



The Hon. David Elliott MP
Minister for Transport
Minister for Veterans

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SECRETARIAT – DOMESTIC COMMERCIAL VESSEL SAFETY REVIEW
Department of Infrastructure, Transport, Regional Development and Communications
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Dear Chairman

Thank you for the invitation to provide comment on the Independent Review of Domestic Commercial Vessel Safety Legislation (the Review).

NSW welcomes the opportunity to help shape the future of the national framework and identify options to improve safety in the marine environment and on its waterways.

There are a large number and diversified range of commercial vessels operating in NSW. The Transport for NSW cluster possesses many years of experience in engagement, compliance and enforcement with the operators of these vessels. Alongside such longstanding experience, I wish to acknowledge the partnership with the Australian Maritime Safety Authority and the Service Level Agreement in place helping to promote a safe operating environment.

To assist the Review Panel in considering the legal framework regulating the safety of Domestic Commercial Vessels, please find enclosed NSW Submission, regarding matters posed in the Consultation Aid. I hope this provides valuable insights for the review.

If you have any queries about this Submission, please contact Mr Peter Harvey, Director Maritime and Transport Safety Strategy and Policy, at Transport for NSW via email at peter.harvey@transport.nsw.gov.au.

Transport for NSW looks forward to further engagement on this Review.

Thank you for taking the time to bring this matter to the Government's attention.

Yours sincerely

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Overview of the NSW operating environment

In NSW, over 90 per cent of Domestic Commercial Vessels are less than 24 metres in length, with 80 per cent of those being less than 12 metres. Transport for NSW (TfNSW) and Australian Maritime Safety Authority (AMSA) have a Service Level Agreement in place to support the Domestic Commercial Vessel Safety Legislation. Under this agreement, a key performance indicator is to perform 250 inspections annually, of which 100 must be for Class 1 vessels that can carry more than 12 passengers and seagoing fishing vessels. These inspections are carried out by four Technical Compliance Officers in the TfNSW Maritime Branch within the Greater Sydney Division who are appointed as Marine Safety Inspectors under the National law. There are about 100 other Marine Safety Inspectors within the TfNSW's Maritime Branch, and 65 of those are Boating Safety Officers.

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

- **Perceived administrative burden by vessel operators must not compromise safety**

The existing legal framework generally supports safety on vessels. However, the application, education and understanding of the legislated safety framework can vary between domestic commercial vessel operators. Based on observations and engagement with industry stakeholders, it is considered that adhering to safety requirements may be seen as a burden by some operators. There is a need to balance safety requirements with level of risk and expected safety impact and work with operators so that the adhering to those requirements is not regarded as an administrative burden.

Suggested consideration: Consider (as a principle for the Review) efforts to better enable domestic commercial vessel operators to understand their safety obligations should not be compromised by efforts to minimise administrative burdens they have/will have.

- **AMSA annual reporting could be similar to other national bodies**

In contrast to the Office of the National Rail Safety Regulator (ONRSR) and the National Heavy Vehicle Regulator (NHVR), AMSA does not regularly report to Infrastructure and Transport Ministers' Meetings (ITMM) or its subsidiary the Infrastructure and Transport Senior Officials' Committee. This is despite the National law stipulating that AMSA provide advice to States and Territories on its activities and the operation of the National law.

Both the ONRSR and NHVR regularly seek Ministerial approval for policy decisions from ITMM, and ITMM is responsible for approving changes to the national laws and regulations for rail and heavy vehicle safety. Further, the NHVR and the ONRSR are required by legislation to submit an annual report to responsible Ministers. This obligation is satisfied by a report to the ITMM.

There is no equivalent reporting duty in the National law for AMSA to report to Ministers through ITMM on the performance of the regulatory system. The Review should consider the suitability of existing governance arrangements for AMSA, (specifically in relation to oversight of maritime safety regulation by States and Territories), through the ITMM to bolster governance arrangements. The Review should consider amendments to the National law to ensure an appropriate level of oversight by ITMM of policy decisions, changes to legislative instruments and performance of the regulatory system. This would ensure a more consistent approach in transport regulation, and oversight of national transport regulatory bodies themselves.

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Improving governance arrangements for AMSA's regulation of Domestic Commercial Vessels would also reinforce the importance of commensurate oversight of national regulators. It is noted Commonwealth complementary law also has been endorsed as the approach for the establishment of a national regulator of automated vehicles.

Suggested consideration: Consider the suitability of existing governance arrangements for AMSA, specifically in relation to oversight of maritime safety regulation by States and Territories, through the ITMM (i.e., policy decisions, legislative instruments and performance of the regulatory system).

- **National law is complex and not always appropriate for operators**

The legislation covers a large and diverse range of vessels which has led to grandfathering and exemptions. These are confusing to the industry and complicate compliance and enforcement functions.

Parts of the legislation and standards are difficult for smaller vessel operators to comply with. In NSW, over 90 per cent of Domestic Commercial Vessels are less than 24 metres in length, with 80 per cent of those being less than 12 metres. For example, Marine Order 'MO 504 Safety Management System (SMS)' requirements are problematic for family or single person operated businesses.

Suggested consideration: Consider small vessel operators having a simplified Safety Management System framework that is suitable and adaptable for their individual operations (noting a 'small vessel operator' may need defining).

Suggested consideration: Consider removal of National law exemptions and incorporation into the National law and National Standards for Commercial Vessels (NSCV), subject to a risk-based analysis and consultation.

Suggested consideration: Consider a review of the national law qualifications framework.

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?

- **Centralising incident reporting**

All States and Territories have their own rules for matters such as work health and safety, electrical, lifting appliances and pollution. TfNSW regulates work health and safety of commercial vessels, pollution, wharves and wharf access, traffic, bar crossing, and navigation.

For incidents, the description/definition between the National and State laws should be aligned and consistent – this would then remove any ambiguity from the current reporting requirements. For example, currently in NSW, vessel masters and owners have an obligation to report incidents to both TfNSW and AMSA on separate reporting platforms.

Suggested consideration: Consider a centralised reporting structure and forms for all domestic commercial vessel reporting be used for both State, Territory and Commonwealth jurisdictions.

- **Improving knowledge of vessel movements**

Currently the States and Territories are not aware of the potential entry of commercial vessels into their waters until they arrive. This has created problems for NSW particularly at peak times such as New Year's Eve. Operational control at a State level would be improved by advance notice of arrivals.

Suggested consideration: Consider how TfNSW could be informed when AMSA receive an application related to a vessel that will operate in NSW.

- **National Certificates**

Certificates of Competency and Survey sit comfortably at the Commonwealth level. However, consideration could be given to changing the arrangements for National Certificates of Operations, because they do not include State based requirements for waterway and traffic management. This would lead to improved outcomes for both State based regulators and industry.

One way this could be done is incorporating parts of Section 48 of the National law (Certificates of Operation) into Division 2 of the National Law Certificates of Survey. Certificates of Operation could then be adapted to cover matters solely related to State legislation, such as bar crossings, pollution prevention, local operational restrictions or requirements.

Suggested consideration: Consider keeping Certificates of Competency and Survey under National regulation and moving operational requirements based on State requirements (this would require consideration of the impact to industry and associated resourcing and funding implications).

- **Work Health and Safety**

The inter-relationship between maritime and work health and safety legislation provides a broad range of safety obligations. The varying levels of safety maturity within the industry and their ability to understand, comply and promote is challenging.

Suggested consideration: Consider (as a principle for the Review), ensuring interactions between jurisdictions and varying regulatory organisations can be complementary to enable consistency and application of all vessel owners and operator's safety obligations.

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?

- **Future proofing the definition of a 'vessel'**

The definition of a 'vessel' is very specific and does not cater for emerging technologies. For example, flite boards (efoils) are not classified as a 'vessel' under the National law but are operated commercially by hire and drive operators in NSW outside the normal commercial operational framework for vessels.

It is noted that there is work underway through the Commonwealth Government led Maritime Policy Group to consider this issue.

Suggested consideration: Consider ensuring the definition of a Domestic Commercial Vessel caters for new and emerging types of watercraft which could be used for commercial purposes and accordingly be captured under the legal framework.

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

- **Providing appropriate standards for the cohort of vessels**

Less than one per cent of Domestic Commercial Vessels are greater than 35 metres. If these large vessels were required to comply with the standards in the Navigation Act, it would provide the opportunity for the standards for the remaining Domestic Commercial Vessels to be better tailored to suit smaller vessels.

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Suggested consideration: Consider the benefits of applying suitable standards for the bulk of the Domestic Commercial Vessels that comprise smaller vessel cohorts (i.e., less than 35 metres).

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

- TfNSW supports the current 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?

- **Further analysis is required for an expanded role of the ATSB**

TfNSW notes the benefits for an independent body to investigate Domestic Commercial Vessels incidents, particularly those that occur regularly with inherent problems.

Expanding the ATSB role would provide more insight into factors related to the incidents that will play a positive role in educating the Domestic Commercial Vessels industry. ATSB comprehensive reports and no blame approach would benefit the Domestic Commercial Vessels industry.

Currently the NSW Office of Transport Safety Investigations (OTSI) remit is generally limited to ferries when acting under its own authority and interstate and international shipping in collaboration with the ATSB, under the terms of a collaboration agreement.

Should the Independent Review of Domestic Commercial Vessels safety legislation recommend an expanded role for the ATSB to include Domestic Commercial Vessels safety, NSW would need to understand consequential legislative and budgetary impacts on OTSI.

There are certain requirements that apply to an investigation undertaken under OTSI’s own functions that do not apply to an investigation undertaken in collaboration with the ATSB, for instance submitting investigation reports to the responsible Minister in NSW and tabling the report in the NSW Parliament.

Suggested consideration: Note that TfNSW would need to understand any legislative, resource or budgeting impacts for the NSW Office of Transport Safety Investigations if it is expected that the current collaboration agreement with the ATSB would continue in respect of any expanded remit.

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?

- **Grandfathering should undergo further risk based analysis**

As part of a rigorous risk management approach, TfNSW considers that evidence/data is critical to understand whether grandfathered vessels have increased safety concerns over similar vessels that are fully compliant with current regulations and standards.

There are significant loopholes related to grandfathering. Grandfathering can lead to confusion and can make compliance and enforcement more difficult. Interpreting Grandfathered standards and exemptions are confusing.

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Removal of grandfathering is supported in general, particularly with respect to vessels considered to have a higher risk (offshore class, passengers, vessel etc.). However, there are a number of issues that would need to be taken into account, including (but not limited to):

1. Impact on jurisdictions, operators and safety outcomes;
2. Considerations such as a vessel's end of life, Commonwealth and State significant heritage assets, crewing competencies, minimum safe crewing levels and absent vessels from a survey schedule;
3. Timeframes, given the need for operators to make the required adjustments to business to comply;
4. Need for transitional vessels to have greater flexibility to operate whilst changes and upgrades are made; and
5. Need for surveys to be required on basis of vessel type and risk rather than automatically being triggered by any changes (as currently required by Marine Order 503)

Suggested consideration: Consideration be given to a process to review grandfathering arrangements, subject to approval by all jurisdictions with an agreed supported timeframe.

Suggested consideration: That data be sought and made available to all jurisdictions to assist with considering specific safety concerns arising from grandfathering compared to vessels that are fully compliant with current regulations and standards.

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?

- **Improvements to understanding standards for Domestic Commercial Vessels operators**

Overall, the framework is very complex and requires subject matter experts to apply and interpret standard requirements for Domestic Commercial Vessels. This can result in third party experts being engaged to confirm all requirements are covered.

Standards can be difficult to follow and often refer to other international or Australian standards that are not freely available. Standards often redirect the reader to another standard which only redirects again and so on, and specific skills are needed to follow and piece together the applicable standard. Feedback has been received that this can be difficult even for professional surveyors. Less technically-qualified vessel owners and/or business operators are often not well placed to understand standards.

Suggested consideration: Standards should be updated and consolidated, with minimal re-direction within them, and guidance material enable an operator to find which standards are applicable to each type of operation.

Suggested consideration: Noting that a vessel is a 'workplace', educational campaigns targeting workplace safety could be timely with the release of these materials.

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

- **Better initiatives on education and enforcement**

Better education initiatives and a targeted inspection regime with compliance campaigns is supported. Such campaigns should target high-risk activities (e.g., high speed passenger vessels, vessels with overnight accommodation, vessels carrying bulk petroleum or gas products, cranes or davits that exceed three tonnes capacity, vessels used for pile driving operations, barges/dredges

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over 24 metres or equipped with machinery greater than 500kW BHP). These campaigns should be undertaken jointly by AMSA and its delegates. A joint campaign would also assist with embedding State law compliance requirements into campaigns. Examples include:

- Easily interpreted towage information, what is required in different locations, area of operation and types of towing activities
- 'AIS' (an identification system which all receivers can read) be considered for all Domestic Commercial Vessels that carry more than eight passengers (this technology is now affordable and would assist in vessel traffic monitoring and search and rescue).
- Campaigns undertaken via peak bodies.

In respect of enforcement, officers have adequate powers to undertake their duties, however there is the opportunity for less serious offences to be dealt with by on-the-spot penalty notices. This avoids the current long-winded process of submitting a breach report and summary of facts, followed by a review by AMSA and issue of infringement offence and a fine.

Suggested consideration: That targeted inspection regime and compliance campaigns targeting high-risk activities by AMSA be developed in conjunction with the jurisdictions.

Suggested consideration: Consideration be given to reviewing the offences and fines regime to improve efficiency of enforcement without the need to escalate to a breach report (e.g., on the spot fines).

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

- **Operational conditions on national certificates**

Targeted work health and safety initiatives outlining rights, roles and responsibilities for all within the industry focus on the vessel as a 'workplace'. However, many working in the industry may have limited knowledge and experience of work health and safety within a workplace.

When TfNSW was the regulator for Domestic Commercial Vessels, certificates included several Appendices that included operational conditions. As many are for state-based legislation, AMSA does not include these on the National certificates. TfNSW understands that vessels can now operate nationally but while they operate in a State, there are specific operational conditions that relate to some or all vessels.

Suggested consideration: Please refer to responses at question 2 and 8.

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

- Education helps WHS obligations

To improve safety incident reporting, stakeholders working within the maritime industry can require education about safety in the workplace (their vessel) and their roles, responsibilities, and rights. Greater engagement and understanding of safety in the workplace will empower reporting. Currently the lack of reporting could be attributed to a low safety maturity.

Suggested consideration: That educational campaigns targeting workplace safety be developed that focuses on commercial activity.