

Finding	TMR Response
<p>Key Finding: While there is room for improvement, there is evidence to suggest the National Law framework has improved safety outcomes. However, the legal framework has introduced unnecessary complexity and regulatory burden and is not responsive to innovation and change.</p>	<p>TMR considers that the current framework provides a wide range of regulatory options to address the differing risks applicable to a wide variety of DCV operations. This provides scope for the National Regulator (NR) to decide the level of regulation to apply to operations commensurate to the level of risk presented by the activity and the duty of care owed by the operator to customers.</p> <p>TMR agrees that there are limitations to the data on which the finding is based and supports improvements in reporting and data collection (refer recommendation 9).</p>
<p>Findings 1 & 2</p> <p>1. Much of the complexity and regulatory burden would be reduced if the general safety duties in the National Law, supplemented by codes of practice developed by AMSA in consultation with industry were used as the primary regulatory tool for the less risky segment of the DCV fleet. This would also allow AMSA to concentrate on the riskier segments.</p> <p>2. The requirement for all DCVs to have Certificates of Survey and of Operation is unnecessary to achieve safety outcomes and has resulted in a complex and burdensome array of exemptions for less risky operations.</p> <p>Recommendation 1: The law should be amended to better reflect a risk-based regulatory model that is flexible and able to adapt to innovation and emerging technologies by:</p> <ul style="list-style-type: none"> • retaining general safety duties on all parties that have a duty under the current law; • removing the universal requirement for all DCV's to have Certificates of Survey and Operations; • providing that vessels of a type or class specified in the regulations (or Marine Orders) be required to comply with NSCV Standards and/or hold a Certificate of Survey or Certificate of Operations; and • requiring higher risk vessels to comply with the Navigation Act and associated international standards, including the International Dangerous Goods Code and the Standard of Training, Certification and Watchkeeping. 	<p>TMR considers that the current framework is complicated and does not provide a simple way for owners to understand their regulatory responsibilities. Approaching regulation by assessing the risk and characteristics of vessels and operations reintroduces complexity and differing regulatory treatment. Arguably, this challenges the underlying principles and rationale for introducing the National Law and System in the first place. If a risk-based model is to be pursued it should adopt the NSCV framework by clearly stating the required outcomes, then either specifying deemed-to-satisfy prescriptive solutions that are contained in the legislation, or equivalent performance-based solutions that are proposed by the applicant.</p> <p>Operators need to understand clearly what the minimum acceptable standard for the key safety elements is. This can be done in hand in hand with risk assessment and an outcome-based focus in the regulation with guidelines providing these high minimum standards. For example, head counts for passenger vessels.</p>
<p>Finding 3</p> <p>3. Progressively withdrawing the existing grandfathering arrangements to the extent they impact on safety would substantially improve safety outcomes.</p> <p>Recommendation 2: The grandfathering arrangements that are a risk to safety should be wound back in accordance with a phased risk-based program.</p> <ul style="list-style-type: none"> • All existing DCVs subject to grandfathered design and construction standards should meet acceptable baseline set of design and construction standards based on the current 'transitional standards' within seven years of implementation of this change. • DCVs that would be required to be certified under the risk-based regulatory regime proposed under Recommendation 1, and that are subject to grandfathered survey requirements or otherwise subject to grandfathered design and construction standards, should undergo survey inspection to assess gaps and requirements to the baseline design and construction standards. • These inspections should occur over a two-to-five-year period, with higher risk vessels/operations • given greater priority for early inspection • Owners should be required to rectify inspection findings within two years of inspection • Grandfathered crewing and crew competency arrangements should be phased out within five years of implementation of this change. • The Australian Government should establish and fund an Industry Assistance Package with a suite of incentives to assist attaining these standards 	<p>TMR considers that while grandfathering was necessary to reduce the impost and burden on Queensland's fleet transitioning to the NL, these provisions have now fulfilled their purpose and believe these arrangements can be phased out to ensure DCVs meet modern standards of safety.</p> <p>TMR understand however, that removing grandfathering provisions will have a financial impact on industry and may require significant changes in certain vessels. These changes require specialist knowledge normally provided by marine surveyors; however, many small businesses may not be able to absorb the cost of specialist assistance.</p> <p>Recognizing the finding that the costs associated with the wholesale removal of grandfathered arrangements may not be justified in terms of safety improvements, and the impact on the financial viability of some industry sectors, TMR would encourage a supportive and consultative approach with industry by providing for example detailed, specific advice regarding what changes need to be made to their operation, and reasonable timeframes for actions to be implemented, to assist industry in understanding the transition pathway.</p> <p>TMR would support the Panel's view that the Australian Government should make assistance available to assist the transition.</p>

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<p>Finding 4</p> <p>4. There is a high level of confusion within the industry about the relationship between marine safety law and work health and safety law.</p> <p>Recommendation 3: AMSA should:</p> <ul style="list-style-type: none"> review its Memorandums of Understanding with State and Territory WHS Authorities to include principles to apply to decisions around which regulator is to lead on safety duties held by persons in the maritime industry; and reflect these in communications and guidance to industry explaining the rationale for the dual operation of the National Law and WHS regulation, and how AMSA and WHS Authorities work practically to reduce any duplication of effort and regulatory burden, including reporting requirements. 	<p>TMR considers that there is scope for improvement in the interaction between national and state frameworks, including around the equitable funding of navigational aids, dealing with ships at the end of their commercial life, and interacting with state requirements including electrical safety and workplace health and safety. For example;</p> <ul style="list-style-type: none"> The NL excludes requirements such as WH&S (including electrical safety) which are managed by state agencies; however, these state agencies are only equipped to deal with land-based structures and businesses. In Queensland, the agency responsible for WH&S has no vessels which would limit any capacity to inspect vessels at sea. By excluding WH&S from the NL, AMSA treats the way in which a vessel is operated (navigated) as separate from the activities undertaken by persons on the vessel. For example, a drilling rig includes navigational activities that are regulated by AMSA, while the drilling activities are regulated by state-based agencies. As state-based agencies do not have the resources to undertake compliance activities and are more suited to land-based construction activities, they are not equipped to regulate the safety of on-board activities. State based WH&S agencies may have the corporate knowledge to address certain operations such as lifting, drilling and construction activities when they are undertaken on a static plane, the dynamic nature of a ship's deck present a level of risk that needs to be addressed by specialists familiar with (for example) stability in the marine environment. While vessels are also workplaces the two activities are too intertwined to treat vessel safety and workplace health and safety as separate regulatory issues. The risks associated with on board operations are managed through Safety Management Systems specifically tailored to commercial vessels as opposed to creating two separate ways to address risks. Given that industry treats workplace and vessel risks through a single risk assessment and treatment process, the effectiveness of having multiple agencies regulating the risk is questionable.
<p>Finding 5</p> <p>5. The current framework provides a comprehensive range of enforcement powers for breaches of safety requirements. However, the formulation of the offences and penalties for breaches of general safety duties differs from similar provisions in WHS law and, as a result:</p> <ul style="list-style-type: none"> the low levels of penalties that can be imposed by the courts limits their deterrence effect; and undermines the effectiveness of AMSA as the safety regulator of DCVs. <p>Recommendation 4: The offences and penalties in the National Law should be aligned to those in the WHS law to the extent practical.</p>	<p>TMR considers that the current framework provides an effective range of powers and enforcement tool. However, there is scope for powers to be more holistically integrated with waterway management. Local AMSA and state officers work well together but having some appropriate regulatory tools, such as DCV compliance taking into consideration the nuance of a particular waterway where the subject vessel operates would make the overall regulatory response stronger.</p>
<p>Finding 6</p> <p>6. AMSA's enforcement powers should be further enhanced so that it has an effective range of powers to support a risk-based, targeted compliance and enforcement approach.</p> <p>Recommendation 5: The National Law should be amended to:</p> <ul style="list-style-type: none"> explicitly refer to an officer's due diligence obligation to ensure that the owner of a DCV complies with their safety duties under the National Law; allow scaling of infringement notice penalties; fill a gap in the law relating to negligent navigation; align the present limitation period on commencement of prosecution action with WHS law; and introduce a power for the courts to suspend or revoke certificates. 	<p>TMR considers that there appears to be a lack of understanding around the extent of powers, or a reluctance to apply powers, in relation to DCVs reaching the end of their commercial life and in particular those vessels that are no longer operating due to their condition.</p> <p>TMR is aware of instances where the National Regulator has considered end-of-life DCVs as waterways management issues and pushed, or attempted to push, responsibility for managing unseaworthy DCVs onto the states. Given the cost of addressing derelict and end-of-life vessels, applying a lifecycle management approach to vessel management taking into account may improve regulatory outcomes for all jurisdictions.</p> <p>TMR further notes in relation to the comments about the unsafe navigation offence, that a hirer operating a vessel, as the person having command or charge of the vessel at the time, falls within the definition of "master" for s16 of the NL.</p> <p>TMR supports the extension of the limitation period (currently in the <i>Crimes Act</i> (Cwlth), and the introduction of a power to impose a temporary suspension of a certificate following a marine incident, similar to s117 of TOMSA.</p>
<p>Finding 7</p> <p>7. Expanding the Australian Transport Safety Bureau's (ATSB) role to include DCV safety incidents would provide for an independent review of systemic safety issues that would support enhanced safety outcomes.</p> <p>Recommendation 6: The Australian Transport Safety Bureau should be funded by the Australian Government to undertake a no-blame investigation program sufficient to support the identification of systemic safety issues. The Commonwealth Transport Minister should issue a statement of expectations regarding the ATSB's DCV function.</p> <p>Recommendation 7: Where a State has its own safety investigator the ATSB may engage it to undertake investigations on its behalf.</p>	<p>The ATSB has the power to investigate incidents involving DCVs as an independent no-blame investigator without any special request from a State or AMSA. It would appear that the ATSB already have sufficient powers under the Transport Safety Investigations Act (2003) (Cth) to investigate issues involving DCVs and exercise its powers over the national domestic fleet. However, there may be benefit in disseminating lessons learned through investigations as these may prevent similar incidents from occurring.</p> <p>Whether this is undertaken by ATSB or AMSA, these lessons should be captured and disseminated in a timely manner to all stakeholders including industry and transport regulators, similar to the process applied in aviation incident investigations.</p>

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<p>Recommendation 8: Safety incidents should be reported to one Commonwealth maritime safety authority only (AMSA or ATSB) who will take responsibility for sharing it with each other as required.</p>	
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<p>8. There is an opportunity and need for the establishment of a concerted effort by AMSA to lead, develop and foster a safety culture within the maritime industry.</p>	
<p>Recommendation 9: AMSA should establish and support an Australian Government funded long-term safety engagement program with all sectors of the DCV maritime industry to:</p> <ul style="list-style-type: none"> • promote the benefits of reporting; • identify best data collection methods; • investigate the feasibility of creating a 'White' card scheme; and • develop simple and accessible guidelines for ease of compliance. 	<p>TMR supports the fostering of a safety culture, and the investigation of a "white card" scheme in conjunction with other training and certification.</p>
<p>Finding 9</p>	
<p>9. There is an opportunity for the Department of Infrastructure, Transport, Regional Development, Communications and the Arts and AMSA to improve the marine surveyor accreditation scheme to ensure it is up to date, fit for purpose and flexible.</p>	
<p>Recommendation 10: The marine surveyor accreditation scheme should be reviewed to make it fit for purpose. As part of that review, consideration should be given to introducing (among other matters):</p> <ul style="list-style-type: none"> • a tiered accreditation scheme according to size and complexity of the vessel; • a formal continuing professional development program; • a regular random audit of surveyor approvals and subsequent standards applied; • increasing the approval powers for accredited marine surveyors; • greater flexibility in who can be accredited as a marine surveyor, and expanding categories of accreditation to adequately cater for the skills that will be required to assess the performance of new and emerging technologies; and • a formal rulings program to provide certainty for surveyors and operators. <p>The review should consider a reasonable timetable for implementation of the proposed reforms.</p>	<p>TMR recognise that AMSA has sought to mitigate the complicated interaction of legislation and marine orders through accrediting marine surveyors to assist industry understand their requirements, however this advice comes at a price that often small businesses may not be able to absorb. This creates an inequitable system that provides a greater level of safety for larger operators than smaller operators unable to afford to access an inherent component of the regulatory system.</p>
<p>Finding 10</p>	
<p>10. The current requirement that changes to regulations made under the National Law be agreed by all States and the Northern Territory is a barrier to flexibility and responsiveness to innovation.</p>	<p>TMR considers that the current arrangement whereby unanimous agreement is required for regulation changes is appropriate and should remain.</p>
<p>Recommendation 11: The current requirement that changes to certain regulations be unanimously agreed by the States and the Northern Territory be removed.</p>	<p>The National Law contains an exclusionary provision that excludes certain vessel types or activities from the reach of the National Law. Where this occurs and the vessel is no longer considered to be a DCV it is automatically regulated under state legislation. However, Queensland has dismantled its commercial vessel legislation, systems and capacity and is not equipped to regulate commercial vessels and activities that are excluded from the reach of the National Law.</p> <p>Removing the requirement for unanimous agreement would allow the National Regulator to make unilateral changes that adversely affect safety, such as by shifting to the states and territories the responsibility to regulate certain commercial vessel types, without consultation or agreement and where the state or territory may not have the legislation, systems or capacity to regulate.</p> <p>Further, the NL creates inequity in the way end of life vessels are treated;</p> <ul style="list-style-type: none"> • Once a DCV leaves the NL at the end of its life and is no longer considered a DCV it defaults to state registration, however the states have not received any funds for the duration of its life. Many of these vessels are constructed as industrial workplaces and fitted with winching and lifting gear, and as a result are unsuitable for general recreational use. • An initial examination of derelict vessels removed in Queensland under the War on Wrecks Program indicates that approximately 12.4% are of commercial origin, however these vessels account for over 37% of the total removal expenses. • End of life vessels present a significant risk to the environment through pollution discharges, and the cost (both environmental and financial) of these events is often greater than the cost of disposing of the ship itself. • The National Law should provide the mechanism for the National Regulator to ensure that commercial vessels that are no longer able to maintain their seaworthy state do not end up as an unseaworthy recreational or unregistered vessel in need of removal by states, and also minimise the associated environmental risks.

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<p>Finding 11</p> <p>11. There is a need to further consider how the National Law framework can be future ready.</p> <p>Recommendation 12:</p> <p>AMSA should set up a taskforce to consider how to optimise and future proof the National Law framework to regulate new and emerging technologies.</p> <ul style="list-style-type: none"> The taskforce should consider whether definitions in the National Law remain fit for purpose in the context of development, deployment and operation of new and emerging technologies. 	<p>TMR considers that the NL should be more agile to apply and manage dynamic/novel craft to ensure the most appropriate regulation for new emerging technologies and operations. While WHS obligations are a relevant factor and is readily understandable in terms of a 'workplace' such as a trawler or work boat it is not the only relevant factor to be considered when capturing 'Domestic Commercial Vessels'.</p> <p>Operators of vessels that provide a service for payment owe a duty of care towards their customers, and customers understandably expect the vessel to meet at least minimum standards of construction and maintenance. As the offering of a product or service is commercial in nature, commerciality is the primary factor in determining whether a vessel should be captured by the National Law. The NL provides sufficient scope to apply an appropriate regulatory touch commensurate with the risk presented by the operation.</p> <p>Future developments of the National Law will need to accommodate the appropriate regulation of both novel and emerging craft (refer AMSA's recent policy, and the ongoing ARBSC project), and autonomous vessels (MASS (maritime autonomous surface ships)).</p>