Boating Industry Association

Submission:

2022 Review National Law

ISSUE: Review of Australia's Domestic Commercial Vessel Safety Legislation and associated Costs and Charging Arrangements

SUBJECT: Consultation 2022 on phase 1 re., Australia's Domestic Commercial Vessel Safety Legislation

INTRODUCTION:

AMSA has announced an Independent Review of Australia's Domestic Commercial Vessel Safety Legislation and associated Costs and Charging Arrangements. Information about the review, including terms of reference and reviewer information can be viewed here.

The review is to be conducted in two phases, with the first to focus on the National Law framework (Phase 1) and the second to consider national system delivery costs and future funding options (Phase 2).

Submissions for Phase 1 of the review are now being sought and a Consultation Aid has been published. To make a submission, please go to the Department of Infrastructure, Transport, Regional Development and Communications 'Have Your Say' webpage. Here you will also be able to access the Consultation Aid and Phase one consultation timeframes. Submissions can be lodged via this website or emailed to dcvsafetyreview@infrastructure.gov.au.

AMSA is open to any relevant submissions from previous similar inquiries. Submissions will be accepted till **30 March 2022**

SUBMISSION

The Boating Industry Association Ltd (BIA) commend AMSA for the opportunity to provide input on this important subject. One in two BIA members have a connection with the Domestic Commercial Vessel industry across these sectors.

The BIA is the peak body in Australia that represents the interests of recreational and light commercial boating which includes boat manufacturers, importers, brokers, insurers, retailers, charters, marinas, events, designers, surveyors and trades from boat builders to riggers, and more. BIA is an advocate for boaters and the boating lifestyle, and supports safe, responsible and enjoyable boating.

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The boating economy generates significant benefits through employment. In 2021 the industry reported national turnover of $8.835 billion, directly employed more than 27,630 people with more than 10,000 contractors. Seventy-five per cent are in small family businesses, employing local workers and supporting local communities.

With more than 85 per cent of the population living within 50km of the coast, it is little wonder that almost 1 in 5 households can have a boat or watercraft. Furthermore, the number of vessels and watercraft in our communities should not surprise as the reality is people of all ages, gender and ability can participate in boating across paddle, sail and power for leisure and sport.

Boating as a result is a significant contributor to the economy that spans metropolitan, rural and regional Australia.

Our responses to the specific questions put by AMSA are as follows:

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

BIA is of the view that the National Law was designed and deployed in consultation with the States and Territories in a process which included compromise and unintended consequences. For example, the capture of what were effectively recreational activities such as hire of paddle craft (eg., small paddle and sail craft), houseboats and boat share clubs under the National Law remain an un-easy and less than ideal fit. We believe such vessels represent low risk activities that are recreational in nature and should not be captured under legislation that was intended and designed to administer what were considered 'commercial vessels' (eg., much bigger, heavier vessels up to and including shipping) prior to the introduction of the Act in 2012.

Low-risk craft being used for what are essentially recreational purposes should be returned to the States and Territories for administration, utilising contemporary industry standards and industry-driven compliance management programs. In the meantime, such vessels should not be treated as equal with traditional commercial vessels. Vessels currently captured within Class 4 should be given additional attention to ensure the regulatory burden including compliance and enforcement is proportionate and appropriate to their operation and not caught up in a 'bundling' effect with much larger vessels which were the intended target of the original National Law.

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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?

BIA believes that as a national law, AMSA's legislative framework continues to have links, overlaps and tensions with State regulations; examples of such are provided within this Submission. Every effort needs to be made to continue to streamline, reduce red tape and ease the burden on the boating and light commercial sector which are captured within the National Law, eg., Class 4.

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?

BIA believes there remains scope in this regard, particularly as a consequence of vessels used for what has been closely aligned to a recreational activity being caught up in the National Law. One example is paddle craft which would benefit from a classification or definition within the National Law. For example, there is a practice currently made possible by the disconnect of National and State laws that enables a commercial operator who can run a commercial business on Sydney Harbour using paddle craft for personal or group training and or coaching on a fee for service basis that is run outside of the National Law. In this scenario BIA has been advised that a person can use a 'surf ski' to run such programs by having Transport for NSW Maritime (TfNSW Maritime) provide them with a permit most likely issued under what has long been a policy intended to exempt Surf Life Saving Clubs to use 'SLS Specification Surf Skis' (which are craft specific to SLS for competition) and or via the State-based Aquatic Licence process. This enables a person to run a commercial business using what are generically called "surf skis" (eg., ocean racing kayaks etc) which are not SLS spec skis but are going through a Fed-State loophole and doing so for commercial gain. This in turn means such commercial operators are running outside of and missing the safety system provided by the National Law and its education, compliance and enforcement regime. The implications, should an incident occur within this activity, would likely be a negative reputational impact on the paddle sector that is compliant with the National Law and have negative impacts on that same sector regarding insurance premiums. Whilst such craft are captured under the National Law, AMSA should address this loophole and inconsistency with TfNSW Maritime. Furthermore, BIA would suggest that the use of SLS 'spec skis' outside of SLS formal training and competition should not be provided with

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exemptions by TfNSW Maritime as this sets up conflicts with the general regulator's provisions in NSW for use of paddle craft.

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

As mentioned, BIA is firmly of the view that vessels formerly used as a low-risk recreational activity eg., hire of canoes and kayaks, self-drive day boat hire, houseboats or boat club share continue to be an un-easy fit under the National Law. International standards exist within this industry sector that are more appropriate for the design, construction and safety equipment of such; duplication of such standards within the NSCV or under the Navigation Act is inefficient and at times incompatible.

Whilst such vessels remain under the National Law, every effort should continue to be made and demonstrated to ensure the National Law does not simply transfer compliance, enforcement, guidelines, policies and enforcement from what could be considered traditional commercial vessel operations that can transit interstate and or international waters, for example, to vessels currently captured within Class 4.

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

Yes, however the obligations imposed on an owner of a Class 4 vessel in terms of Safety Management System and control of vessel users when underway remote from owner or business operational management, ie "out on hire" (the very concept of Class 4) are unworkable in that the owner is not present during the time out on hire and unable to effect direct control.

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?

The Australian Transport Safety Bureau (ATSB) is an independent Commonwealth Statutory agency that conducts independent "no-blame" investigations into safety occurrences in the maritime, aviation and rail transport sectors. These investigations are separate from any compliance investigations that may be undertaken by a regulator. ATSB investigations focus on identifying systemic safety issues that may be of relevance to the industry. The ATSB may look at the regulatory framework and the actions of the regulator as well as operators.

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ATSB's jurisdiction with respect to the maritime sector is limited, in general terms, to international and interstate shipping. It therefore excludes a significant segment of the DCV sector.

There is merit in consideration of the involvement of the ATSB. Considerations regarding ATSB involvement under the National Law would however have to include how this relationship would interact with, replace or overwhelm existing investigative bodies eg., Police, Office of Transport Safety Investigations (OTSI), Independent Transport Safety Regulator (ITSR) etc. Any move should not add complexity, burden, red tape, duplication, conflicts and confusion.

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?

BIA believes that removing grandfathering would not substantially improve safety outcomes.

BIA supports the view that safety outcomes are driven by the owners of the vessels, the operators of the vessels, and the procedures and processes that those organisations/parties have in place and enforce rather than existing grandfathering provisions.

Furthermore, rather than assume that everything that came before the National Law is less than appropriate, BIA believes that grandfathering, when aligned with solutions to issues of safety, construction or operation, have allowed for example vessels in the boat club share sector to be brought up to an acceptable standard, without compromising safety outcomes. BIA supports education and collaboration before regulation.

BIA believes AMSA should, as part of considerations around grandfathering, provide and or address the following:

- relevant and appropriate long-term data
- Application of objective analysis
- A clearly defined public benefit
- A clearly defined need

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and only proceed after consideration of:

- stakeholder impacts such as economic, environmental, cultural and social implications
- alternatives to legislative measures such as education and, where appropriate, compliance are explored
- Consultation.

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?

BIA supports a risk-based approach which is proportionate to the risk of the different operations; is based upon a policy to support safety outcomes in a manner that minimises regulatory and administrative burden for industry; is simple and transparent; is consistent in delivery; and does not result in a disproportionate cost burden to industry.

The wider adoption of international standards used in the Class 4 vessel sector, with greater reliance on suitability of compliance of such vessels with global industry compliance programs would be welcomed. The need to verify, validate and times change or alter technical solutions on imported vessels is inefficient and inappropriate. The focus of NSCV standards is not, in terms of Class 4 vessels, on what are essentially recreational vessels.

BIA is aware of at least one case of a business spending countless hours and an unquantifiable amount of money in trying to get clarification or clear advice on subjects specific to their situation within the National Law. Consistency of technical advice and guidance on compliance requirements is lacking, both within local operational teams and across the country where historic norms prevail in terms of what is suitable locally.

Essentially the legislation should state obligations clearly and allow simple options to achieve compliance as well as empowering risk professionals to look at the circumstances of the operation and authorise appropriate mitigation, without the need to refer to AMSA.

For example, where operators in the low-risk recreational sector have a proven history of compliance and have demonstrated they have more than adequate procedures and

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processes in place, then those operators should be given some sort of recognition. Such recognition could perhaps be by way of exemption from annual or periodic testing regimes, or by a lessening or simplifying of reporting standards and requirements. No one in the industry expects to get anything for free, but recognition could also perhaps be in the form of reduced or discounted fees that might otherwise apply to less proactive participants.

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

BIA is concerned about the current framework being applied to operators in low risk, recreational-like environments such as within Class 4 on enclosed waters.

We encourage AMSA to promote a risk-based approach – the framework should impose safety requirements proportionate to the risk of different operations; to minimise burden – the framework should support safety outcomes in a manner that minimises regulatory and administrative burden for industry; to be flexible – the framework should cater to the diversity of regulated businesses, individuals and vessels and accommodate innovation and changes in technology; to be simple and transparent – the framework should be informed by wide consultation, be accessible and clear and support operators to understand and comply with safety requirements that apply to them; and to support effective compliance – the legal framework should provide an effective, practical and proportionate range of compliance powers and enforcement tools for AMSA.

BIA are not convinced that AMSA necessarily require any additional tools to enforce compliance or enforcement. We would be concerned if AMSA used the review to bring about more regulation or enforcement powers or penalties which would simply further stifle industry and collaboration towards the best outcomes in maritime safety across the country.

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

BIA would recommend AMSA join with the ARBSC to develop and deliver through ANZSBEG a sustained and funded Responsible Boat Ownership education campaign. Such a campaign is equally relevant and applicable towards recreational and commercial vessels. Issues such as Lifejackets, Proper Lookout, Keeping Clear, Skipper Responsibility, Weather, Safe Speed, Communications, etc are relevant across both sectors.

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We have recently supported Marine and Safety Tasmania in a request to the ARBSC to support the move to electronic distress signaling devices and we call on AMSA to join that effort. The mandated carriage of pyrotechnic signaling devices should be challenged and scaled back, wherever possible, across both sectors.

As previously stated, BIA is of the view low-risk, recreational activities captured within the National Law eg., Class 4 should be returned to the States and Territories for administration. However, until such a time, activities which are recreational in nature eg., hire of a kayak are to remain within the National Law, then AMSA should provide a unit within its resources who have the experience, training and or capability to liaise with and or respond to queries from this sector. Furthermore, AMSA staff who are required to interact with such a sector should be provided with training relevant to such vessel issues and management in addition to the training received around what could be considered traditional (much larger) commercial vessels. In the same vein, AMSA safety bulletins are an important communication to all those captured under the National Law however there should be greater effort put into ensuring communications are relevant and presented in a way which connect and resonate with those recreational-based activities.

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

Consider adoption of Marine Card for those working in Class 4 (owners/managers) and smaller Class 2 (under 7.5m workboats in marina settings) to comply with WH&S requirements. See https://www.marinecard.org.au/

The BIA commend AMSA for the opportunity to provide our input.

Please do not hesitate to contact Mr Neil Patchett, Co General Manager, e. neil@bia.org.au or m. 0418 279 465 on this matter.

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