



Independent Review of Domestic Commercial Vessel Safety Legislation

March 2022

The Australian Commercial Vessel Operators Association (ACVOA) members own and operate domestic commercial vessels (DCVs) of class 1 (passenger) and class 2 (non-passenger), in varied locations the Australian coast and out to the exclusive economic zone (EEZ) limit. A number of members also operate regulated Australian vessels (RAVs) on international voyages as well as around the Australian 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. The diversity in operations of such vessels, dictate the challenge in creating a system to cater for the entire domestic fleet. A risk-based approach is supported as a method to resolve the discrepancies in requirements evident in current domestic operations.

ACVOA acknowledges the effort required to achieve agreement and acceptance from all states and territories leading up to the 2013 implementation of the National Law. On taking over service delivery of the national system in 2018, the Australian Maritime Safety Authority (AMSA) has worked and continues to do so, to make improvements and engage with industry, recognising the difficulty in application across the diverse domestic fleet. The government review is timely, to enable a comprehensive re-evaluation of the framework that impacts the domestic fleet and evolution of the system, to one that operates comfortably for the industry and regulator.

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

The intent of legislation is oriented around maritime safety, however the framework does not fit this purpose, as it involves a complexity level that diminishes understanding of the safety system and is administratively focused rather than risk-based, resulting in cumbersome useability that doesn't contribute to envisaged safety outcomes.

Support safe vessel operations

The legal framework exists to cover these elements, but its complexity in trying to work for all vessels, prevents its ability to operate well for any.

The framework for DCV operations includes the Navigation Act, National Law Act and Regulation, the International Convention of the Prevention of Pollution from Ships (MARPOL), Load Line Convention, Uniform Shipping Laws (USL) code, National Standard for Commercial Vessels (NSCV), marine orders, along with some individual guidelines and standards to support marine orders. In addition, some marine orders reference other

Commonwealth legislation relevant to certain vessels. Commonwealth and state and territory laws then apply to workplace health and safety (WHS) and environmental management, as well as specific legislation for operating in individual harbours and waterways.

The nature of the domestic fleet results in difficulty in understanding the exact safety requirements for particular vessels by operators and an inconsistency in application of requirements at times, by the regulator with staff located around the country. The outcome is compliance through meeting a checklist of requirements, rather than improved safety through industry understanding, supported by guidance and legislation from the regulator.

Modifications for improvement include:

- Requirements for meeting safety legislation need to be in fewer places with minimal cross-referencing and seamless links where this is unavoidable.
- Guidelines could be used for marine orders where legal terminology has clouded the practical meaning of legislation. The level of content in guidelines would need to be established to ensure these are consistent in detail.
- Both USL code and NSCV could be further rationalised as the standard(s) for DCVs. It is recognised that grandfathering provisions may create the need for retention of some reference standards. This can be made clearer in marine orders or guidelines as to the application of a particular standard. Current references leave the reader needing to look up all references to determine relevance to a particular vessel.
- The exemptions process is a useful enabling tool, however the number of prescriptive exemptions that exist, suggest the underpinning legislation doesn't sufficiently cover the practical applications. Some exemption pathways could be incorporated into marine orders as a valid means of compliance, leaving exemptions for the more exceptional circumstances and reducing the paperwork burden for all.
- The exemptions process doesn't maintain an overview of an operation being provided an exemption, leading to 'tick-box' compliance rather than ensuring safety of operations. For example, an exemption may be provided for lower certificates of competency while a vessel is operating in a near coastal area, while the requirement for GMDSS radio operator certificates to be carried is retained, when GMDSS radio equipment is not required on the vessel in a near coastal area.
- The grandfathering process needs to be based on actual risk, rather than provisions being either retained indefinitely or resulting in a vessel being deemed legislatively unsafe due to changes in technology and standards.
- Survey programmes need alignment where vessels are surveyed under more than one service category and less requirement for the involvement of classification society surveyors ("recognised organisations" under legislation) would reduce the burden for domestic operators.
- Domestic operating requirements (e.g. crewing levels, certificates of competency, equipment carried) become based on operating within a particular area of Australian coast, rather than based on the registry on which a vessel is listed.

Promote a risk-based approach

A risk-based approach is not embedded in the national law framework and this evolution is required to ensure a proportionate and robust safety standard. The approach needs to be more than just assessing risk to inform compliance activities or punitive penalties. It needs

to form part of all interactions between AMSA and vessel operators, to ensure risks are managed at any point they occur. A practically focused, risk-based approach requires experience in domestic operations, resulting in the ability to appreciate whether the risks in an operation have been adequately identified and an operators' proposed mitigations are proportionate and realistic. While the onus can remain on the operator to manage risk, this cannot be demonstrated only by paperwork. Safety legislation only goes so far to ensuring safe outcomes, the practical application of safety legislation also needs to be guided by a consistent and pragmatic approach.

Minimise Burden

The burden to both the domestic fleet in compliance and understanding and to AMSA in maintaining, updating and operating within the current framework, can be reduced with the consolidation and alignment of requirements between the many individual acts, regulations, codes, standards and orders.

AMSA has made continuing efforts to utilise online service platforms to both share information and manage applications for various certificates, approvals and exemptions. As a method of service providing this is successful, however the regulatory burden is greater than an online platform will remedy.

Factors contributing to the regulatory burden:

- The lack of alignment within the national system or vessels surveyed for more than one operational area. Duplication of certificates in this instance means surveys cannot be aligned adding a time and financial cost to both operator and regulator. An application process may trigger a change to this circumstance, however rather than adding more administration, a better mitigation would be initiating this change at the point of original certificate issue to prevent any duplication occurring.
- The lack of recognition of safety standards in the Navigation Act by the National Law Act gives rise an inconsistency for those in the domestic industry operating RAVs around the coast. The international standards of the Navigation Act these vessels operate under, are not recognised for domestic operations.
- Vessels $\geq 35\text{m}$ (and in the future $\geq 400\text{GT}$) need to be surveyed by a classification society surveyor rather than an accredited marine surveyor, despite being operated domestically under the national law.

Be Flexible

The framework endeavours to be flexible via transitional arrangements and enables application of equivalence and for exemptions. Exemptions are applied for with such regularity as to suggest the underpinning legislation does not cater to diversity at all. In addition, the exemption application becomes about the process being correct, ignoring the wider maritime operation seeking approval. If an exemption application is not filled out exactly right it is denied, often with no communication as to why, alternatively applications may be approved for one aspect of an operation, without an integral part also being exempt.

Legislation around the implementation of new technology or alternative fuels need to be improved to allow for innovation. By definition, new technology will not have existing legislation, however development of supporting legislation and keeping pace with

technology is essential. Working with developers, surveyors and operators in a timely manner will allow AMSA to effectively regulate in these areas.

It is noted that AMSA are engaging with sections of industry to inform future legislation though further work needs occur. Once this ability is lost to the pace of evolution of technology, it will take decades to recapture and result in developers deciding the direction of evolution, without thought for consistency, useability, safety regulation or compliance.

Simple and transparent

In ways already outlined, the framework for DCV safety is not seen to be simple, in that it does not support understanding or ascertaining which requirements apply, nor why they apply in many cases. There is a perception in industry that surveyors in some areas also do not understand application of the domestic legislation well and revert to Navigation Act knowledge they better understand. The inconsistency in approach arises from the convoluted nature of the framework. A clear, transparent and robust framework would encompass training and evaluation of surveyors and inspectors and remove as far as possible, the scope for individual interpretation in application of legislative requirements.

The framework is transparent, in that content is accessible (albeit cumbersome to find in some instances), AMSA has available its annual regulatory programme of legislative reviews and consults widely with industry on proposed changes to legislation.

Support effective compliance

If legislative requirements are simple to understand, proportionate, consistently applied and an operator has an approved method of going about an operation, compliance will follow. As described above, it is seen that even the regulator at times has difficulty with application of the framework, so equal difficulty discerning compliance.

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?*

There is no *efficient* interaction between legislative instruments.

It is beneficial to understanding safety and compliance, for information relating to particular vessels or operations, to be simple to reference and proportionate to the operations being undertaken. For the domestic fleet, compliance with legislation previously listed (Question 1), involves multiple legal instruments, both international and domestic, with a number being state and territory based. For vessels that operate around the coast this leads to changing workplace health and safety requirements and changing environmental compliance requirements.

In turn this has led to consequential legislative requirements with jurisdictional boundary complications, in relation to workplace health and safety requirements and operational safety management, particularly around dangerous goods, repairs on board and gas and electrical safety. Duplications in legislation between jurisdictions are in danger of detracting from, rather than enhancing safe operations and compliance.

For domestic operators that have RAVs and DCVs within their fleet, the national law and Navigation Act have two entirely separate sets of requirements around surveys, operational certificates required, carriage of safety equipment, crew licensing and crewing numbers. For example, the national law does not recognise class rules and international standards in

areas such as stability and electrical systems that apply to RAVs, and instead mandate compliance with the NSCV. A RAV can be compliant with international standards and can trade around the world under the Australian flag, yet is not deemed to satisfy the standards that apply to a DCV, restricted to operating inside the EEZ. For similar vessels, operating in the same area, there is also difficulty for crew in transitioning between one vessel and another in their employer's fleet, due to the lack of interaction between legislative instruments. The lack of transitional pathways is a particular stumbling block for the domestic industry in efficient operations, recruitment and crewing utilisation.

The articulation between legislative obligations, particularly for the domestic fleet, is untidy and inconsistent. ACVOA supports change to enable the national system to mature and evolve, to be practical, useable and better focused on risk and safety.

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?*

ACVOA supports a review of jurisdictional boundary covering the definition of DCVs and notes the association of this with the definition of recreational vessels. The National Law Regulation 2013 Division 2.1 has seven sections that relate to the definition of a DCV. In a framework coming together as a national system in 2013 this may have been required. Under a now existing national system this appears an excessive method of describing a type of vessel for which certain legislation may or may not apply. In addition, it provides for a system which needs to be duplicated in some states and territories to cover vessels to which the national system does not apply, in turn giving rise to consequential laws for these vessels, such as jurisdiction based environmental and WHS legislation.

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

The Navigation Act providing the default standards for all commercial vessels is not supported in the form of the current framework.

Vessels operating nearer to the coast do not need the same standard as those voyaging internationally, to be operating safely. Therefore using a default standard would still require application of different parts of that standard to different vessels. This would not be any less complex than the current framework, nor any better understood.

If a default standard is applied it must be to vessel types and areas of operation, rather than type of registration. Currently with RAVs under the Navigation Act and DCVs under the National Law (a separation by registration), anomalies exist between the standards that apply to very similar vessels operating in the same area, as well as to crewing numbers and qualifications (as mentioned under Question 2). For example, the rules that apply to a Class 2B RAV are vastly different to the rules that apply to a Class 2B DCV even though they are restricted to the same operational area and have the same risk profile. This occurs because legislation applies to registration rather than operation.

A safety framework cannot maintain its credibility with such differing standards. The inconsistency needs to be removed in whichever manner standards are applied.

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

The definition of owner in the National Law does not provide clarity in obligation or liability. While it does enable AMSA to hold accountable those that may seek to avoid this via commercial means, this should be balanced against the ability of a “culpable entity” to hide when operating domestically. The burden is accordingly increased on AMSA to investigate liability of all owners by definition, and all these owners by definition to demonstrate their lack of liability. The current definition includes several entities as potential owners, and it is not possible for all to participate in the same safety obligation practically and effectively. The Navigation Act definition better addresses the common maritime contractual position of a disponent owner. ACVOA supports a review of this definition.

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?*

Expanding the role of the Australian Transport Safety Bureau (ATSB) would be beneficial to safety outcomes for the entire industry.

AMSA’s role is to promote maritime safety via legislation, education and infrastructure, to create a system for safe maritime operations. As an independent body, the ATSB’s role is to investigate incidents occurring within this system and improve safety awareness, knowledge and actions to reduce the likelihood of further incidents.

AMSA is endeavouring to provide safety learnings from incident reports, though with the view of a safety regulator. The regulator is looking for someone who has not complied with legislation, who is at fault. The ATSB is reviewing all aspects of the system in operation, determining what went wrong and why, then providing the findings on all contributing factors to industry.

To be of benefit, a number of incidents would need to be investigated within the domestic industry, with reports tailored to the domestic target audience. The ATSB overseeing all marine incidents would identify areas of risk and mitigations that can be shared and promoted across the industry. The reporting structure already exists for this model, with incidents reportable to AMSA being considered also reported to the ATSB.

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?*

A wholesale removal of grandfathering is not supported, on the basis that a vessel is not inherently unsafe, just because it is operating under a grandfathered standard. A review of the system is supported to ensure risk is minimised and safe operations can be maintained, with evolving safety standards.

Grandfathering is an almost inevitable part of any industry, it is a relevant means of enabling evolution in safety across different vessel types. Technology and methodology both evolve over time and these factors, along with incidents and accidents, contribute to new safety requirements. Unless every vessel is retired any time an improvement in safety or technology is made in legislation, then there will be grandfathering. An older vessel is

unlikely to meet current standards. What needs to be clear is why a vessel doesn't meet the standard, rather than it being deemed merely 'unsafe'. For example, an older vessel with no residual current devices means it fails an electrical survey. This does not make the vessel unsafe, only that a better standard has been implemented since the vessel was built. Mitigations are possible to cover the risk of a power surge on board, enabling the vessel to continue operating safely, though to a grandfathered standard by legislation and certification.

There are also instances where the constraints of a vessels construction or equipment can no longer justify the understood risk and mitigation measures are no longer sufficient. Grandfathering needs to be a risk-based activity, applied with practical knowledge and experience. If such parameters are not applied, then a grandfathering system can lead to vessels being unsafe.

To support industry where sunset clauses may be added to grandfathering provisions, consultation, clarity, time and risk-based decision making are required. There are precedents for this in the international shipping industry, through generally relevant to vessels of similar types and age. A strong focus on exposure to risk is needed in the domestic industry due to the range of vessel types and operations impacted by any change.

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?*

The response to this question is predominantly provided under Question 1. In addition the following point is made around innovation and novel vessels.

It is acknowledged the novel vessels are difficult to legislate, they are new and safety parameters are still being established. Currently when faced with a novel vessel, the focus of granting approval, appears to be based on whether laws are being contravened. Not a focus on risk or safety, just regulation. This is to the detriment of the maritime industry. Innovation in the domestic industry will be either stifled if the regulator doesn't keep pace with technology or presented as a *fait accompli* by developers (as has occurred with some equipment in the international shipping industry), with limited input from operators or the regulator. Future technology will potentially impact safety parameters around crew numbers and required training and legislation will need to keep up with this change.

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

The current framework involves AMSA safety inspectors, recognised organisation surveyors and accredited marine surveyors having in person and on-site contact with operators. Compliance powers do not appear to extend to surveyors operating on behalf of AMSA, being able to effectively deal with risk in-the-field in practical terms. An additional layer of paperwork is created in referring back to AMSA. This changes the inspection/ survey process into risk management by paperwork as the means of information exchange and rule interpretation, rather than a practical exercise dealing with a risk or safety concern as it is observed and at the point it can be most easily rectified.

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

To improve safety outcomes the focus of any investigation should involve practical compliance rather than only auditing the paperwork. There has evolved a shift in focus to written processes and records and while these are a necessary part of the compliance system, this focus does nothing to enhance the safety of processes. Practical assessments require accompanying knowledge and experience by those involved in such investigations. This style of focus will lead to better preventative outcomes, than any mistake or omissions in written procedures or records.

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

To improve incident reporting the maritime industry need to understand the benefit of reporting, other than offering themselves up for potential further investigation and prosecution. Feedback on safety learnings has been missing, meaning the ability to learn from others' mistakes and see value in reporting has been missing.

Incident reporting has been discussed at AMSA's National Safety Committee and independently with an AMSA project team. AMSA are commended for having recently begun providing monthly safety learnings aimed at the domestic fleet. There remains further work to be done in this area to improve content, as extracting data from incident reports has its limits, without further investigation. Providing industry appropriate safety learnings not only provides a means of increased exposure to incidents without the risk, but also demonstrates a relevancy to reporting in everyday maritime operations.

In addition, AMSA is currently engaging with industry to improve the useability of incident reporting forms, adjusting useability, content and mode of interaction with the reporting forms, for more efficient use through different digital platforms.

For further information or clarification on this submission, please contact ACVOA.

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