



Mr John Harrison and Ms Carolyn Walsh
Independent Review Panel
Department of Infrastructure, Transport, Regional Development, Communications
and the Arts
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Dear Independent Review Panel

**Draft Interim Safety Report—Independent Review of Domestic Commercial Vessel
Safety Legislation and Costs and Charging**

The Australian Maritime Safety Authority (AMSA) welcomes the draft Interim Safety Report (the draft Report) and the opportunity to participate in this important review.

The draft Report recommends a number of changes to the current arrangements, which address several challenges with the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law Act), and makes a number of findings, including that the National System for Domestic commercial Vessels has improved safety outcomes.

AMSA notes some of the challenges being addressed through the recommendations are a result of the amalgamation of eight different Commonwealth, State and Northern Territory regimes into one law, and the legacies of the grandfathering and transitional arrangement put in place to achieve this historic reform. Other challenges flow from the limitations of the current National Law Act, and legislative changes are required to address the issues.

AMSA supports most of the findings and recommendations contained in the draft Report. **Attachment A** provides the detail of AMSA's views on each finding and recommendation.

AMSA looks forward to the final report being released.

Yours sincerely



MICK KINLEY

23 November 2022

Att. (1)

AMSA's position on draft Interim Safety Report: Findings 1 & 2 and Recommendation 1

AMSA supports amending the National Law Act to remove the requirement for all vessels to have a certificate of survey and operation. AMSA also supports requiring some, higher risk domestic commercial vessels to comply with the cargo and other relevant requirements of the *Navigation Act 2012* (Navigation Act) marine orders and associated international standards. However, AMSA also believes that human powered vessels should be excluded from the National Law Act.

AMSA considers the recommendation would benefit from further specificity around how the risk-based model should be applied to the broad spectrum of vessels within the fleet. In addition, more detail around how it proposes to change the current arrangements, particularly the arrangements provided for in the general exemptions, would be beneficial. AMSA also considers the role and intended legal status of the proposed codes of practice should be clarified to better understand the funding required for their development.

Certification

The draft Report recommends the amendment of the National Law Act to better reflect a risk-based regulatory model that is flexible and able to adapt to innovation and emerging technologies. AMSA strongly supports amending the National Law Act to remove the requirement for all vessels to have a certificate of survey and operation. This would allow the marine orders to specify the kinds of vessels required to have a certificate, rather than relying on exemptions. AMSA considers the safety certificate concept established under the Navigation Act provides a suitable model. Applying a similar approach under the National Law, the current multi-certificate approach could be replaced with an 'all-in-one' safety certificate. Further, the issuing-body could be in the marine order instead of being set in the Act; and could include Recognised Organisations and accredited marine surveyors (in addition to AMSA). This would reduce the number of certificates required and will future proof the legislation in terms of the entities that may be empowered to issue certificates. A further complementary change that would reduce burden is to amend the National Law so that it allows for a safety certificate issued under the Navigation Act to be taken to meet the safety certificate requirements under the National Law Act. Currently, AMSA can only achieve this outcome by issuing exemptions from the standards, which is administratively burdensome and costly for industry and AMSA.

Codes of practice

AMSA supports the concept of making available more guidance on safety risks. However, AMSA notes developing codes of practice with industry will require significant resourcing and could not be developed by AMSA without additional funding. Safe Work Australia provides a model, whereby one of its function includes the development of codes of practice and it is funded to do so. If codes of practice were to be introduced to the National Law framework, the intended legal status of the codes requires clarification. For example, the codes of practice could be given a legal status similar to codes issued under the model Work Health and Safety Act, the rail safety national law and the heavy vehicle national law, through amendment to the National Law Act. Further, AMSA considers codes of practice would be appropriate for operational matters only, as opposed to design, construction, and equipment standards, as these matters are covered in the National Standard for Commercial Vessels (NSCV).

Applying appropriate requirements to higher risk domestic commercial vessels

AMSA supports requiring some domestic commercial vessels to comply with specific requirements of the Navigation Act and associated international standards. Further consideration around which vessels would be subject to additional, more specific requirements would be required. One example would be the increased risk of the cargo carried by the vessel, such as petrochemical, containerised and dangerous goods cargoes.

AMSA notes there are several ways in which this could be achieved. The Navigation Act marine orders already prescribe standards for these matters. However, these orders currently only apply to regulated Australian vessels. Where additional requirements are needed for domestic commercial vessels, the relevant

requirements of the Navigation Act marine orders could be applied. This could be achieved by either moving the relevant vessels under the Navigation Act, or alternatively through extending the application of some of the Navigation Act marine orders to also apply to relevant domestic commercial vessels.

Excluding human powered vessels

AMSA considers excluding all human powered vessels from the National Law Act is warranted based on their low risk profile, due to their size, speed, operational area and use. The current regulatory framework for human powered craft is not commensurate to the risk. Under the current legislative system, human powered vessels are subject to a number of different laws. In addition to the National Law Act, human powered vessels must comply with State and Territory waterway management laws, which cover issues such as speed and navigation matters. AMSA considers the additional regulation imposed by the National Law Act provides little additional safety assurance to both the operators and users of these human powered craft.

This is illustrated by some human powered vessels used for commercial, research or governmental activities being excluded from the National Law Act through the definition of 'vessel' in section 12 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* (National Law Regulation). This includes for example surf skis which, from a risk perspective, are comparable to a kayak which is prescribed as being a 'vessel' for the purposes of the National Law framework.

AMSA notes the numbers of fatalities and injuries on bicycles far exceed those on human powered craft. Between 1999 and 2016, on average there were 38 deaths a year from cycling accidents, in 2015–16 there were over 12,000 cyclists hospitalised due to injuries sustained in a crash.¹ Despite these statistics, AMSA understands there is no dedicated safety regulator for commercial bike hire business, and no additional regulatory requirements for the operators of these business and hirers, other than the existing road rules.

AMSA's position on draft Interim Safety Report: Finding 3 and Recommendation 2

AMSA supports the finding and recommendation, including the recommendation the Australian Government establish and fund an industry assistance package.

AMSA supports the application of the transitional vessel standards to grandfathered vessels. The transitional vessel standards are a combination of the Uniform Shipping Law Code (the USL Code) and the NSCV. In general:

- the USL Code standards for hull and machinery apply
- the NSCV standards for some elements of electrical safety, fire, equipment and stability apply. This is generally where the USL Code is no longer 'fit for purpose'. For example, for stability, NSCV 'person weight assumptions' are required, given the increase in average weight between 1970 and today.

Applying the transitional vessel standards offers several advantages, it:

- would ensure that the vessels receive an uplift in safety to address safety risks without requiring full compliance with the NSCV.
- would provide operators with the economic benefit of obtaining a certificate of survey that allows national operation. Vessels which meet the transitional vessel standards would be (and are currently) permitted national service.
- works within the existing, established standard set, thereby not introducing more complexity or resourcing impost to develop an alternative set of standards and communicate and educate these differing standards to industry and surveyors.
- would provide certainty in regard to the standards to be complied with and the process to be followed. The transitional vessel standards are 'tried and tested' as they have been in place since 2017.

¹ Australian Institute of Health and Welfare, *Pedal cyclist deaths and hospitalisations 1999-00 to 2015-16*, 2 May 2019.

In AMSA's view, applying the transitional vessel standards in full to grandfathered vessels is the best way to ensure that the domestic commercial vessel fleet meets a minimum level of safety commensurate with modern safety standards. AMSA has also developed, through experience and by working closely with operators and surveyors, practical mechanisms for determining compliance to the transitional vessel standards. For example, AMSA generally does not require vessel plans to be (re)drawn, plan approval to be obtained, or full initial survey processes to be undertaken. Rather, AMSA accepts certificates of compliance and performance-based testing.

The draft Report also recommends that:

- grandfathered vessels undergo a survey inspection to assess gaps to the baseline design and construction standards, over a two-to-five-year period, and
- inspection findings be rectified within two years of the survey inspection.

AMSA supports this recommendation and considers it provides a reasonable interim period in which grandfathered vessels can shift to the transitional vessel standards. Scaling the transitional period based on risk will enable grandfathered safety arrangements that present a higher risk to be transitioned first, and assist in ensuring the availability of surveyors, slipping facilities, etc. However, AMSA notes that any deficiencies or noncompliance with the grandfathered standards identified during the inspection would need to be rectified more promptly.

AMSA anticipates there will be additional resource cost imposed on AMSA to end grandfathering, including costs associated with accessing records, providing guidance to industry and accredited marine surveyors, and increased applications for certificates of survey.

AMSA's position on draft Interim Safety Report: Finding 4 and Recommendation 3

AMSA supports the finding however recommends an alternative approach would better address the finding.

While AMSA agrees with the finding *"There is a high level of confusion within the industry about the relationship between the marine safety law and work health and safety (WHS) law"*, AMSA considers amendments to the legislation will provide greater certainty regarding the relationship between WHS laws and the National Law Act. AMSA considers this recommendation largely reflects what is the current practice now and in AMSA's view will not sufficiently reduce confusion and ambiguity.

As noted in AMSA's submission, the Council of Australian Governments (COAG) Intergovernmental Agreement on Commercial Vessel Safety Reform was clear that WHS was to remain separate to the National Law Act. This is reflected in sections 6 and 7 of the National Law Act. AMSA notes it has memorandums of understanding (MoU) with the WHS authorities to cover these matters that are reviewed annually. AMSA has recently agreed with the WHS authorities for a single MoU to cover all jurisdictions, this will reduce much of the confusion for industry. AMSA has also sought agreement to publish this MoU on AMSA's website in 2023. Further, AMSA has released guidance for industry explaining the dual operation of the National Law Act and WHS laws. This is available on AMSA's website: [whs-dcvs-brochure.pdf \(amsa.gov.au\)](https://www.amsa.gov.au/whs-dcvs-brochure.pdf).

A number of submissions to this Review indicated that there remains considerable confusion about the delineation between 'maritime e safety', as regulated by AMSA, and 'work health and safety', as regulated by the WHS authorities. Industry is also concerned that they need to report to two 'masters', creating uncertainty and unnecessary regulatory burden. This indicates that the MoU and guidance approach has not been sufficiently effective to reduce the overlap and ambiguity arising from the two legislative schemes.

AMSA previously submitted that the best way to achieve greater clarity regarding the interaction between the marine safety and WHS is through a legislative amendment to the National Law Act, which clarifies the scope of the general safety duties. AMSA reiterates that this is the preferred approach. Amendments to the general safety duties of the National Law Act that confine the duties to maritime specific matters, such as the design, construction, equipping, maintenance, crewing and safe navigation of vessels, would achieve this outcome. All other safety matters on board domestic commercial vessels would then more clearly fall under WHS laws.

In addition, AMSA believes that a recommendation should be made regarding increased inspections on domestic commercial vessels by WHS authorities. A number of coronial recommendations have emphasised the importance of WHS on vessels and the role of the relevant WHS Authority. As the WHS authorities administer WHS laws and not AMSA, education, compliance monitoring and enforcement of those laws with respect to domestic commercial vessels rests with the WHS authorities. Further, AMSA also notes the model WHS Act provides for codes of practice to be developed. Safe Work Australia, using their existing legislative functions and processes, could develop codes of practice for the maritime sector to provide industry with practical guides to achieving the standards of health and safety required under the WHS laws. AMSA would support this being reflected in the draft Report and recommendation.

AMSA's Position on draft Interim Safety Report: Findings 5 and 6 and Recommendations 4 and 5

AMSA supports the findings and recommendations.

AMSA considers the recommended changes to the duties, penalty and offence provisions of the National Law Act would address several issues, which are hampering AMSA's ability to enforce the law in a way that is commensurate with the breach and community expectations.

AMSA's position on draft Interim Safety Report: Finding 7 and Recommendations 6, 7, and 8

AMSA supports the recommendations as likely to improve safety outcomes on domestic commercial vessels.

AMSA notes that increased numbers of Australian Transport Safety Bureau (ATSB) investigations of incidents involving domestic commercial vessels will have resourcing implications for AMSA, as AMSA will be required to collate evidence collected after an incident and provide it to the ATSB (in accordance with section 32 of the *Transport Safety Investigation Act 2003*). AMSA anticipates additional funding for both ATSB and AMSA would be required to implement this recommendation.

AMSA's position on draft Interim Safety Report: Finding 8 and Recommendation 9

AMSA supports a long-term safety engagement program provided that it is funded to deliver its role in such a program. AMSA considers relevant WHS authorities could also undertake a similar safety engagement program with respect to WHS matters on board domestic commercial vessels. Industry-led initiatives would benefit safety culture within the sector.

While AMSA also supports the concept of all persons working on board a domestic commercial vessel having a baseline level of training and skills, depending on the details of the 'white card' scheme (including who it would apply to and if the card required renewal), the introduction of an additional authorisation scheme is likely to have significant cost impacts. An alternative could be the introduction of mandatory baseline set of training—for example, completion of the elements of a shipboard safety course—without an associated card. As seafarers holding a certificate of competency already have this training, it could be applied only to seafarers that do not hold certain national system certificates of competency.

AMSA's position on draft Interim Safety Report: Finding 9 and Recommendation 10

AMSA supports the finding and this recommendation in principle.

AMSA supports a review of the accreditation scheme. As outlined in the draft Report, and AMSA's previous submission on the review, amendments to the surveyor accreditation scheme are needed to ensure that it is sustainable and that it meets the needs of AMSA and industry. Through administering the scheme, AMSA has identified issues with the current arrangements. This includes a lack of appropriate limitations on accreditations, particularly relating to vessel length, and the lack of pathways for trainees and provisional marine surveyors to overcome barriers to entering the profession. Further, the categories of surveying are not in keeping with new and emerging vessel types and technology, such as autonomous vessels or vessels that use alternative fuel sources. Reviewing the scheme as recommended would address these issues.

However, AMSA notes section 163 of the National Law Act mandates that the accreditation scheme be contained in the National Law Regulation instead of in marine orders. AMSA considers the scheme would be more appropriately contained in the marine orders. This would allow the scheme to be periodically reviewed more readily to ensure it is keeping up with technology. It will also simplify the regulatory framework and be co-located with other technical requirements which accredited marine surveyors, associations, and industry are accustomed to using.

AMSA also notes all marine surveyors have been accredited by AMSA, as opposed to employees of states and territories as was the case prior to AMSA assuming service delivery. Requiring unanimous agreement from the former COAG Council on matters relating to the scheme is therefore considered no longer necessary.

AMSA's position on draft Interim Safety Report: Finding 10 and Recommendation 11

AMSA supports this finding and the recommendation.

This recommendation would make it simpler for AMSA to clarify the meaning of 'vessel' and 'domestic commercial vessel' in light of new and emerging technology and vessels.

AMSA's position on draft Interim Safety Report: Finding 11 and Recommendation 12

AMSA supports this finding and the recommendation in principle. While AMSA supports amendments to the National Law Act to ensure the framework is flexible enough to regulate new and emerging vessel types and systems, establishing a taskforce would add additional resourcing implications for AMSA, which are not currently funded.

AMSA acknowledges the use of emerging technology, including alternative fuel and non-conventional vessel types, within the domestic commercial vessel sector is increasing and recognises the environmental and safety benefits newer technology brings. AMSA supports that changes to the National Law Act regarding vessel certification and standards are needed for AMSA to efficiently regulate emerging technology. In addition, changes are needed to key definitions in the Act (including "master", "crew", "defence vessel" and "vessel") to account for non-conventional vessels, such as autonomous or remotely operated vessels, that do not have persons on board. In regard to "defence vessels" specifically, currently for a vessel to be a "defence vessel" it must be manned by seafarers under armed forces discipline, meaning uncrewed vessels used for defence purposes continue to remain within the scope of the National Law framework. A similar definitional issue also applies with respect to more conventional defence vessels while it is undergoing seatrials, resulting in the vessel needing to comply with the National Law framework initially, only to then later be excluded from the law. Further, the general safety duty with respect to who design, manufacture, supply etc should be reviewed to ensure that it captures components or systems of a domestic commercial vessel, such as artificial intelligence systems, which may be separately designed and maintained to the physical vessel.

AMSA notes that a major barrier to a safety regulator facilitating the application of new technology is the unknown nature of the safety and environmental risks of the new technology and the availability of expertise in emerging technology. AMSA considers that these changes to the National Law Act, combined with enhanced technical resources within the organisation, covering key emerging technologies, would assist in addressing the current issues associated with new and emerging technologies. However, AMSA would need additional funding to accommodate the establishment of a taskforce or to employ or engage personnel with appropriate expertise.