



Australian Government
Australian Transport Safety Bureau

ATSB

INDEPENDENT REVIEW OF DOMESTIC COMMERCIAL VESSEL SAFETY LEGISLATION AND COSTS AND CHARGING ARRANGEMENTS

AUSTRALIAN TRANSPORT SAFETY BUREAU
JANUARY 2023 SUBMISSION

[Abstract](#)

This submission is a response to the consultation aid, released in November 2022, prepared for phase 2 of the independent review. The ATSB's submission outlines matters for the review Panel to consider in relation to expanding the ATSB's role.

Contents

1	Introduction	1
2	Australian Government funding	3
3	ATSB's role	3
3.1	A role for the ATSB	3
3.2	Independent no-blame investigations	3
3.3	Safety data recording, analysis and research	4
3.4	Influencing safety action	4
4	Potential areas of focus	5
4.1	ATSB welcomes further clarity	5
4.2	Ferries	5
4.3	Charter boats	6
4.4	Fishing vessels	6
5	Efficient and effective implementation	7
5.1	Staged implementation	7
5.2	Project implementation team	7
5.3	Recruiting staff	7
5.4	Training investigators	8
5.5	Support staff	8
5.6	Office and staff locations	8
5.7	Capital and maintenance costs	8
5.8	Establishing relationships and influence with DCV stakeholders	8
5.9	DCV investigations by other investigators	9
5.10	Coordination with any other remit expansion	9

1 Introduction

- 1.1.1 The terms of reference for the *Independent Review of Domestic Commercial Vessel (DCV) Safety Legislation and Costs and Charging Arrangements* include consideration of:

...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.¹

- 1.1.2 The ATSB responded to this part of the terms of reference in its April 2022 submission².

¹<https://www.infrastructure.gov.au/department/media/publications/terms-reference-independent-review-australias-domestic-commercial-vessel-safety-legislation-and>

²https://www.atsb.gov.au/about_atsb/inquiry-submissions

- 1.1.3 The draft phase one report for this review made three recommendations relating to the ATSB:

Recommendation 6: The ATSB should be funded by the Australian Government to undertake a no-blame investigation program sufficient to support the identification of systemic safety issues. The Minister should issue a statement of expectations regarding the ATSB's DCV function.

Recommendation 7: Where a State has its own safety investigator the ATSB may engage it to undertake investigations on its behalf.

Recommendation 8: Safety incidents should be reported to one Commonwealth maritime safety authority only (AMSA or the ATSB) who will take responsibility for sharing it with each other as required.³

- 1.1.4 The ATSB understands phase 2 of this review will consider costs and charging, including consideration of the following section of the terms of reference:

...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.⁴

- 1.1.5 The ATSB welcomes the opportunity to comment on phase 2 of the review.
- 1.1.6 The ATSB has prepared this submission consistent with the Minister for Infrastructure, Transport and Regional Development's expectation that the agency provide input into government inquiries reviewing the ATSB's jurisdiction across different modes of transport⁵.
- 1.1.7 Any changes to the ATSB's jurisdiction are a decision for the Australian Government.

³<https://www.infrastructure.gov.au/department/media/publications/draft-interim-safety-report-independent-review-domestic-commercial-vessel-safety-legislation>

⁴<https://www.infrastructure.gov.au/department/media/publications/terms-reference-independent-review-australias-domestic-commercial-vessel-safety-legislation-and>

⁵https://www.atsb.gov.au/about_atsb/ministers-statement-of-expectations/

2 Australian Government funding

- 2.1.1 The ATSB notes that recommendation 6 of the review specifies that any expansion of the ATSB to include DCVs should be funded by the Australian Government.
- 2.1.2 The agency also notes a statement in the phase 2 consultation aid regarding cost recovery for ATSB work:

The Panel does not intend that the cost of funding the ATSB for the proposed DCV functions be recovered from industry.⁶

- 2.1.3 The ATSB acknowledges that a funding model that does not recover funds from industry is consistent with maintaining the independence of the ATSB and recognises the public good of ATSB investigations. It further reflects the systemic no-blame focus of ATSB investigations. ATSB investigations do not limit safety findings to those involving individual operators. Safety findings are reflective of the role of manufacturers, maintainers, port authorities, regulators and policy makers..

3 ATSB's role

3.1 A role for the ATSB

- 3.1.1 The ATSB welcomes further clarity in the review's final report on the scope of the role envisaged for the ATSB in relation to DCVs. This would greatly assist with further policy consideration and cost estimates.
- 3.1.2 Consistent with the ATSB's Portfolio Budget Statement⁷, at a minimum, the ATSB advises that an appropriate role for the ATSB in DCVs would include each of the following elements:
 - 3.1.2.1 independent no-blame investigation of DCV accidents and other safety occurrences
 - 3.1.2.2 safety data recording, analysis and research
 - 3.1.2.3 influencing safety action.

3.2 Independent no-blame investigations

- 3.2.1 If the ATSB had a role in DCVs, investigation of DCV incidents and accidents would be central to its work.
- 3.2.2 Independent no-blame safety investigations are part of a mature transport safety system, complementing the role of regulators, policy makers, manufacturers, operators, other service providers and industry professionals.

⁶<https://www.infrastructure.gov.au/department/media/publications/independent-review-domestic-commercial-vessel-safety-legislation-and-costs-and-charging-arrangements>

⁷https://www.atsb.gov.au/about_atsb/portfolio-budget-statement

3.2.3 Independent, no-blame investigations do not set out to duplicate the investigations conducted by other organisations, they examine the transport safety system as a whole, and consider how to make it safer for all industry participants. Independent, no-blame investigations objectively determine what has occurred, why it has occurred and what needs to be done to rectify any deficiencies. They expand beyond the compliance focus of an investigation undertaken by a regulator.

3.3 Safety data recording, analysis and research

3.3.1 Safety data recording, analysis and research is also an important element of the ATSB's role in improving safety.

3.3.2 In relation to safety data recording, the ATSB notes and supports recommendation 8 of the review's draft phase one report – that only one agency should be responsible for receiving notifications of safety occurrences. This is currently the approach in marine where reports are made direct to the Australian Maritime Safety Authority (AMSA). The ATSB's legislation provides for the ATSB being able to acquire information directly where this is needed for consideration to conduct an investigation.

3.3.3 In other transport sectors, the ATSB conducts research and analysis to assist organisations managing transport safety risks. As trends emerge, the ATSB uses its access to data and productive relationships with stakeholders to research these issues.

3.3.4 The ATSB could contribute to DCV safety through research. The ATSB understands little formal research has yet been completed for Australia's DCV sector. The AMSA produced a 2016 paper 'An Exploratory Study of Safety Culture in Domestic Commercial Vessels' in conjunction with the University of Queensland and the University of Western Australia⁸, acknowledging the limitations of DCV research:

This research has provided an initial understanding of safety challenges facing a small sector of the domestic commercial vessels. The significance of the industry and the risks faced by vessel operators underlies the need for more research into factors contributing to poor safety outcomes in domestic commercial vessels.

3.4 Influencing safety action

3.4.1 The third element of the ATSB's role – to influence safety action – brings together the other work and ensures it makes a practical difference. Industry education is a vital to ensure that lessons learned actually reach the organisations and operational personnel whose behaviour can change safety outcomes.

⁸ Douglass, E., Neal, A., & Grech, M. (2016). *An exploratory study of safety culture in domestic commercial vessels*. University of Queensland/ University of Western Australia/ Australian Maritime Safety Authority.

- 3.4.2 The ATSB’s independent status allows it to educate and engage with industry in an effective way. The ATSB is a trusted agency with a reputation for quality analysis and impartial advice. Safety messages communicated by the ATSB can reinforce the messages already shared by others or point to something new.
- 3.4.3 Education and engagement can include:
- 3.4.3.1 publishing investigation and research reports
 - 3.4.3.2 promoting safety messages and investigation findings
 - 3.4.3.3 managing official communication platforms, including a website and social media accounts
 - 3.4.3.4 developing mutually beneficial relationships with media outlets to share key safety messages
 - 3.4.3.5 promoting key safety initiatives such as legislated accident and incident reporting, and confidential reporting
 - 3.4.3.6 publishing educational booklets and brochures
 - 3.4.3.7 monitoring media and industry commentary
 - 3.4.3.8 actively engaging with key stakeholders.

4 Potential areas of focus

4.1 ATSB welcomes further clarity

- 4.1.1 The ATSB welcomes further clarity in the review’s final report on the areas of focus envisaged. The ATSB understands there are divergent views on the types of vessels the ATSB should focus on. To assist the Panel, below is a brief discussion on several key types of DCV operations.

4.2 Ferries

- 4.2.1 The ATSB’s current Ministerial Statement of Expectations states that the ATSB should “give priority to transport safety investigations that have the highest risk or potential to deliver the greatest public benefit through systemic improvements to transport safety”⁹. At face value, it appears that of DCV operations, investigation of public transport ferry operations most clearly aligns with this expectation.

⁹ https://www.atsb.gov.au/about_atsb/ministers-statement-of-expectations

- 4.2.2 Ferries are typically large vessels, often carrying many people.
- 4.2.3 As ferry operations are common throughout Australia, lessons learned from any one investigation have the potential to be relevant to many other operations across the country.

Box 1: Example of a ferry accident the ATSB could investigate

In 2007, a ferry and charter boat collided on Sydney Harbour – resulting in the destruction of one of the vessels, four fatalities and eight people requiring hospitalisation¹⁰.

4.3 Charter boats

- 4.3.1 Similar to ferries, though typically on a smaller scale, charter boats often carry members of the public.
- 4.3.2 These operations are also common, for example many tourist operators use charter boats, meaning lessons learned can be shared across the country.

Box 2: Example of a charter boat accident the ATSB could investigate

In 2016, a commercial tourist vessel burnt to the waterline, forcing all 46 people on-board to evacuate onto life rafts and into the water¹¹.

4.4 Fishing vessels

- 4.4.1 Fishing vessels are typically used for commercial operations with no passengers.
- 4.4.2 The demands of fishing operations create additional safety risks and there is an interplay between workplace health and safety considerations and general maritime safety.
- 4.4.3 While fewer people are likely to be involved in accidents involving these vessels, the rate of reported serious incidents is disproportionately high compared to other DCVs¹². In the absence of supporting data and research, it is unclear which factors contribute to this increased risk. This lack of information supports the case for the ATSB to investigate fishing vessel incidents and accidents.
- 4.4.4 However, it is possible, given the small-scale of many fishing operations, that fishing vessel incidents and accidents may occur due to factors already well-known to industry. If the ATSB was to determine that this was the case, there may be less value in conducting large numbers of fishing vessel investigations, as many of those investigations would be unlikely to lead to the identification of new safety issues and significant safety improvements.

Box 3: Example of a fishing vessel accident the ATSB could investigate

¹⁰ <https://knowledge.aidr.org.au/resources/transport-ferry-accident-sydney-2007/>

¹¹ <https://www.theguardian.com/australia-news/2016/may/11/tourists-rescued-from-boat-that-caught-fire-off-great-barrier-reef-island>

¹² Figure 6, <https://www.amsa.gov.au/annual-overview-marine-incident-2021>

In 2017, a fishing vessel, MV Dianne sank off the coast of Agnes Waters in Queensland, resulting in six fatalities¹³.

5 Efficient and effective implementation

5.1 Staged implementation

- 5.1.1 Should the Australian Government decide to adopt the draft recommendation to expand the ATSB's remit to include DCVs, several factors would be critical for efficient and effective implementation.
- 5.1.2 Regardless of the scale of the ATSB's involvement in DCVs, implementation would need to be staged. An increase to the ATSB's remit could have a major impact on the agency's ability to continue business as usual activities unless the expansion is managed in a controlled manner.

5.2 Project implementation team

- 5.2.1 Based on the ATSB's experience developing and implementing the national rail safety investigator reform, a dedicated project team would be required to manage expansion of the ATSB's role into DCVs.
- 5.2.2 This team would help coordinate policy development in conjunction with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, manage internal and external consultation, and plan the operational aspects of implementation in conjunction with ATSB specialist staff.
- 5.2.3 This team would need to be established as a first step, to enable other work as outlined below.

5.3 Recruiting staff

- 5.3.1 Recruitment is intricate, time-consuming, and complex. The ATSB continually improves its recruitment strategy to overcome changing environments and the challenge of finding the right person. Since the pandemic, it has become harder to find quality talent with relevant industry knowledge and skills, and the willingness to undertake the considerable training required to be a successful Transport Safety Investigator.
- 5.3.2 In the current tight employment market, new recruitment strategies are required. The ATSB would need to develop and implement a strategy to attract and retain DCV-skilled staff to support the agency's expansion.

¹³ <https://www.brisbanetimes.com.au/national/queensland/new-memorial-for-six-men-killed-in-sunken-trawler-off-queensland-coast-20220716-p5b22l.html>

5.4 Training investigators

5.4.1 Training specialist ATSB investigators takes significant time and resources.

5.4.2 Over the past five years, the ATSB has been furthering its training program for Transport Safety Investigators. In 2019, the ATSB partnered with RMIT University (RMIT) to introduce a Graduate Certificate in Transport Safety Investigation. RMIT relies on ATSB resources to help deliver this qualification to Australian and overseas students. ATSB investigators are required to undertake this study and combine it with on-the-job experience, and this training is an integral part of the learning required for investigators in their initial 18 months of employment. It takes a further 24 months of being coached and mentored on-the-job before an investigator can demonstrate sufficient capability to investigate an accident independently.

5.5 Support staff

5.5.1 An increase in operational staff focused on DCVs would necessitate an increase in corporate support staff. Essential corporate services include finance, human resources, training, information and communication technology support, records management, legal, and governance.

5.6 Office and staff locations

5.6.1 With an increase in staff, the ATSB would need to reconsider its office space and locations.

5.6.2 The ATSB currently has staff located in Canberra, Brisbane, Melbourne, Perth, Adelaide and Sydney. The distribution of DCV activity may require an increased presence in one or more of these locations, or potentially a new office in another location.

5.6.3 Sufficient time and resources would need to be allowed for the ATSB to assess its staff distribution across Australia, and make changes as required.

5.7 Capital and maintenance costs

5.7.1 The ATSB would require resources to expand its investigation management system to handle DCV occurrences and investigations, and interact with other relevant data sources. If the ATSB was responsible for DCV safety incident reporting, as suggested could be the case in draft recommendation 8, this expansion would be particularly significant.

5.7.2 It is likely that new capital equipment, specific to DCVs, would also be required for the ATSB's technical facilities. The exact nature of this capital would require further research.

5.8 Establishing relationships and influence with DCV stakeholders

5.8.1 Current DCV sector understanding of and engagement with the ATSB is limited, as is the ATSB's understanding of the sector.

5.8.2 In order to effectively fulfil its role, early in the process of implementation, the ATSB would need to invest significant time and resources to engage with DCV stakeholders. Effective influence in future would be reliant on the ATSB developing a comprehensive understanding of the sector, and building stakeholders' understanding and appreciation of the ATSB's contribution to DCV safety.

5.9 DCV investigations by other investigators

- 5.9.1 Noting draft recommendation 7, that the ATSB may engage a state safety investigator to investigate on its behalf, the government would need to consider the costs and opportunities of a shared arrangement with the New South Wales Government's Office of Transport Safety Investigation (OTSI) and the Victorian Government's Chief Investigator Transport Safety (CITS).
- 5.9.2 Negotiating an effective and efficient partnership with state agencies, would require significant resources, and the maintenance of such a partnership would require ongoing resourcing. The ATSB has previously commented in the rail sector that these arrangements have administrative costs and efficiency and effectiveness challenges¹⁴.

5.10 Coordination with any other remit expansion

- 5.10.1 As noted in the ATSB's April 2022 submission to this review, several recent reviews and inquiries have considered and recommended changes to the ATSB's jurisdiction:
- 5.10.1.1 The 2019 *Review of Road Safety Governance Arrangements*¹⁵ noted the opportunity to consider the utility of a no-blame investigator, such as the ATSB, in road safety.
 - 5.10.1.2 The 2020 *Productivity Commission inquiry into national transport regulatory reform*¹⁶ recommended formalising the ATSB's role in rail and expanding the ATSB's jurisdiction to include DCVs, heavy vehicles and autonomous vehicle technologies. In its response, the then Australian Government committed to consult with state and territory governments, regulators, the ATSB and industry on these recommendations.
 - 5.10.1.3 The 2020 *Senate inquiry into policy, regulatory, taxation, administrative and funding priorities for Australian shipping*¹⁷ recommended expanding the ATSB's jurisdiction to include DCVs. Parliament was prorogued before the then Australian Government responded.
 - 5.10.1.4 The 2021 *Senate inquiry into the importance of viable, safe, sustainable and efficient road transport*¹⁸ recommended expanding the ATSB's jurisdiction to include commercial heavy vehicles. The then Australian Government noted this recommendation and acknowledged it is consistent with the recommendation from the Productivity Commission.
- 5.10.2 Any change to the ATSB's role in DCVs should be considered in the context of any other jurisdictional expansion and coordinated appropriately.

¹⁴ Paragraph 6.5.11 of submission 39, <https://www.pc.gov.au/inquiries/completed/transport#report>

¹⁵ <https://www.roadsafety.gov.au/nrss/2019-governance-review>

¹⁶ <https://www.pc.gov.au/inquiries/completed/transport#report>

¹⁷ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Shipping

¹⁸ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/RoadTransportIndustry