinct phases. This submission made on behalf of MIAL addresses the second phase of the review in relation to whether costs and charges out be payable (and if so on what basis) the domestic commercial vessel sector.

There is no question that there is a significant cost attached to the regulation of commercial vessels, to ensure that these members meet appropriate levels of safe operation for the safety of those working on them, the Australian community and the marine environment. Previous governments have determined that the regulation of such vessels by a single national regulator is in the national interest. This had been demonstrated through government budgetary contributions to the tune of $123.4 million up to the 2021/2022 financial year.

Despite this government contribution, to ensure the appropriate resourcing of the Australian Maritime Safety Authority (AMSA) the cohort of industry currently subject to levies (Marine Navigation Levy, Protection of the Sea Levy) are in effect cross subsidizing a large part of the DCV sector who are not subject to the payment of this levies.

This submission addresses the questions raised in the consultation aid, where relevant, as well as other issues identified by MIAL members, and attempts to strike a careful balance between a number of matters which include:

- recognising the need to appropriately fund and resource AMSA's regulatory activities in respect of domestic commercial vessels;
- recognition of the public benefit derived from a safe, efficient, and vibrant domestic commercial vessel industry that is properly and appropriately regulated;
- recognizes as far as practical that users of a services should predominantly be responsible for paying for it;
- striking a balance that ensures commercial vessel operations are not made commercially unsustainable through changes to the existing costs and charges practices
- ensuring that parts of the industry who currently through their payment of existing AMSA levies are relieved from cross subsidizing the regulatory functions clearly attributable to other parts of the industry not currently subject to such levies.
- ensuring that any reduction in funding by government is done so through a reasonable transitional period.

The submission is set out in response to the questions identified in the consultation aid for ease of reference.

1. User Costs

1.1 Question 1.

What is the nature of the costs that you (or your DCV sector) incur? This can include for example charges recovered by AMSA for fee-based activity, any relevant jurisdiction-specific fees and charges, accredited marine surveyor costs, etc. and can include one-off and regular costs.

- *It would be useful if you could provide an indicative estimate of the current annual costs of a DCV operator within your subsector in your jurisdiction.*

- *It would also be useful if you could provide an indicative estimate of the percentage increase or decrease in these costs since 2017–2018.*

- *The Panel is also interested in understanding the annual cost for the same/similar services incurred by you (or your DCV sector) under the pre-National regulator state-based system.*

MIAL represents owners and operators from the domestic commercial vessel sector and does not own and operate vessels itself – ideally individual operators would be based placed to answer these questions and for some the information may be commercially sensitive. MIAL has encouraged its members to provide such information directly to the panel.

MIAL is able to provide the following context which may assist the panel.

The costs incurred by an operator will largely depending on a number of factors – the operation itself playing a large part. Different categories of vessels usually would attract different fees for survey, there may be a different fee to issue a certificate of operation, certificate of survey, certificate of competency (for crew), any necessary medical assessments, and any exemptions that must be sought (usually charged at an hourly rate).

Changes in costs since the implementation of the National law will very – state maritime regulators all subsidized their industry to varying degrees. MIAL would anticipate those operating in states where subsidization was high due to the recognition of consecutive state governments of the importance of the industry are likely to have seen their costs increase.

2. Funding the National System

2.1 Question 2:

What are the considerations that you believe should be taken into account in determining whether full or partial recovery of the costs of the National System is appropriate, and to determine the level of cost recovery? Please provide examples to support/illustrate your response.

MIAL has formed the view, that:

- parity with other national regulatory regimes such as aviation;
- the role of the DCV industry in the community and the public good that a thriving industry provides

- the level of costs being incurred that are specific to government and accordingly are not reflective of genuine market costs,

justify the position that the recovery of regulatory costs should be partial, with the remaining appropriation reflecting the benefit that the industry provides to the Australian community.

Under this principal there is a reasonable expectation that all domestic commercial vessel operators will to a degree contribute to the funding of the regulator in respect to its regulation of the domestic commercial vessel industry. MIAL also recognises the government is obligated to abide by its Charging Framework, with the framework helpfully set out in the consultation aid.

To some degree, it is difficult for MIAL to advocate for a specific framework in the absence of phase one of this independent review being finalised. There are a number of proposals within that review which may, structurally determine one cohort of domestic commercial vessels being subject to greater regulatory oversight than others. Based on a user pays principle, this would then entail such a cohort paying a higher proportion for the resourcing of the regulator.

It should be noted that MIAL does not support some of the proposals which may consequently affect the fees and charging review. For example, we are far from convinced that a delineation of certain vessels into a category of high risk, where criteria for allocation to a high-risk category is far from clear.

MIAL considers that allocation to a high-risk category with accompanying fees and charges reflective of increased regulator resources is very difficult to fairly achieve. This is because there is no certainty about how vessels will be allocated – will it be according to the operators record of safety incidents and previous infractions, or will it be because of their operational scope which may be considered without further context high risk but pays no consideration to the rigour applied in safety management systems, internal training and other risk mitigations used by the operator in regard to its operation.

Ultimately MIAL recognises that a line must be drawn somewhere and while MIAL considers that each operator should be judged on its performance (and have its allocated contribution to funding the regulator assessed accordingly) we do recognise the challenge that this poses to Government in determining how much is recovered and from whom. Therefore to strike and appropriate balance, we consider that there could be a levy matrix which combines objective factors (size/power/operation) with a more subjective assessment (safety records/breach incident/ verifiably risk mitigations/ demonstration of the operator about their approach to safety), on balance, provides the fairest allocation of cost while making the assessment of such costs practically able to be determined.

MIAL members also seek the assurance where the costs of providing the regulatory services due to extraordinary circumstances beyond industries control are increased, that there will not be an attempt to include these costs in recovery. An obvious recent example was the COVID 19 pandemic where operators' costs (for those permitted to operate) increased significantly more than any of the funding packages devised by government could compensate for. MIAL assumes that costs increased to for the regulator, largely as a result of government decisions regarding testing/quarantining/safety procedures which impacted the industry.

2.3 Question 3:

What funding approach or mix of approaches do you believe would best achieve secure and stable resourcing of the National System.

It is MIAL's position that governments should continue to be responsible for some cost which relate to or reflect:

- costs are incurred because of the transition to a national model (such as IT, service delivery and remote officers, to the extent that these costs are ongoing or outstanding)
- The costs are incurred because of regulatory services being delivered to government
- the industry has strong community element that can be identified and partitioned (e.g. marine tourism, shipments to remote communities particularly supporting first nations communities).
- there are other partial cost recovery models in operations in similar regulatory regimes around Australia that recognise the importance of the industry to the community and therefore the obligation on government to contribute to sustaining it.

The Australian Energy Regulator (AER) is a national body that has operated since 2005. As part of its role it regulates wholesale energy markets through monitoring, investigation and enforcement of compliance with national legislation. All aspects of its operations, including the regulation of retail energy markets, are fully funded by the Commonwealth via the ACCC.

The Civil Aviation Safety Authority (CASA) have a government appropriation for 'regulatory functions' which encompass the following: services to the aviation community; standard setting; surveillance, investigation and enforcement; aviation safety promotion and education; international cooperation; and services to Government. Many of these parallel services provided by AMSA. Detail can be found in the CASA CRIS.

The Panel has invited industry to express its views on what other considerations may be relevant to cost recovery considerations, and while some of these have been touched upon above MIAL takes the opportunity to provide further context.

The DCV industry is very diverse – it ranged from commercially and operationally sophisticated operators to effective sole operators (i.e. commercial charters/ fishing vessels etc). While more sophisticated operations, particularly those who may operate in across multiple sectors of the industry and who have experience with AMSA's existing levy, may be positioned to withstanding increases in costs associated with regulations, smaller operators may in fact find their operations commercially unviable, therefore reducing competition in some sectors as well as limiting the options available for the community and consumers.

For example:

- Smaller charter vessel operators may exit the market, meaning consumers are left with medium to larger charter operators and unable to experience a more boutique experience – this will then flow on to the broader tourism industry if the marine tourism element is unable to cater to the tourist demand. This would also impact on smaller communities as a whole, where the tourist derived income is wholly through marine tourism. Loss of this revenue would be devastating to those communities.

    - While MIAL does not represent the fishing and aquaculture industry and makes no representations on its behalf, increasing costs for vessels in these industries will likely directly impact the consumer.

    - Operators who provide goods and transport to communities in regional and remote areas whose costs increases will have to consider whether they continue to provide

> services or change the terms of which services are provided. This puts these communities (often first nation communities in Australia's north, where islands are only accessible via vessel or air) at risk of isolation from essential goods and medical care as well as having easy access to mainland Australia.

MIAL does not understand the Panel to have reach a concluded view on the structure of any cost recovery or charging regime. Reference is made within the consultation aid to a previous proposal by AMSA when this issue was most recently discussed in or around 2016, however MIAL has not had the benefit of revisiting or renewing any further refinement of the proposed cost recovery model. MIAL also notes that AMSA's Cost Recovery Implementation Statement notes that a further budgetary appropriation of approximately $12.5 million for this financial was made due to the delay in reviewing the costs and charges as a result of the pandemic.

MIAL is of the view that government should provide support for the regulation of the industry, which is acknowledgement of the public benefit that the industry provides. This was something that was recognised by government at the time initial discussions around cost recovery were had. MIAL considers that an appropriation which represents 30% of the costs of regulation of the industry is an appropriate reflection of the contribution to the public good that is made by the industry.

3. Levy Model and the structure of the levy

3.1 Question 4:

What are the aspects of a vessel or its operation that could form a suitable basis for levy-based cost recovery?

MIAL, in its response to the previous question has articulated its position of the level of support that should be provided via direct appropriation for the costs of regulating the industry. On the assumption that it is decided that a levy is the best form of collecting revenue, we note that an option provided in 2017 did propose a way to determine apportionment of levy though size and class of operation, but this was not necessarily fully supported.

Again, on the basis that this submission has not had the benefit of considering the draft report to phase one of this review, MIAL's preliminary view is that any levy should:

1. identify objective measures that tend to indicate that a vessel will require greater regulatory oversight – this could include size and operational area;
2. incorporate based on appropriate risk assessment other vessels that will due to their operational history attract greater regulatory oversight and resourcing, in a reasonable proportionate manner
3. only exempt vessel or a cohort of vessel where there is a rational and compelling justification for doing so (operation is such that physical survey is not required, interaction for regulatory oversight is largely educative, for example).
4. Be transitioned in over a period, in terms of a gradual increase toward the level of cost recovery ultimately determined to be payable by industry (in MIAL's submission, not more than 70% of costs attributable to the regulatory services) over a period of not less than 10 years – this submission is of course subject to gaining a better understanding of the costings that would be payable by industry. The levy basis could be maintained around the Cost Recovery system that was proposed in December 2017 (Domestic commercial vessels—proposed subsidised cost recovery levy model) (Copy attached for reference).

The rules specify the value of the transitional factor up to and including the 2022/23 year.
However, the announcements made by the then Federal Minister, Darren Chester MP and the Communique from the Transport and Infrastructure Council both specify that the levy charges will gradually increase until the industry funds around 70 per cent of the national system, with the balance funded by Government.

This being the case, it would provide industry with a great deal of comfort and certainty if the 'transitional factor' was specifically capped within any rules or indeed, within any Bill, and that the transitional factor become the final basis for cost recovery from industry. That is, that the maximum levy when the model reaches 100% (of the 70% MIAL suggests is to be funded by industry) is the maximum that will be charged under the model. This can be indexed against CPI.

3.2 Question 5:

Having regard to Finding 1 and Recommendation 1 of the draft Report, how could a potential levy be structured to better reflect the level of regulatory effort and resources directed towards sectors of the DCV industry differentiated on the basis of risk? Are there sectors, or part of sectors, that should be exempted from any future levy, if so why should they be exempt?

It is understood that the penultimate draft of Phase one of the Review, will clarify the term "high risk" to mean those vessels that would be on the cusp of being required to be Regulated Australian Vessels (RAVs) due to the work they are conducting. This does not include vessels such as tugboats, bunker barges and various ferries and charter boats.

MIAL remains unconvinced that this proposal is necessary or would result in a better outcome for industry, nor is MIAL certain how many vessels this would affect. Currently there is no gap in terms of vessels that are regulated. The regulator is currently empowered to address perceived shortcomings in safety regulation to the vessels that it regulates and if it considers that there are shortcomings, it should consult with industry and rectify these.

MIAL will reserve its judgement on this proposal until it has seen and addressed the detail with its members. It will also need to consider the effect of designation of high risk on any levy attribution and will be better placed to do so on receipt of the second draft to phase one of this review.

As articulated in our response to question 4, questions of equity will arise where vessels or cohorts of them are exempted. There should be compelling grounds as well as the vessels requiring virtually no regulatory oversight in the normal course of events, to consider exempting such a cohort. This will of course mean that there is a level of cross subsidisation by other operators for this such as safety campaigns which are directed to all DCVs. If a class of vessels is exempted, the contribution by government should be adjusted to reflect that so that other industry participants are not unfairly burdened.

4. Impact and resourcing implications—draft report recommendations

4.1 Grandfathering – Industry assistance fund.

4.1.1 Question 6:

What are the industry subsectors most likely to be affected by the proposed winding back of grandfathering arrangements?

There would be vessels across all sectors of the DCV fleet that would be affected by the wind back of grandfathering arrangements. How the wind back of grandfathering were done, will impact any final outcomes on industry sectors.

Based on our discussion with the panel, we agree that the panel's understanding of how grandfathering of standards ought to operate, and how it does (according to operators and often the regulator) under the current national system, differs. The Panel has suggested that where this understanding has sought to stifle innovation and disincentivize operators from making improvements in one area which would have the consequences of changing standards that are to apply in another, it should be clearly articulated that this is not intended.

4.1.2 Question 7:

What is the nature of the impacts that these subsectors are likely to experience? For example, survey costs, costs of upgrades to vessels, costs of upgrading crew competencies, difficulties finding crew with requisite competencies, etc.

Again, until phase one is complete it is difficult to provide a comprehensive response. Depending on where phase one of the recommendation lands, and if such recommendations are adopted, and vessel which is determined to require greater regulatory oversight is likely to see:

- its costs of survey increase,
- potentially its insurance arrangements change
- If modifications are necessary to obtain a different standard to the one currently applying to the vessels, this will incur costs.
- If a change in crew competencies is required (and MIAL would strongly oppose any such move unless it can be shown that the existing requirements are unsafe) this will result in additional costs and depending on the training requirements, difficulty in sourcing qualified crew.

MIAL will be better placed to respond once it has a clearer understanding of any intended regulatory changes.

4.1.3 Question 8:

What form/s of targeted support do you consider would be effective in assisting the DCV fleet impacted by the phased withdrawal of grandfathering arrangements?

Government could fund the provision of grants encourage those sectors of the industry with grandfathered vessels to update those vessels to current standards as a way to offset costs of transitioning to the national law. There could be incentives offered under this scheme to improve engineering technology (for example) to update to modern carbon efficient engines or engines that utilize alternative fuel sources (methanol, hydrogen, biofuels)

In any circumstance, such funds should not be recovered from industry participants and government should support the transition of these vessels consistent with commitments it has made domestically about operation efficiencies and support for emerging technology and energy, as well as its commitment to decarbonization at a global level. Without such support, these business will in many cases fail and in almost all cases not adopt new and emerging technologies within the life of the asset they operate.

5. Other Recommendations

5.1 Question 9:

What are the relevant economic impacts and/or costs or resourcing implications (positive or negative) of any of the recommendations in the draft Report that the Panel should consider?

Cross subsidization

From MIAL's perspective it is imperative that the report acknowledges that the domestic commercial vessel industry is as critical as it is diverse and a thriving industry compliments so many other industries critical to prosperity (resources, transport, tourism, domestic freight to name but a few). Given the broad jurisdictional responsibility of AMSA, clearly identifying the resourcing requirements for this industry is critical. This is because as critical as it is to ensure that the public good of the industry is acknowledged and warrants support, there are other parts of the industry who have long been the subject of cost recovery for AMSA's regulatory functions. Cross subsidization by one industry of another is not fair, equitable or sustainable. As a statutory entity it is imperative that AMSA are clear and transparent about what costs they incur on behalf of industry (rather than as a function of government) and from whom such costs ought be recovered.

While MIAL acknowledges the support to date, it has long been the position of other parts of the industry that the levies applied to them, at least to some degree, subsidise services provided to the domestic commercial vessel industry. This is an outcome entirely at odds with sound cost recovery principals identified by government.

Industry contribution to Australia's international obligations/community safety

While potentially beyond the scope of these terms of reference, the maritime industry through its continuous on water presence plays an important role in assisting with meeting Australia's search and rescue obligations. The industry culture of prioritizing safety of life and the marine environment together with obligations on a large number or operators under the Safety of Life at Sea Convention (SOLAS). Government recognises that the countries geography means it has responsibility for a significant search and rescue obligation in waters beyond its territorial seas. An appropriation is given to support this function but in reality, there is a significant reliance on privately owned assets when vessels and persons are in distress.

MIAL members have from time to time been called upon to assist in such circumstances and they do so willingly and as obligated under SOLAS. Even absent obligation, there have been instances of vessels operating in and around Australia providing assistance to the Australian community in times of disaster (see for example the work of the Far Saracan during the Mallacoota bushfires in Victoria)[1] There have been other instances of vessels directed by AMSA to standby vessels in distress for days on end, meaning such vessels during that time are not performing their commercial functions. While MIAL supports the

[1] The Saracen off Mallacoota - Solstad Offshore ASA

SOLAS culture for merchant vessels without reservation, there have been occasions where vessels have been directed to assist in situations other than to directly ensure the preservation of life, and for extended periods. For this no compensation is received. They are in effect performing a government function for which no compensation is received. MIAL has previously raised this as an issue with AMSA and previous governments. If it is governments position that it solely funds Australia's search and rescue obligations, MIAL submits that the current appropriation does not meet the actual costs in situations where merchant ships are directed to assist. The loss of the revenue for the commercial vessel not engaged in its commercial activity while under the direction of search and rescue authorities is borne entirely by the operator. Consideration should be given to whether there are circumstances (time diverted etc.) which justify compensation being provided.