

## Independent Review of Domestic Commercial Vessel Safety Legislation

**Submission- XXXX**

Q1 Is Australia's legal framework for the safety of domestic commercial vessels fit for purpose?

**A- AMSA have done a fine job within the constraints of the Law as it stands-but to get to where this reform needs to work towards there needs to be clear consideration of changes to some of the legal framework that currently seriously constrains AMSAs ability to focus on its core goals, and in some cases actively frustrates them.**

**It must be remembered that much of the National Law was a compromise- the bare minimum that the States and Territories were willing to agree to, in order to get the reform over the line. All of the previous regulators tried to impose their views and regulatory philosophies on the legal framework, many intending to continue to deliver these services in accordance with their own operating models after the legislation was passed. This influence has produced a camel of an Act where a racehorse is needed.**

**One by one all state-based delegates dropped away and AMSA now has the sector to itself. It is only fitting and fair that the legislation is now optimised to fully support the expected outcomes of this reform and that they are given an opportunity to leverage the newly emerged capacity in industry to fully support these aims.**

**The current framework is clunky, resulting in AMSA requiring excessive amounts of otiose paperwork and duplication of effort to ensure their governance responsibilities are met. This duplication has meant that the talent within AMSA is woefully mis-employed pushing paper**

***around inefficiently and that opportunities to use Australian third party providers externally are simply not supported.***

***It is perverse and completely unreasonable that AMSA is not allowed to use on-site -on ground non-government delegates to perform even basic survey and regulatory services. Operators CAN however can use expensive, in some cases inexpert and in all cases overseas domiciled and managed service providers in the form of Class Societies such as the China Classification Society, Class NK (Japanese), Korean Register, the American Bureau of Shipping and the London and Singapore based Lloyds Register in order to do so. It is easily arguable that this constraint reduces opportunities for Australian companies and individuals and further erodes our capability as a maritime nation.***

***Since the start of the system a number of Australian companies have invested heavily and built capacity to discharge Class- like services to the domestic market and its time that they were allowed to do so.***

***We would like to emphasise our view that that none of this is AMSA's fault- it's a consequence of a legal framework that is no longer fit for purpose.***

- support safe vessel operations – the framework should support safe behaviour, foster a safety culture across industry and encourage continuous improvement and adoption of best practice. The framework should support people to have and maintain the skills needed to safely design, construct, equip, crew and operate vessels;

***A- The increased cost and complexity and difficulty in complying with a poorly written set of legal and technical requirements caused to some extent by the contradictory provisions of the National Law are putting these aims in serious jeopardy.***

- promote a risk-based approach – the framework should impose safety requirements proportionate to the risk of different operations;

***A- Governance issues imposed upon AMSA by internal interpretations of their legislative responsibilities have severely impacted this aim- resulting in a one-sized fits all approach which does not take into account modern regulatory philosophies in any shape or form. Additionally, the mis-deployment of expensive technical assets to low value paper pushing tasks has severely impacted AMSA's technical standard and legislative development processes and its ability to fix known deficiencies in the standards , and its ability to evolve as emerging technologies such as the decarbonisation of the industry are emerging. Policies around emerging issues are ad hoc, creating risks to projects which will increasingly be taken overseas if this trend is not arrested. It represents a major loss of opportunity for Australia as a country in a post fossil fuel world. AMSA efforts should be concentrated at standards setting, third party provider output quality and consistency- to align with more modern regulatory practice- not by processing bits of paper, and off the***

***back of these bits of paper, deciding issues many 1000's of km away from the vessels and operations themselves.***

- minimise burden – the framework should support safety outcomes in a manner that minimises regulatory and administrative burden for industry;

***A- This is probably the largest failing of the current system and one that needs urgent addressing- an operator is faced with a myriad of often conflicting requirements, reporting obligations and confused overlapping regulations- WH&S being prime examples- electrical and gas compliance others . No government agency sees the cumulative effect of the sloppy and overlapping regulations- the burden is borne squarely by the operator of the company or vessels. The early RIS associated with the introduction of this legislation under stated the costs to industry massively, and any margin between cost/benefit has eroded in most cases to nothing due the additional costs imposed on operators by the system that sees them answering to so many masters.***

- be flexible – the framework should cater to the diversity of regulated businesses, individuals and vessels and accommodate innovation and changes in technology;

***A- There is no flexibility in the current system save for the incredibly burdensome lottery that comes when operators are required to seek exemptions for the most minor matters which could otherwise be satisfactorily resolved by a different framework, as exists in many other higher risk areas of endeavour.***

***Emerging technologies such as alternative propulsion options are still not given proper regulatory treatments and examples abound of safe innovation being rejected by individual officers at AMSA scared to stand up or temperamentally loathe to poke the God of Governance. Culturally it seems that the view is taken that 'you can't do that because the law doesn't say you can' at desk level- rather than a principles-based approach that is more modern and arguably already supported by the legislation as written. We would suggest that the law could be re-cast to empower AMSA officers of a more modern bent to support, rather than stifle safe innovation.***

- be simple and transparent – the framework should be informed by wide consultation, be accessible and clear and support operators to understand and comply with safety requirements that apply to them; and Independent Review of Domestic Commercial Vessel Safety Legislation

***A- We fully welcome this aspiration. To be fair to AMSA, Covid has impacted recent consultation in a significant manner and we look forward to the resumption of something AMSA did quite well in the past. After a somewhat bumpy first few years we have commented on and engaged on a number of issues that are within our interest and expertise and have been very happy with the responses we have received.***

- support effective compliance – the legal framework should provide an effective and practical range of compliance powers and enforcement tools for AMSA

**A- We are of the view that this is one of the least problematical aspects of the current Act/Regulation and look forward to a review but not necessarily a wholesale overhaul of these provisions. We believe that AMSA needs to gain more experience using the tools they currently have.**

Question 2: Does the national law interact efficiently with other Commonwealth and State and Territory frameworks, particularly the Navigation Act 2012 (Navigation Act) and workplace health and safety regulations, as well as with international maritime safety obligations?

**A- Unequivocally no. The carve outs need to be reviewed- the Commonwealth owns this space now and can and should regulate into the space to streamline and clarify obligations. When these regulations come into effect- at the same time it needs to be clear that legacy state-based regulations no longer apply.**

Question 3: Is the scope of the definition of 'Domestic Commercial Vessels' appropriate to capture the types of vessels and operations that justify additional regulatory intervention under the National Law beyond existing WHS obligations?

**A- We believe it generally does. One area that might need attention is with regard to the merging share economy- there are great differences between how rules are applied nationally and our view is that permutations of these operations should be outside of the law to better allow AMSA to concentrate on matters that merit national regulatory attention.**

Question 4: Should the framework ensure the Navigation Act provides the default standards for commercial vessels?

**A- Our view is that it doesn't matter where it sits so long as its fit for purpose. Care must be taken that in doing this inappropriate 'large vessel' provisions don't inadvertently get dumped on the DCV fleet.**

Question 5: Is the definition of an "Owner" of a vessel in the National Law sufficiently clear and understood?

**A- Yes**

Question 6: Would expanding the Australian Transport Safety Bureau's role to include domestic commercial vessel safety support substantially improved safety outcomes for industry, as well as regulators and policy makers?

**A- Yes if the state based safety investigators such as OTSI exited the space- otherwise more complexity rather than less ensues.**

Question 7: Would removing, in whole or in part, current grandfathering provisions substantially improve safety outcomes? If so, how could industry be supported in making that transition?

**A- Rather than fall into the trap that everything that came before AMSA is bad as seems to be the message from some quarters, we would be in favour of sunsetting some requirements, and allow time for vessels to bring themselves up to an acceptable standard. AMSA has been collecting rafts of data for many years now so should have a very clear idea of where failures are occurring, and be able to put in place easily justifiable transitional requirements much in the same way C7A currently does.**

Question 8: Does the current framework provide clear and simple standards for operators to meet their safety requirements? If not, how could it be improved?

**A- No- we constantly field queries over the phone, by email and face to face on regulatory requirements from a vast swathe of operators and owners who find it hard to understand or access clear advice on these subjects. We cannot charge for this advice- these are intelligent people who genuinely want to do the right thing but find it hard to get answers specific to their situation . Essentially the legislation should state obligations clearly, and allow simple options to achieve compliance as well as empowering risk professionals to look at the circumstances of the operation and authorise appropriate mitigation effectively on the quayside, without the need to refer back to AMSA officers many thousands of km away from the point of risk. As an example there are c. 44 exemptions extant- only by doing this full time can you keep up with all the permutations and changes and ifs/ands/buts the system currently features.**

Question 9: Does the current framework provide an effective and practical range of compliance powers and enforcement tools for AMSA

**A- Yes we do.**

Question 10: Are there specific safety initiatives that would substantially improve safety outcomes?

**A- None spring to mind-perhaps an analysis of accident and incident data would throw up some potential campaigns?**

Question 11: What can be done to improve safety incident reporting both for safety and Workplace Health and Safety purposes?

**A- Make available a system like CASA's Repcon system :**  
[http://www.atsb.gov.au/voluntary/repcon\\_aviation/](http://www.atsb.gov.au/voluntary/repcon_aviation/)

We really appreciate the opportunity to comment as requested and look forward to working constructively to assist as this important review progresses.

Yours ever,