

Terms of Reference

Independent Review of Australia's Domestic Commercial Vessel Safety Legislation, and Costs and Charging Arrangements

Purpose

The Australian Government has commissioned an independent review to consider whether Australia's legal framework regulating the safety of domestic commercial vessels is fit for purpose.

The review is also to consider whether this regulatory framework is being delivered efficiently and effectively, and to consider options for future cost recovery arrangements.

Context

Australia's diverse maritime industries include tourism, transport and fishing operations. These businesses are especially important in our coastal and regional communities, as well as to the whole Australian economy.

The Australian Government is committed to having an effective system of safety regulation for vessels and seafarers across these industries. This is important to ensure that passengers and crew are confident they will come home safely, and to support the productive contributions of our marine industries. As part of considering the effectiveness of our maritime safety regime, it is also important to consider how much it costs to deliver, and how it should be funded.

The National System for Domestic Commercial Vessel Safety (National System) is Australia's national regulatory framework to ensure the safe design, construction, equipping, crewing and operation of commercial, government and research vessels operating in Australian waters. Since mid-2018, the National System has been delivered by the Australian Maritime Safety Authority (AMSA) under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law) and related legislative instruments.

This legislative and charging review fulfils the Government's commitments made in the context of recent inquiries by Senate Committees and the Productivity Commission into aspects of maritime safety regulation, and in the context of AMSA taking responsibility for the National System in 2018.

The review will be conducted in two stages, commencing with a review of the legislation and followed by a review of AMSA's costs and charges.

Scope – Safety Legislation

In assessing whether the National Law and related instruments are fit for purpose to achieve their safety objectives, the review should consider whether these laws:

- **support safe vessel operations** – the laws should support safe behaviour, foster a safety culture across industry, and encourage continuous improvement and adoption of best practice. The laws should support people to have and maintain the skills needed to safely design, construct, equip, crew and operate vessels. The review should include comparison of safety outcomes across sectors.
- **promote a risk-based approach** – the laws should impose safety requirements proportionate to the risk of different operations.
- **minimise burden** – the laws should support safety outcomes in a manner that minimises regulatory and administrative burden for industry.
- **are flexible** – the laws should cater to the diversity of regulated businesses, individuals and vessels, and accommodate innovation and changes in technology.
- **are simple and transparent** – the laws should be informed by wide consultation, be accessible and clear, and support operators to understand and comply with safety requirements that apply to them.
- **support effective compliance** – the laws should provide an effective and practical range of compliance powers and enforcement tools for AMSA.

The review should also specifically consider:

- whether the National Law interacts effectively with other Commonwealth and state and territory legislative frameworks, particularly the *Navigation Act 2012* and workplace health and safety regulations, as well as with international maritime safety obligations.
- whether expanding the Australian Transport Safety Bureau's (ATSB) role to include domestic commercial vessel safety could support substantially improved safety outcomes for industry, as well as regulators and policy-makers.

The review should advise the Government of the extent to which the National Law framework is currently fit for purpose. It should have regard to any challenges in existing arrangements under the National Law.

The review should make recommendations to Government where the National Law framework is not fit for purpose, or where it identifies opportunities to improve outcomes by reforming the laws. As part of these recommendations the review should provide advice on possible alternative approaches.

The review should always have regard to the views of stakeholders.

Scope – Costs and Charges

In considering the costs of delivering the National System under the National Law, as well as future options for industry charging, the review should consider:

- **efficient and effective resourcing and delivery** – AMSA's effort and approach to delivering the National System should be sufficient to support safety objectives, while also minimising AMSA's delivery costs, underpinned by the best available data, evidence and information, and risk-based decision-making.
- **delivery cost challenges and opportunities** – the benefit of safety regulation, and the expected benefit of any changes, should ultimately exceed associated cost impacts for industry. In considering potential changes and opportunities to improve safety, the review should also consider potential cost challenges for industry and AMSA.
- **existing and future charges** – current industry fees, and any future charges, should support the achievement of the Government's safety objectives and align with the Australian Government Charging Framework. The review should consider the merits of a range of options for potential future industry charges for Government to consider, with regard to the nature and diversity of industry, and how users interact with the National System.
- **charging challenges and opportunities** – future charging should support the efficient and sustainable delivery of safety regulation. In assessing options for future charges, the review should consider implementation challenges for these options, and opportunities to support safety outcomes.

The review should also specifically consider:

- whether changes to grandfathered arrangements (as recommended in past inquiries) or to exemptions may give rise to cost challenges or safety opportunities, and if so, how these could be addressed.
- if a role for the ATSB is recommended, how this role could be implemented in an efficient, cost-effective manner, with due regard for the independence of the ATSB and its existing multi-modal responsibilities and funding arrangements.

The review should provide advice to Government of the extent to which AMSA's delivery costs are efficient and proportionate to the risks being managed.

The review should make recommendations to Government on options for future funding arrangements for the National System, including considering alternative delivery approaches. Recommended options should seek to improve safety, reduce costs for industry where appropriate, and provide financial stability and certainty for industry and AMSA.

The review should have regard to the outcomes of consultation.

Process

The review will be undertaken by an independent expert panel, supported by the Department of Infrastructure, Transport, Regional Development, and Communications. The DPM, in consultation with the PM, has appointed Michael Carmody AO, Carolyn Walsh, and John Harrison. These eminent reviewers have been selected due to their experience and skills as senior advisers to government, their diverse and complementary expertise across regulatory, safety and maritime industry sectors, as well as their availability to conduct the review within timeframes required by Government.

The review is to commence in 2022 and be conducted in two phases. The first phase is to focus on whether the National Law framework is fit for purpose and should conclude by mid-2022. The second phase is to consider whether delivery of the National System is cost-effective, and options for future charges.

The review will be informed by significant stakeholder consultation, including public discussion papers, supported by efforts to encourage public submissions including industry engagement. An interim report is to be released for further public comment at the conclusion of each phase.

Subject to progress of the review, the Government expects to receive a final report by the end of 2022.