

# SEAFOOD INDUSTRY AUSTRALIA



**Seafood Industry Australia  
response to the Department of  
Infrastructure, Transport, Regional  
Development, Communications and the Arts  
Independent Review of Domestic Commercial  
Vessel Safety Legislation and  
Costs and Charging Arrangements  
Draft Phase 1 Report  
November 29, 2022**

Submitted via email: to [dcvsafetyreview@infrastructure.gov.au](mailto:dcvsafetyreview@infrastructure.gov.au) on November 29, 2022.

**ATTN: Review Panel.**

## Introduction

Seafood Industry Australia (SIA) welcomes the opportunity to provide feedback on the Independent Review of Domestic Commercial Vessel Safety Legislation and Costs and Charging Arrangements Draft Phase 1 Report.

SIA is the national peak-body representing the Australian seafood industry as a whole. With members from the wildcatch, aquaculture and post-harvest sector, including state, territory and sectorial associations, along with seafood businesses and producers. We are the voice of Australian seafood.

Currently valued at more than \$3.15 billion and directly supporting more than 17,000 Australian families ([ABARES, 2021](#)) and thousands more downstream in logistics and sales, the Australian seafood industry plays a key role securing Australia's food base, creating and maintaining jobs, boosting economic activity, and generating valuable export income for Australia and our rural and regional communities. Australian seafood accounts for 10 per cent of the national agricultural production.

Growth of our industry delivers increased jobs and investment in rural and remote Australia, and puts more than 1.5 billion meals of quality, healthy, sustainable seafood for Australian families and our international neighbours.

SIA provides consumers, Government and other stakeholders with confident and united representation.

Our mission is to Promote, Protect and Develop the Australian seafood industry on the national and international level. Our unity indicates that we love what we do, we stand by our products, and that our products are the best in the world.

## Our Pledge

We are the Australian seafood industry, and we are committed to putting the best Australian seafood on your table now and for generations to come.

To ensure we do this in ways we are all proud of, we promise to:

- Actively care for Australia's oceans and environment and work with others to do the same;
- Value our people, look after them and keep them safe;
- Respect the seafood we harvest and the wildlife we interact with;
- Be transparent and accountable for our actions;
- Engage with the community and listen to their concerns; and,
- Continually improve our practices.

This is our pledge to you.

Chair

DCV Safety Review Panel

## INDEPENDENT REVIEW OF DOMESTIC COMMERCIAL VESSEL SAFETY LEGISLATION

Dear Chair,

Seafood Industry Australia (SIA) welcomes the opportunity to provide feedback on the findings and the recommendations in the Draft Phase 1 report prepared after Phase 1 of the Review.

SIA is the national peak-body representing the Australian seafood industry as a whole. With members from the wildcatch, aquaculture and post-harvest sector, including state, territory and sectorial associations, along with seafood businesses and producers. SIA provides consumers, Government and other stakeholders with confident and united representation.

Our mission is to Promote, Protect and Develop the Australian seafood industry on the national and international level. Our unity indicates that we love what we do, we stand by our products, and that our products are the best in the world.

SIA acknowledge that a further phase of the Review is yet to be undertaken that will also seek to capture input to service delivery, costs and cost recovery of services by the Australian Maritime Safety Authority (AMSA).

The SIA feedback takes into account input from key stakeholders which supported the recommendations contained in the SIA submission provided to the Review Panel after Phase 1 and considers the Findings (and Recommendations) in the *Draft Interim Safety Report - Phase 1* in this context.

**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.*

SIA agrees with the Key Finding, which is consistent with feedback received by stakeholders and included in the SIA submission. In particular, the report provided a comparison between DCV fatality and serious injury rates being at, or below, similar levels to rail and aviation, who have traditionally been recognised for the exemplar industries in this regard. Given the number of DCV in the fleet a comparison with heavy vehicles may have been useful to further show the improvement. An alternative way to consider this may be to report on hours travelled, fished, or flown, this may also provide some balance when comparing the data. SIA agree encouraging better incident reporting would improve the data used to make these comparisons.

SIA agree the move towards a single, national management system for marine safety is progressing with simplification of current regulations and supporting regulations and flexibility in the use of marine orders and standards to allow for flexibility provide for key opportunities to support an evolving DCV fleet.



***Finding 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.*

This finding is supported, with implementation of some of the recommendations associated with this finding potentially addressing key recommendations in the SIA submission, including designing risk based framework that is flexible and able to adapt to innovation and emerging technologies. A transition to codes of practice will also assist in simplifying rules and deregulating smaller vessels in less risky operating environments, which was a key point raised by seafood stakeholders during the first consultation period.

An example of this approach could be found in a different approach for the management of the “small inshore vessels” (less than 7.5m). The strong resistance to the level of regulation is the lack of recognition for the different risks it carries to other types of operation. A risk based standard would address many concerns over the current over regulated approach. A set of standards that is clear and “simple” would eliminate much of the resistance. Small inshore operators are predominately in highly competitive and heavily regulated fisheries with significant costs burdens and limited operations due to a range of competing interests and heavy regulatory burdens. These fisheries are almost universally of a relatively low Gross Value of Production (GVP) and provide very low Returns on Investment (ROI) in licences, boats and gear required to run those businesses together with low operating profits leaving little for investment in meeting costs of excessive regulation and related improvements or replacement of vessels.

SIA does not support the recommendation that higher risk vessels comply with the Navigation Act and its associated standards. The Navigation Act was established for the management of vessels travelling to and from Australia and clearly does not relate to DCV’s operating inside the Australian EEZ. SIA supports the use a risk based approach to understand and mitigate risk within the seafood component of the DCV fleet. Further discussion on defining high risk DCVs within the fleet and assessing management of these vessels within the National law framework may be required, although many of the tools in assessing these risk factors are already found within Marine Order 504.

SIA agrees that AMSA should be allocating its finite resources to riskier segments of the DCV fleet, although this focus should be based on data on risk. Further discussion of this should occur in Phase 2 of the review.

***Finding 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.*

SIA supports the position to remove this requirement unless specified benefits are demonstrated for a particular type of vessel. SIA acknowledges this finding directly relates to one of the recommendations in the SIA submission and is consistent with the adoption of a risk based framework and not a one size fits all approach.

***Finding 3: Progressively withdrawing existing grandfathering arrangements to the extent they impact on safety would substantially improve safety outcomes.***

SIA have concerns with this finding in the context of feedback received from seafood industry stakeholders on challenges associated with any decision to phase out grandfathering in the seafood industry DCV fleet. SIA are unsure with the finding that safety outcomes would substantially improve.

COAG introduced the “grandfathering policy” recognizing that many in the DCV fleet were operating safely under their existing vessel’s standard and management systems, using their existing vessel configurations and within their existing area of operation and thus should not be forced into major cost imposts to modernize or meet the various different standards across jurisdictions for little change in safety benefit at the vessel level. At the time these arrangements were deemed to continue to apply unless incident data dictated the need to adopt an alternative approach, which does not seem to be the case in the data provided in the draft report.

Grandfathering of boats and certificates is a core part of a fisher family stability. Fishery management changes can be stressful and often hard for a fisher to cope with. However, their boat and their credentials are the very stable thing they most understand and depend on.

While there is progressive development of design and safety support systems, the removal of the range of grandfathering provisions would be a significant challenge to industry and owners. Any process that would force vessels that are sound and fundamentally safe to operate within their current environment into a different status (including non-compliant) would place a significant proportion of the industry at risk and severely compromising many owner operators and small businesses to meet any new standard.

There will continue to be a need for a transitional arrangement as vessels require major changes / refits to maintain their operational capacity. The transitional arrangements need to be clear and specific to enable owners to evaluate changes and improvements.

Recommendation 2 refers to a transitional period away from grandfathering of seven (7) years. While this seems reasonable its likely to prove to be impractical merely creating further calls for delays and exemptions. The current state of the Australian ship building industry and the manufacture of smaller vessels with a DCV or recreational application may make this impractical.

Further common safety standards for both commercial and non-commercial boats would benefit both sectors of the boating industry, examples of benefits are particularly found in key issues such as flotation. This would require the State’s to sign on to a higher level of safety than they currently commit to. Being the key agency across governments is a role AMSA should use to bring about broad change even if the non-commercial sector is not within its scope.

The report’s suggestion that a baseline set of safety standards would need to be established to provide flexibility to enable vessels to phase-in or transition to that baseline set of standards would be an approach that has merit.

Any potential removal of grandfathering should be supported by recognition of qualification equivalence with the current system. The AMSA qualification recognition needs to ensure that it is complimentary or provide equivalence with those under the Navigation Act. The implementation of a ‘tinny to tanker’

qualification stream (which has been discussed by AMSA in the past), would allow seafarers to work their way up to gaining internationally recognised qualifications.

It is unrewarding for Australian fishers that their qualifications and experience are not recognised under the Navigation Act and further underlines the view that the DCV process is being unnecessarily influenced by “big boat” thinking by not recognising equivalence for the “inshore fleet”.

It is imperative given this disconnect, that a pathway be implemented into the National Law to allow Australian fishers to hold qualifications that allow moving from small DCVs to internationally recognised qualifications on RAVs or foreign flagged vessels with recognition for the existing qualifications and experience.

If this finding is implemented SIA supports the Panel’s view that the Australian Government should make available some form of assistance to industry to help mitigate the impacts of transition of the DCV fleet by the wholesale removal of the grandfathered arrangements to modern safety standards. Further discussion of this should occur in Phase 2 of the Review. It is critical any steps are undertaken in consultation with industry; as an example a DCV operator indicated in attempting to transition a vessel into survey after almost 12 months of time and ~\$60K were invested the process was abandoned due to inconsistencies and challenges of working with AMSA which made the process impossible.

***Finding 4:*** *There is a high level of confusion within the industry about the relationship between the marine safety law and work health and safety (WHS) law.*

SIA agrees with this finding and the recommendation under it, with concerns over duplication and hierarchy of AMSA and WHS regulations being raised in the SIA submission. Given it is likely that a breach of a general safety duty under the National Law is likely to be a breach of WHS law, development of any MoU arrangements between AMSA and WHS need to set out practical terms in which regulator will take the lead in the investigations. Deferring this to AMSA would make sense where possible, to lessen the confusion individual operators have when an incident is investigated and simplify the process.

If this approach were to be taken there would need to be clear understanding on the nature of costs that shift between regulators and where there would be savings to the DCV fleet.

***Finding 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:*

- *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.*

Although enforcement of regulations and Marine Orders are important for deterrence and, in cases where non-compliance has been significant or persistent, consequences need to be severe, SIA has difficulty in supporting an increase in penalties. Implementation of a risk based approach through codes of practice as recommended in finding 1 will rightly put a focus on education and awareness to maximise the safety outcomes of the national system. Notwithstanding this, the

proposal outlined in the draft report for proposed amendments looks like it may happen, so ensuring there is a clear evidence base to increase the effectiveness of AMSA is important to meet this finding.

***Finding 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.*

The Seafood industry is supportive of AMSA having access to a variety of enforcement tools to improve deterrence and compliance of the regulations. Flexibility to scale penalties to align to offending is also supported and supports the aim of moving to a risk based approach to simplify the regulatory framework. Any increase in enforcement, as distinct from education and awareness should not come at more cost to users, and this should be discussed during Phase 2 of the review. Compliance is a core role of government and should not be subject to any cost shifting.

***Finding 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.*

SIA notes the ATSB is an independent statutory agency which is separate from the regulators and applies a no-blame approach to improve transport safety through investigation of accidents at arm’s length from determining liability. The concept of expanding the ATSB role to include DCV incidents is supported by SIA.

A benefit of this approach may be the improvement in reporting of safety incidents due to the “no-blame” approach of ATSB, but need to be accompanied by improvements around incident reporting arrangements through a central reporting structure and streamlining of the process across jurisdictions and agencies through the use of consistent definitions and requirements.

As discussed in the SIA submission any implementation of this finding should not increase costs and this should be further discussed in Phase 2 of the review.

***Finding 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.*

In supporting a transition to a risk based regulatory framework with greater self-management and self-audit, SIA understands the requirement for a greater level of education regarding responsibilities and requirements for operators. SIA agrees AMSA will need to establish a better relationship with industry over the above matters including developing a best practice approach to implementing a system that is more empowering to operators.

Opportunities to make this occur relate to AMSA improving engagement with all levels of industry, from representative bodies like SIA and its state and territory equivalents, to sector based bodies (where individual fisheries and aquaculture operations diversity of operations is best understood) and industry

networks. This will enable industry to assist with fostering a safety culture, identify best practice and assist safety champions and leaders.

More emphasis on incidents and response would better serve to educate and improve reporting. SIA contends a safety culture is not directly promoted through a White Card scheme, and it should not be a mandatory pre-entry requirement. A White Card should be seen as the entry level to a future involvement in the industry and should be transitioned through staged education, competency recognition and certification to meet the requirements of the national system and improve the safety culture.

SIA supports the recommendation that AMSA should establish and support an Australian Government funded, long-term safety engagement program with all sectors of the DCV industry to promote the benefits of reporting, identify best data collection methods, investigate the creation of a widely accepted 'skills portability' scheme and develop simple and accessible guidelines for ease of compliance.

***Finding 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.*

SIA supports the improvement of the marine surveyor accreditation scheme, given the important role the scheme plays in safety assurance and the direct role surveyors play in liaising with seafood industry DCV operators. In addition to the items raised in recommendation 10 of the draft report, a number of matters raised in the SIA submission could be considered in this improvement program, in order to improve consistency in interpretation and take into account new and emerging technologies.

***Finding 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.*

SIA agree, now AMSA has taken over full-service delivery of the National System, that the responsibility for changes to regulations should be the sole responsibility of the Commonwealth and AMSA. Notwithstanding this, SIA believes consultation with industry, State and Territory governments should continue to be a requirement when changes to regulations, or new regulation, are being considered. SIA notes there may be implications with regards to the financial support the States and Northern Territory provide to the National System at present and the implications of this change will need to be discussed in Phase 2 of the review.

***Finding 11:*** *There is a need to further consider how the National Law framework can be future ready.*

SIA agrees with this finding and supports AMSA setting up a taskforce (which includes industry representation) to consider the implementation of recommendations in the draft report and how to future proof the DCV National Law framework, particularly when consider new and emerging technologies.

Prescriptive design and specifications in the regulations need to be removed and replaced with key statements of conformance / performance/ deliverables from any range of alternative design / operational



specifications / systems. What is fit for purpose will always change and improve with alternatives the system does not manage for this change, but seeks to still be prescriptive rather than risk based.

In addition to the comments above the following comments are provided in relation to the specific Recommendations contained in the report:

**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:

**Majority supported, see comments on dot points below.**

- retaining general safety duties on all parties that have a duty under the current law; *Supported*
- removing the universal requirement for all DCV's to have Certificates of Survey and Operations; *Supported*
- 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; *Supported*
- 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. *Not-supported*

**Recommendation 2:** The grandfathering arrangements that are a risk to safety should be wound back in accordance with a phased risk-based program.

**Conditionally supported, see comments on dot points below.**

- 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. *Conditionally supported – depends on what is the baseline and what resources are provided to assist DCV operators to meet it*
- 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. *Conditionally supported, pending baseline and resources*
- Grandfathered crewing and crew competency arrangements should be phased out within five years of implementation of this change. *Conditionally supported pending resources, however pathway program to enable equivalency of qualifications should be considered.*
- The Australian Government should establish and fund an Industry Assistance Package with a suite of incentives to assist attaining these standards. *Supported*

**Recommendation 3:** AMSA should:

- 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; *Supported*
- reflect these in communications and guidance to industry explaining the rationale for the dual operation of the National Law and WHS Law, and how AMSA and WHS Authorities work practically to reduce any duplication of effort and regulatory burden, including reporting requirements.

***Supported, as long as duplication is reduced.***

**Recommendation 4:** The offences and penalties in the National Law should be aligned to those in the WHS law to the extent practical.

***Supported.***

**Recommendation 5:** The National Law should be amended to:

- 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.

***Supported although still needs some detail regarding gaps and to be aligned to the development of a risk based framework.***

**Recommendation 6:** The ATSB should be funded by the Australian Government to undertake a no-blame investigation program sufficient to support the identification of systemic safety issues. The Minister should issue a statement of expectations regarding the ATSB's DCV function.

***Supported.***

**Recommendation 7:** Where a State has its own safety investigator the ATSB may engage it to undertake investigations on its behalf.

***Supported.***

**Recommendation 8:** Safety incidents should be reported to one Commonwealth maritime safety authority only (AMSA or the ATSB) who will take responsibility for sharing it with each other as required.

***Supported.***

**Recommendation 9:** AMSA should establish and support an Australian Government funded long-term safety engagement program with all sectors of the DCV industry to:

***Supported, but not with a white card scheme becoming a 'mandatory' point of entry.***

- promote the benefits of reporting;
- identify best data collection methods;
- investigate the creation of a 'white card' scheme; and
- develop simple and accessible guidelines for ease of compliance.

**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):

***Supported, the review should consider a reasonable timetable for implementation of the proposed reforms.***

- a tiered accreditation scheme according to size and complexity of the vessel;
- a formal continuing professional development program;
- regular random audits 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 new and emerging technologies; and
- a formal rulings program to provide certainty for surveyors and operators.

**Recommendation 11:** The current requirement that changes to certain regulations be unanimously agreed by the States and the Northern Territory be removed.

***Supported, with retention of existing consultation mechanisms.***

**Recommendation 12:** AMSA should set up a taskforce to consider how to optimise and future proof the National Law framework to regulate new and emerging technologies.

***Supported.***

- 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.

## Thank you

In conclusion, SIA asks the Review Panel and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts to consider the points raised in this submission.

SIA, on behalf of our members and the entire Australian seafood industry, would like to thank you for taking the time to review our submission. I welcome the opportunity to discuss any points raised with you further and can provide more detail if needed.

Finally, I would like to thank you in advance for your support of the future of Australia's seafood industry, and your commitment to the safety of the industry.

Yours sincerely,



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