

26 September 2022

DCV Safety Review Panel
Attn: Secretariat
PO Box 594
Canberra ACT 2601

Via email: dcvsafetyreview@infrastructure.gov.au

Re: Draft interim safety report - Independent Review of Domestic Commercial Vessel Safety Legislation

Dear DCV Safety Review Panel

Thank you for the opportunity to comment on the draft interim Safety Report - Independent Review of Domestic Commercial Vessel Safety Legislation.

Tuna Australia is the industry association representing statutory fishing right holders, fishing companies, fish processors and sellers, and associate members of the Eastern and Western Tuna and Billfish fisheries of Australia (ETBF / WTBF). Our members catch more than 5000 tonnes of premium produce from Australian waters each year delivered to domestic and export markets. Our members operate vessels in the 18 – 24m size range, generally from the continental shelf break to the limits of the Australian EEZ. Several of our members have also historically operated in the high seas adjacent to Australia's EEZ.

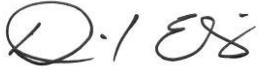
Tuna Australia is broadly supportive of the findings and recommendations of the independent review. In our view, any attempt to improve safety outcomes for our members is welcomed. However, there are various aspects of the current regulatory framework that need further refinement, modernising, or abandonment in favour of a more streamlined, efficient, and cost effective approach to domestic commercial vessel (DCV) safety. These issues will be addressed through responses to the questions posed in the consultation aid document accompanying the review (Attachment 1).

Thank you for the opportunity to consult on this important review process and we look forward to working collaboratively with legislators and regulators on mutually beneficial outcomes for our respective stakeholders



Please call me if you would like to discuss any of these issues further

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Ellis". The signature is written in a cursive, slightly stylized font.

Mr David Ellis
CEO

Attachment 1 – Tuna Australia submission to DCV safety review

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

The rationalisation of DCV safety management from State and Territory agencies to the national regulator AMSA has been a significant undertaking. The result is a system that is overly prescriptive and aims to achieve a “one size fits all” approach to managing domestic vessel safety. This has resulted in many ambiguities in the subordinate legislation which has led to overly bureaucratic, inefficient, and costly interactions between boat owners and the regulator. AMSA needs to implement a risk based approach to vessel safety. Risk based management is a modern compliance ideology of government regulators which can reduce costs, target those at greatest risk of safety incidents and allowing compliant operators to conduct business unencumbered by government intervention.

There is a clear disconnect between the legislation, enabling regulations and the practical advice provided by AMSA in the field. This has manifested itself in a scenario where no two marine inspectors provide the same advice on issues due to the ambiguity of the rules and an unwillingness to assist operators for fear that they have not interpreted their own “rule book” correctly.

As an example, one of our members’ boats was inspected at the Gold Coast earlier this year. The inspector advised that he was required to relocate his life raft. The member enquired as to where on the boat he should move the life raft. The inspector stated he was unable to give specific advice and that the owner would be required to look up the relevant Marine Order to work it out himself. Clearly this is unacceptable and a result of complex law making prohibiting practical operational outcomes.

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?

One of the outcomes of encapsulating vessel safety into national laws is the ambiguity created by State WHS legislation. The fact that a vessel may be compliant under national laws but can still breach State based safety legislation is an unintended consequence of transitioning to a national safety system for vessels. AMSA deals with these scenarios by issuing exemptions for vessels, but as the consultation aid



correctly points out, this creates complexity and compliance costs for the fisher and administrative burden for AMSA in articulating and managing the exemption process.

We support State based WHS law relating to vessels being subsumed by the national law for vessel safety. This would create uniform rules across jurisdictions, which would reduce complexity for businesses operating across multiple States and Territories.

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?

Tuna Australia member vessels neatly fall into one of vessel classes managed by AMSA (Class 3) so the definition of a DCV has no real impact on our member fleet. However, there is scope to remove vessels which are clearly used for recreational purposes or only irregularly used to support commercial activity e.g. dinghies and tenders. Responsibility for vessel safety management under a certain size (say 8 meters) should be conferred back to another (State) agency to reduce management burden on AMSA providing vessel management is consistent across jurisdictions

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

No. The original intention of the Navigation Act is to regulate distant water vessels such as cargo ships and the like. Applying the standards of the Navigation Act to DCV's places unrealistic compliance costs and burden on vessels that operate within the Australian EEZ and are very different vessels. For example, vessel build specifications need to be fit for purpose. There cannot be a "one size fits all" approach to the National standard given the disparate array of domestic commercial vessels in Australia. Any applicable standard should take into consideration the risk profile of the vessels' primary activity, where it operates, and its compliance history with respect to safety, survey and documented maintenance schedule.

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

For the purposes of the National law, the definition of "owner" is appropriate and relevant. However, the definition of an "owner" under AMSA legislation can be interchanged with the definition of a "person conducting a business or undertaking" in State WHS legislation. For consistency, "owner" should be defined in the same terms in both sets of legislation, so it clearly identifies the "owner" as having ultimate responsibility for a vessels' safety for compliance (AMSA) purposes and safety incident investigation (Workcover).

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?

It makes sense for there to be one agency responsible for transport safety, however introducing a new agency (ATSB) to become responsible for vessel incident investigation may have the unintended consequences of creating another set of legislation for boat owners to be governed by and lack of subject matter expertise which may hinder investigations. The ATSB has an edict for a "no blame" approach to incident investigation and this would be a welcome approach in investigating maritime safety incidents. This approach may also encourage more self-reporting of "near misses" which is currently required under WHS legislation, but in practical terms, incidents are often unreported for fear of compliance reprisals. If owners had comfort that they would be investigated in a neutral manner, they may be more willing to self-report safety issues and "near misses".

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?

The removal of grandfathering arrangements is not necessarily consistent with improved safety outcomes. There are many "grandfathered" vessels that are maintained to the highest standards, are extremely capable and seaworthy, and have a strong safety history. Removing grandfathering arrangements would add significant cost to operators, in many instances it would not be financially feasible to replace a grandfathered vessel. The contra argument is that removing grandfathering of vessels would lead to a modernisation of vessel fleets, but there would need to be a strong evidence base and economic support needed to impose this type of draconian measure.

In the tuna longline sector, we are seeing a natural transition from fiberglass to steel boats over time. This is a function of needing increased range, hold capacity, ability to work in all sea states etc. These purchasing decisions are not solely made for WHS reasons (although that is a positive consequence) but to improve the operations of the fishing business.

Industry could be supported to transition to more modern vessels through an attractive bounty for old vessels, a subsidy scheme, an effective tax treatment or an industry assistance package. However, relevant to the tuna longline industry, there is a growing call to end ship building and fuel subsidies which contribute to overcapacity and overfishing by some nations. Government would need to be cautious in defining how it incentivises the transition to newer vessels to ensure consistency with FAO current thinking and regional fisheries management measures with respect to vessel subsidies.

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?

No. As mentioned previously, even AMSA's front line have difficulty articulating the safety requirements of vessels with any certainty. When reviewing the Act, various Marine Orders and guiding documentation, the language is unnecessarily legalistic, cross references other legislation and international standards, and is a needlessly complex and unwieldy set of operating rules. AMSA needs greater awareness of its clientele and their background / educational qualifications and should revamp its framework to be more user friendly, instructional, and streamlined.

The framework does not facilitate the ability for AMSA officers to offer improvement advice, back their own experience and judgement, or provide clear cut, simple and unambiguous information for operators to work with. Further, the AMSA website is a virtual maze of information, not intuitive or user friendly, and this is a function of the complex space that AMSA has created through its legislation and articulating its functions.

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

Our view is that the current framework of compliance powers and enforcement tools is reasonably effective. However, evident is that AMSA assume the role of a pure regulator instead of viewing its mandate through the lens of education, training, and helping industry to comply. In a risk-based compliance program, there is a clear path for dealing with those who do comply or will comply with some regulator assistance (e.g. training) through to those operators who chose not to comply. Targeted compliance for repeat or recalcitrant operators should be the focus of AMSA's compliance activity, while supporting most good operators with lower inspection rates, regular training, and rewards for compliant behavior.

There is also a disconnect in the penalty provisions between AMSA and State WHS regulators. AMSA is well powered to issue infringements at the lower end of the offence scale, including significant fines for routine level offending. However, for those incidents which require significant deterrence, AMSA's penalty regime is inadequate and well below (5 – 10 times lower) the equivalent fines that can be issued by State WHS regulators. The offence provisions and penalties available to AMSA to deal with higher level offending (e.g. for incidents resulting in death or serious injury) is not currently commensurate with the seriousness of high order offences.

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

We are not convinced that changes to grandfathering arrangements will improve safety outcomes. As previously stated, this is an unpractical solution and more likely to lead to significant economic loss and closure of fishing businesses. The fact that AMSA continues to advocate for this as a safety issue which is easily resolved is ignorant to the impacts of its practical application and financial repercussions.

There are several more practical measures that AMSA can take to actively manage safety on DCV's, including more rigorous auditing of safety drill management (man overboard, firefighting), compulsory STCW training for deckhands and skippers for vessels of a certain size or operational use, Safety Management System compliance training, and education focused interventions by AMSA marine inspectors and liaison officers.

Recent attempts by AMSA to increase the use of life jackets has been unsuccessful in part due to the deeply entrenched belief by industry about the inconvenience, impracticality and potential safety issues caused by life jacket usage. AMSA should consider incentivising investment in new life jacket technologies that are more compact, practical to use and addresses industry safety concerns. As a regulator primarily focused on achieving safety outcomes, more investment is need by AMSA to understand this deep seated generational issue before they can effectively change the landscape.