



Response to the Independent Review of Domestic Commercial Vessel Safety Legislation

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To Whom It May Concern:

The responses below are compiled by the team of AMSA Accredited Marine Surveyors employed at Maritime Survey Australia (MSA). We welcome any feedback.

Best,

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Question 1: Is Australia's legal framework for the safety of domestic commercial vessels fit for purpose?

1. The survey frequencies adopted in Marine Order 503 schedule 3 see's light touch on many vessels requiring greater oversight and heavy touch on those that don't. In general terms the class 3 and class 2 workboat fleets are poorly maintained and we are seeing compliance of these vessel dropping away with the introduction of low and medium risk surveys for these vessels.

2. Survey modifiers for wood and GRP vessels more than 15 years old make no sense as the increased survey frequency only leads to more frequent periodic surveys. The perceived risk of the material the vessel is made of should be controlled by more frequent out of water surveys where the material in question can be better examined. Steel and aluminium hulls can also deteriorate rapidly.

The risk is not what material the vessel is made of, it is the type of service the vessel is engaged in and how well maintenance is carried out. All vessels regardless of construction material should attract more frequent out of water inspections at 20-25 years of age, this would help promote owners to replace vessels rather than continue to operate degraded vessels. Operators that proactively maintain their vessels to a high standard would already be slipping more regularly than 5 years and would not see this as an impost.

As Surveyors we are seeing more aluminium vessels - as new as two years old -suffering from corrosion issues, using the Survey modifier, many of these vessels are not seen until it is too late.

AMSA are not responsible for the condition and repair of DCVs however, by setting the survey schedule, they by virtue set the maintenance schedule. Our experience is that all owners plan their dry dockings around these dates.

3. Out of water and shaft surveys should be decoupled from the renewal surveys and simply be required at a period not more than five years from the last out of water and shaft survey (three years for class one and vessels >20 years old), permitting owners to slip their vessels when relevant resources are available. Having to apply for extensions or executing the renewal survey earlier than required is unnecessary red tape and a senseless impost on the industry.

4. To be more consistent EX40 should be more like EX41 whereby the exemption dictates parts of the NSCV that may be omitted or certain conditions to adhere to. EX40 vessels should receive a certificate of survey and undergo the normal 5 yearly renewal survey to receive the renewed certificate.

5. MSA have had experiences where government departments have procured vessels as recreational craft and registered them privately because they were of the assumption, they were exempt from survey under Exemption 2. AMSA have given vessels under 12m the name Non-Survey (NS) vessels. The name implies the vessel is "not in survey" or not a Commercial Vessel, however this is not the case. These NS vessel are commercial vessel but do not require an initial or on going inspection, they are required to comply with the marine safety (domestic commercial vessel) national law act 2012. The operators of NS vessels are given a trust and verify approach in an online application.

The application requires a builder's plate confirming level floatation and compliance with the relevant standards. Unfortunately, for all involved including the passengers, builders' plates in Australia are not audited. A vessel build plate is used as a marketing tool in most cases by larger boat builders rather than following safety standards. A competent person is required to complete a builder's plate. There is no requirement for this to be checked or for the vessel to be inspected by a qualified person such as a Naval Architect. AMSA should not consider the build plate on a vessel as a measure of compliance.

6. AMSA Exemption 2 references the NSCV Part G which provides no requirements specific to construction, machinery (other than shafts), electrical and fire safety (other than fire extinguishers and fire blankets). Exemption 2 can be applied to an 11.99m vessel with inboard engines below deck with substantial seawater systems, electrical installations and fire risks below deck with no standards applicable to the design and maintenance of these and no surveys required initially or when in service. This presents a significant risk to the safe design and operation of these vessels. At present a member of the public could pay to go on a charter (up to 4 passengers) and unknowingly be on a Exemption 2 vessel that is a significant risk to their safety.

7. Increasing the original NS vessel length from 7.5 to 12m was a poor decision. A 12m vessel has larger systems and more complex than a trailer-able vessel yet considered low risk. Commercial Fishing globally is considered the highest risk job in the world yet in this case it is considered almost zero risk by AMSA. For example, a Class 2D or 3D commercial vessel with a Certificate of Survey may be required to have a fixed firefighting system and inspected every 3-5 years compared to a NS vessel that does not require any of the aforementioned. 7.5 meters is the upper limit for most legally road trailer-able vessels making this threshold a sensible pragmatic approach. AMSA's decision to increase this threshold to 12 meters without any underlying risk model that justifies such an increase is poor.

A NS vessel is not assessed for construction, stability, electrical, buoyancy or crewing. It is not given a certificate of survey and in most cases a certificate of operation. It still does require a SMS. Amazingly, these same vessels with only a self-assessment required are able to carry up to 4 passengers. How do you decide that 4 dead people is acceptable on a NS vessel but not on a Class 1 vessel?

AMSA have not completed a risk assessment in determining this outcome and simply relied on Canberra bureaucrats to deliver the decision rather than real data. This is the same system that delivered the fatal Malu Sara incident that saw the vessels not undergo initial survey and compliance checks, rather a trust and verify model that failed. resulting in the death of 5 people on a 6m commercial vessel. The general public or broader community has a reasonable expectation that a vessel that plies for hire and reward is fit for purpose. They cannot be expected to judge whether or not a vessel is capable of performing the task for which it advertises.

In Australia, AMSA is now charged with ensuring that the public is protected from unscrupulous or careless operators, which includes monitoring compliance to ensure that a vessel's hull, machinery and equipment meets certain minimum standards. Accordingly, both AMSA and the vessel owner have a duty to the public and to other users of the waters to ensure that public safety is preserved. AMSA cannot abrogate its responsibilities to public safety through an administrative sleight of hand that permits self-declaration to certain classes of commercial vessel, particularly when there is no corresponding commitment to monitoring compliance.

Aside from questions of the legality of Non-Survey Vessel, self-declaration and whether or not it has the potential to void a vessel's insurance. Industry, AMSA and the Marine Safety Inspectors all know

that some vessel owners are flouting the self-declaration process. In our view, if AMSA takes no action to remedy the situation then it is effectively condoning the continuation of irresponsible marine safety practices on the Australian waterways

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?

1. All states and territories have their own rules around WHS, Electrical, Lifting appliances, pollution, masts and rigging. This can be confusing and difficult to navigate for both operators and surveyors.
2. MSA recommends standards should be implemented into the NSCV specific to lifting appliances, pollution (blackwater holding tanks and treatment) and masts and rigging on sailing vessels. The NSCV does not presently provide for any standards for these.

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?

The use of 'club' vessels under 'boat share' arrangements can be difficult to interpret and can be used by an operator where persons pay a fee to become a 'member' and use the vessel as a boat share arrangement.

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

Navigation Act is focused on big ships and international vessels and not entirely suited for DCVs.

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

Most operators believe the Certificate of Survey or the Certificate of Operation represents ownership of the vessel. This message is not conveyed to the owner or operator well by AMSA.

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?

1. This would provide more insight to the causal factors of incidents to educate the DCV industry. AMSA do not make their incident reports publicly available so there is not sufficient information to educate & inform the industry on the outcomes of an incident and safety implications.
2. Adding another government agency is not desirable, it ATSBs involvement is to add a no blame, transparent safety incident reports to industry then we are supportive.

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?

1. Proposing to remove in part grandfathering arrangements is a good idea however, before solving the problems of the past, the focus should be on the problems that AMSA is creating now with the acceptance of NS Vessels without any oversight or inspection. Accepting build plates as a compliance measure should stop immediately. This is not delivering the best safety outcome and will just compounds the problems that we already have with Grandfathered vessels.

2. One of the major points that the states and industry agreed to the implementation of the National Law was that existing vessels would be grandfathered. Grandfathering has already been partially eroded with C7A applying to all vessels and the ever present "transitional survey gauntlet" removing grandfathering altogether would be a kick in the guts for the DCV industry. The underlying issue is that the NSCV has not delivered on it's original objectives. The USL code should be seen as an equally effective standard and application of either standard should be applied more pragmatically and with greater flexibility than the current transitional process.
3. If AMSA consider removing grandfathering it is recommended they consult with industry on how this would be applied. The transitional standards in Marine Order 503 have been a nightmare to apply and impose undue red tape and cost to industry and in most cases with no increased safety outcomes. Removal of grandfathering provisions specific to standards that apply to a vessel should only apply to those areas that will bring an improved safety outcome. In general we find this to be stability focused as older vessels become overloaded and have no historical stability data.
4. MSA support the implementation of survey frequencies for grandfathered vessels to come in line with new and existing vessels in accordance with Marine Order 503. As presently standards some grandfathered vessels are not required to be surveyed at all. This presents a significant risk to the safety of these vessels and the persons onboard as we have seen the industry is not good at maintaining compliance without 3rd party oversight. In the majority of cases it is about saving a dollar.
5. If it is decided to implement transitional measured to existing vessels then this should be completed in a staggered approach. For example; The requirements of NSCV C7C to be implemented by the next renewal survey. Giving a trigger date such as 01/01/2024 put's pressure on suppliers and installers as all operators begin purchasing a week before the due date.

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?

1. The NSCV is overly complex and difficult to interpret and apply. As surveyors we have a better understanding and a large division and interpretation register where we have sought interpretation from AMSA. However, for industry their understanding is very poor and they rely on their surveyor for understanding.
2. The divisions under Exemption 2 are hard to interpret and apply. MSA deal with many government departments who previously were exempt from survey so apply division 5. They have little understanding of their compliance requirements or operational requirement under this.
3. The NSCV Part C2 is still not implemented. This is simply not good enough.
4. There is no clarity of what standards need to be applied to grandfathered vessels under Exemption 2 Division 5. Unless the surveyor or owner knows the history of the vessel or has access to historical state survey documents there is no clarity as to what standards applied to the vessel which standards applied to the vessel on the 30 June 2013.
5. MSA get feedback from industry frequently that there has been too much change, the industry needs some settlement.
6. The NSCV, exemptions and GES make reference to many International standards. These are costly to purchase and make compliance requirements complex raising costs for operators.

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

1. There should be a greater focus on the accreditation of Surveyors rather than the on going auditing of Surveyors once accredited.

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

1. Running campaigns through peak bodies that reaches industry at the coal face.
2. Stop accepting build plates on vessels as a measure of compliance. Build plates in Australia are not audited. Build plates do not offer reliable information. Not accepting the build plate as a measure of compliance would offer a better safety outcome.
3. Base inspections on the risk that the vessel operates in. Fishing is still listed as the most dangerous occupation in the world, the last AMSA audits by MSIs have listed fishing vessels with the highest number of deficiencies, yet fishing vessels require surveys once or twice every five years.

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

1. Feedback from reporting of incidents from AMSA could be improved. Incident investigation appears to be specific to compliance outcomes and not determining cause of the incident and identifying risks that can be used to improve safety on the water.
2. Requirements for repairs and oversight of surveyors is inconsistent from AMSA in our experience.
3. Smaller operators and Fishing vessel operators in general do not report incidents. This is reflective in the data, generally only people who work professionally in the industry on larger vessels report incidents. The incident data presented by AMSA, while helpful, is not a reflection of the DCV industry.
4. Recommend AMSA develop a best practice model on how to report and process for close out, possibly a flow chart. Need to encourage reporting, not scare them off. Feedback we receive from operators, is that AMSA become heavy handed as a result of a reporting of a near miss or a minor incident, they are then less likely to report in the future.
5. Have an anonymous confidential near miss register online to encourage operators to report.