

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

January 2023

The Australian Commercial Vessel Operators Association (ACVOA) members own and operate domestic commercial vessels of class 1 (passenger) and class 2 (non-passenger), all around the Australian coast and out to the exclusive economic zone limit. A number of members also operate regulated Australian vessels (RAVs) on international voyages as well as around the coast. This provides ACVOA with the perspective of operations within both the Navigation Act and the National Law Act, experiencing the advantages and challenges of each system, along with the difficult articulation between these systems for the Australian domestic fleet.

With the final report on Phase 1 of the review still to be published and changes to the National System still to be implemented, there are challenges in responding specifically to some the questions posed. ACVOA has taken the view that an implementation phase must follow the government review panel's final report, with the National System still to be fully established.

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.*

Information for this question is to be supplied separately by operators.

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.*

1. The semi-privatisation of the vessel survey system means operators pay twice for vessel surveys

With the introduction of the national system came the outsourcing of surveys. This passed the responsibility of ensuring compliance to an individual, rather than a regulatory entity, which has increased costs to maritime operators. The increase has arisen from the market economy that now exists with engaging a surveyor in a privatised market, as well as AMSA's monitoring and audit method of surveyors.

Included within the costs of the national system that are sought to be recovered are listed the functions¹:

- Survey vessels and deal with matters relating to survey of vessels by accredited surveyors
- To accredit persons and approve training organisations for the purposes of this Law.

¹ p2, Phase 2 Consultation Aid November 2022, AMSA range of functions under the National Law, bullet points 4 and 5.

Prior to the introduction of the national system, an annual fee was paid to the state or territory regulator, who would provide a surveyor to ensure a vessel was compliant. The regulator was available to provide advice and information, with any change to a vessel or its operation being approved by the local surveyor. This single fee covered a vessel's compliance, with fee-based activities charged as applicable.

Currently an operator will independently engage a surveyor, who surveys for compliance. This individual generally needs to approach AMSA for advice, information, or confirmation of approval. AMSA then conducts or requires additional surveys to ensure compliance, at further cost to the operator. Any change to the vessel or operation proposed incurs another cost from the surveyor and still requires the approval of AMSA.

A decision needs to be made whether a privatised certification system is operating or not. Currently there is dual system which results in twice the cost for operators. Random monitoring and compliance activities by AMSA marine safety inspectors are understood, being charged for these in a levy when they are an audit of surveyors, is not accepted by industry.

If a privatised system is to be used, then privatised surveyors should have the autonomy of decision making in the field. In the current system the safety regulator adds requirements, adjusts decisions or requires final decision making involving a repetitive survey process, then charges the operator for this process. It is not indicative of an efficient or effective system.

The bullet point relating to accreditation and training organisation approvals may be costs to AMSA but are recovered from costs charged to surveyors and training organisations for their accreditation. These should not form part of levy for DCV operators. The cost is already passed on to the user by surveyors and training organisations as part of their business compliance costs. In applying these costs to a DCV operators levy, AMSA is again receiving payment twice for the same service.

2. Provision of services

The domestic industry needs to be clear on the service being provided and what they are getting from this service, to understand the effectiveness in paying for the service. It is noted that AMSA has taken steps in recent years to improve transparency of costs, though this is a separate issue to why industry must pay for the regulatory service.

Industry is looking to understand why they are paying for what is a public service. It was once received from local jurisdictions, now with no reduction in state/territory based payments or taxes, a levy is required. AMSA's Maritime Safety system (MARS) for survey reports still needs improvement and the problems with the surveyor system have already been described. Incident reporting continues to be problematic for industry, with the inconsistency in response by marine safety inspectors around the country impacting on motivation to report.

The shift to a national system has (outside of covid) simplified the movement of vessels and seafarers around the coast but has not heralded any savings to the industry. It has only increased the numbers of payments required from DCV operators.

3. Ability of domestic industry to pass on costs

The domestic sector has a limited ability to pass on increased costs compared to the international industry sector. The dilution of increased costs is difficult with a smaller customer base and the position of much of the sector, nearer the end of the supply chain.

In addition, the domestic industry has seen significant cost increases outside of regulatory functions. The cost of constructing a replacement vessel has increased approximately 20% since the start of covid is an example of just one of the increased costs for industry.

4. Relevance of levies charged under the Navigation Act to DCVs

Table 1 - Calculation Rates of AMSA levies² should not be used as a starting point for attributing services to the domestic industry. The Marine Navigation Levy for navigational infrastructure covers international standards and obligations to the IMO³ and IALA⁴. These requirements and costs are not the same if providing navigation aids to the domestic fleet. Similarly, the Protection of the Sea Levy covers costs for the needs of the National Plan for Maritime Environmental Emergencies (National Plan). The National Plan covers Australia's international obligations under UNCLOS⁵ and OPRC⁶. Again, these requirements and associated costs are not providing for the domestic fleet.

Question 3: *What funding approach or mix of approaches do you believe would best achieve secure and stable resourcing of the National System?*

To achieve secure and stable resourcing a government funded approach is recommended.

This applies particularly to the next few years where the National System will again be in a state of flux. The DCV industry already funds the survey system and pays for fee-based activities. Funding was granted by the government to cover the implementation phase, when AMSA assumed service delivery of the National System. Implementation costs will again apply, with changes to the system as a result of this government review. AMSA and the domestic industry have been in a holding pattern since 2018, with one inquiry or review following the next. A finalised system would enable clear identification of ongoing costs and the efficiency and effectiveness of the system. This information is not currently available.

A direct user pays model will impact the method and frequency of interaction with the safety regulator. The domestic industry will seek cost savings through less interaction, which will not enhance maritime safety outcomes.

The contribution to the supply chain, transport of passengers and cargo, construction and tourism is for the public good around the Australian coast and provides a critical service in many cases. AMSA, as a commonwealth entity, provides a public service and the DCV industry, as an Australian based industry should receive the benefit of this service. Consolidated revenue is the method of providing for public services.

The involvement of a number of associations and unions in committees, working groups and consultations with AMSA, highlights the difficulty in reconciling safety regulator interaction directly to a user pays model. Who is to be charged for industry body involvement when these entities have the predominant involvement in consultative groups?

For any levy imposed, whichever method of cost allocation was determined, the number of operators or vessels contributing to this fund is unknown without further evolution of the National

² p6, Phase 2 Consultation Aid November 2022

³ International Maritime Organisation

⁴ International Association of marine aids to navigation and Lighthouse Authorities

⁵ United Nations Convention on the Law of the Sea

⁶ International Convention on Pollution Preparedness, Response and Co-operation

System. A levy may be determined, but full cost recovery may still not be achievable if a viable DCV industry is to continue operating.

Question 4: *What are the aspects of a vessel or its operation that could form a suitable basis for levy-based cost recovery?*

Until the risk-based system (or any other system to be implemented) is finalised, risk profiles are determined and the system is implemented, equity in safety outcomes will not vastly change and a levy will not influence outcomes.

In terms of listed levy-based services, there becomes little to differentiate one operator from another until details of the system are implemented. If greater contact is made with AMSA in developing and evolving operations, then less compliance monitoring is likely to be warranted. Other operators would avoid all but the bare contact necessary, meaning greater compliance monitoring may be warranted to maintain an appropriate overview of operations. Contact will occur with AMSA, either with operational planning or with compliance monitoring.

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?*

Regulatory effort and resources are a reasonable basis for fee setting in a user pays model. This can be dependent on organisational or industry sector 'safety maturity' (for example the resources and focus committed to safety outcomes), not only risk profile, so need system changes to be implemented to fully determine the relevant costs.

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.*

Until industry subsectors understand where they fit in the risk-based model, actual costs are difficult to reconcile.

Additional costs to those mentioned in the question above may include:

- time off the water while upgrading vessels or crew competencies.
- for vessel that cannot be retro fitted to the required standard; the loss in commercial market value of the vessel as well as the cost of a new vessel that must be outlaid.

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?*

Target support on a commercial loss basis is appropriate for sectors impacted.

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?*

Through the questions posed and key issues identified in the consultation aid, it is evident the panel understands many potential impacts of recommendations made in Phase 1. Additional costs will also arise to either industry or the safety regulator through;

- Implementation costs of the risk-based structure;
- Additional compliance costs should perceived 'high-risk' vessels need to be regulated under the Navigation Act as recommended in the risk-based structure;
- The structure and resourcing of AMSA.

AMSA's structure has changed several times since the introduction of the national system and while there is now a better focus on the domestic industry, evolution is still required.

- International shipping touch points are generally port state control and/or when something has gone wrong. Investigations and determinations around safety issues are often more process based.
 - The domestic industry requires more operationally based interactions, assistance with operational problem solving in a compliant manner. Operations are often more variable in nature and interaction with the safety regulator can assist with the positive safety outcomes being sought. To achieve this a genuine understanding of the industry is needed, the right people in the right place to be efficient. An understanding that the approach between international and domestic industries is different is needed for effective interaction. Not a greater number of people, but an efficient and effective workforce.
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