



30 March 2022

Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594
CANBERRA ACT 2601

To Whom It May Concern

Re: Independent Review of Australia's Domestic Commercial Vessel Safety Legislation, and Costs and Charging Arrangements – Phase 1: AMC Submission

It is with pleasure that I attach the Australian Maritime College's (AMC's) input to Phase One of the Independent Review of Australia's Domestic Commercial Vessel Safety Legislation and Costs and Charging Arrangements, for your consideration.

AMC is the primary national institute for Australia focusing on the maritime sector and has national and international roles in training, education and research; and is an institute of the University of Tasmania.

AMC maintains strong connections to industry, primarily to ensure that the relevance of our offerings is maintained, particularly as new technology, global challenges and processes emerge. Our view on the questions posed in the Review's consultation aid reflect our connectivity to industry, primarily through the perspective of teaching and interacting with students who are existing or imminent DCV operators.

I confirm that AMC's submission may be made public.

Please do not hesitate to contact me if I can provide clarification on this response, and if you wish to seek further information from me or my staff.

Your sincerely

A handwritten signature in black ink that reads 'M. van Balen'. The signature is written in a cursive style with a large, prominent 'M' and 'B'.

Michael van Balen AO
Principal, AMC
University of Tasmania

Attach.

Australian Maritime College Input to Phase One of the Review of Domestic Commercial Vessel (DCV) Safety Legislation

Question 1: Is Australia's legal framework for the safety of Domestic Commercial Vessels (DCV) fit for purpose?

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?

Response to Questions 1 and 2:

The National Law is broadly fit for purpose however it could be better streamlined, or at least be made more easily interpreted by those vessel masters operating in the DCV sector. For example, more explicit guidance would be of use to stipulate an order of precedence between state/territory Workplace Health and Safety (WH&S) / Occupational Health and Safety (OH&S) acts and the Occupational Health and Safety (Maritime Industry) Act 1993, and when which applies to a vessel, activity or operation. Circumstances where a near coastal vessel crosses state boundaries may not be sufficiently clear to a DCV master. Additionally, the OH&S Inspectorate generally seems geared towards STCW-regulated vessels; AMC's observation is that most experienced near coastal students have not heard of the Inspectorate. The National Law system is better suited to larger organisations with sufficient resources to bear the cost of engaging accredited persons to assist in developing appropriate safety management systems (SMS), or with staff who hold a high level of understanding of the National Law safety requirements.

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?

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

Response to Questions 3 and 4:

The current distinction between the Navigation Act and its application to ocean-going vessels, and the National Law and its application to DCVs, is seen as valuable and appropriate. The provision of default standards for all commercial vessels within the National Act could create the risk of an undesirable 'one size fits all' approach. The nuances necessary for regulating the full range of DCVs may be lost if the default standards were only provided within the Navigation Act, which would be unfavourable.

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

Response to Question 5:

There is likely scope to broaden the definition of owner within the National Law, as a means of covering, and thus ensuring accountability of, all entities connected with a vessel’s operation. Such an expansion might include companies and individuals involved in financing an operating company, who hold a level of control over operations but may not be accountable under the existing definitions.

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?

Response to Question 6:

The role of the Australian Transport Safety Bureau’s (ATSB’s) as an independent statutory agency (separate from transport regulators, and without apportioning blame or determining liability) and AMSA as a statutory authority (Australia’s national maritime regulator) are viewed as complimentary, and together provide a means of incident analysis, and separately a framework to pursue compliance and enforcement. The no-fault nature of ATSB investigations, and the inadmissibility of ATSB findings in legal proceedings by a Regulator means that regulatory bodies probably need to maintain their own investigative function. If, however, the expansion of the ATSB’s role as described in the question was through additional funding or resourcing, with no disadvantage to the resourcing or capability of the Regulator, the lessons which could be learned from ATSB reports of DCV investigations would certainly provide improved safety outcomes.

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?

Response to Question 7:

The AMC is not in a position to answer the first part of this question.

Regarding support to those within industry operating vessels under current grandfathering provisions, the most logical approach would be supporting a transition to newer vessels; funding such an initiative would likely be significant.

Perhaps such support might be initiated through engagement with individual entities, and case by case risk assessment of the condition of individual vessels.

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?

Response to Question 8:

The current framework is not straight forward and requires an understanding of the interaction between marine orders which is, in AMC's experience, above the level of understanding of many operators or masters.

One area of ambiguity relates to the application of the 500 series of Marine Orders (501-507 which apply solely to DCVs) and the 100 series (1-98). The 100 series apply to Regulated Australian Vessels (RAV), foreign vessels and some apply to DCVs. All of these marine orders have an application section that lists the type of vessels to which the orders apply. However, only a small number directly mention DCVs.

The example below is from Marine Order 21, Safety and Emergency Arrangements, and shows the potential ambiguity in interpreting application:

6 Application

- (1) This Order applies to:
 - (a) a regulated Australian vessel; and
 - (b) a foreign vessel.
- (2) Division 2 applies to a domestic commercial vessel.

There are multiple sections in the 100 series that apply to DCVs, on which Master 35m students are examined during oral examinations, that do not make direct mention of DCVs in the application section. One example is Marine Order 32, Cargo Handling Equipment:

6 Application

- (1) This Order applies to:
 - (a) loading or unloading a regulated Australian vessel anywhere; and
 - (b) loading or unloading a foreign vessel at an Australian port; and
 - (c) loading or unloading of a foreign vessel that is an offshore industry mobile unit:
 - (i) at an Australian port; or
 - (ii) in the territorial sea of Australia.
- (2) This Order is not intended to exclude or limit the concurrent operation of any law of a State or Territory that imposes additional obligations or liabilities on a person.

In this example there is no direct mention of DCVs, yet the legislation still applies. This system could be improved by ensuring that any marine order which applies to DCVs includes that detail in the application section. This would lead to a greater understanding for DCV masters regarding

their legal responsibilities, and remove ambiguity and confusion about their compliance obligations

Streamlining of the regulations should be implemented, such that a clear understanding may be achieved by the full cohort of DCV masters and operators. A suggested approach might be tabulated information, with rows and columns clearly detailing which requirements apply to which vessels under which operating conditions.

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

Response to Question 9:

The AMC is not in a position to answer this question.

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

Response to Question 10:

Specific initiatives should stem from a response to trends in accidents and incidents within the sector. Generically however, some examples might include:

- The addition of confined space education to all Certificate of Competency (CoC) qualification courses.
- The addition of specific Safety Management System competencies in all CoC qualification courses.
- A government incentive to replace fixed fire suppression systems which present a deadly risk to compartment occupants, such as CO₂ or Halon systems, with less dangerous systems such as water mist or chemical aerosol (FM200/NOVEC) systems.
- Mandated Continued Competency (refresher) training of the Shipboard Safety Skill Set for near coastal (DCV) CoC holders (akin to the Continued Competency requirements for STCW CoC).
- Disambiguation of marine order application, as detailed in the response to Question 9.

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

Response to Question 11:

To achieve improvement in reporting, the method of reporting must be made easier for DCV operators, coupled with a cultural shift away from a mindset of non-reporting (non-reporting motivated by a desire to evade scrutiny and liability). Mobile device apps with GPS connectivity and drop-down selections of incident reporting criteria might significantly improve the ease of reporting for small or sole operators. A shift in culture requires a review of compliance and enforcement rationale, and a risk-based case by case approach by Regulators.

Date of Submission: 30/03/22