

SVITZER AUSTRALIA AND SMIT LAMNALCO

Discussions with Industry Representatives

To determine agreed industry sector responses to the draft report, Svitzer and SMIT met and consulted with peers amongst many industry sectors including representatives from Safer Together, SeaLink, Maritime Industry Association Limited (MIAL), Western Australia Fishing Industry Council (WAFIC) SpearGreen Design, Australian Commercial Vessel Operators Association (ACVOA) and the Seafood Industry Australia (SIA).

This group unanimously agreed that moving domestic commercial vessels (DCV) operating in Australia waters should not be covered by the Navigation Act, irrespective of how high risk is defined or managed that there must be no referral to the Navigation Act in the final report.

The National Law can manage all DCVs, and the Navigation Act is not believed to be the appropriate mechanism for managing DCVs.

In support of the National Law remaining the primary legislation for DCVs:

- Marine order 504 already includes risk assessments within the SMS
- A risk is required to be managed by the DCV operator under MO504, therefore there is no need for referral or requirement to comply with the Navigation Act
- Under the National Law Act, Section 48, a certificate of operation should only be issued if:
 - b) *“the National Regulator is satisfied that the applicant has demonstrated appropriate competence and capacity in relation to the safe operation of the vessel; and*
 - c) *the National Regulator is satisfied that the criteria prescribed by the regulations are met in relation to the issue of the certificate.”* [Noting a marine order is a regulation]

Should the certificate of operation not be continued in favour of the certificate of survey, clause c) above is already written into the National Law.

- At the Regional Safety Committee (RSC) meetings AMSA discussed the algorithm used for frequency of safety inspections. This could equally be utilised where a perceived great ‘risk’ exists, that requires more scrutiny. The system already exists to manage risk, there is no need to rewrite legislation or define risk.

The group noted the work being done by the 504 industry reference group, in making risk assessments under MO504 more robust. With the improved prescription around risk assessments, this would be sufficient to manage any DCV risk.

General Comment

The lack of detail in some sections of the draft report, in particular details on which vessels are high risk and how it is determined raises several important questions.

- What is the criteria for establishing ‘high risk’ vessels or operations?

- Where does the risk control matrix fit into the 'high risk' assessment?
- If sufficient controls are in place to mitigate identified risks and the residual risk is at an acceptable low level, does this reduce a vessel or operations overall risk rating?
- What is the risk mitigation control for changing a vessel from National Law to the Navigation Act?
- How does vessel and operation risk level align with new and emerging technologies and performance based legislation?

Moving vessels from the National Law to the Navigation Act without a significant safety improvement or outcome would have added cost and resourcing implications and a significant negative impact to our business and the rest of industry. It is therefore the opinion of Svitzer and SMIT that the Navigation Act is not an appropriate solution for DCV's.

Definition of Owner and Certificate of Operation

The importance of a practicable definition of owner in relation to charter vessels and certificates.

- The certificate of operation is a control document, identifying liability under WHS legislation. It defines the 'worksite' and responsibility cannot be transferred without it.
- The definition of owner is important for charter vessels (both tourism and dry hire), this is currently linked to the certificate of operation.
- The definition of owner is slightly different between the Navigation Act and National Law Act. The Navigation Act deals better with the charter vessels and may have greater importance if certificates of operation are discontinued.
 - o Chapter 1, Part 4, Section 4 Navigation Act
owner of a vessel means one or more of the following:
 - a) a person who has a legal or beneficial interest in the vessel, other than as a mortgagee;
 - b) a person with overall general control and management of the vessel;
 - c) a person who has assumed responsibility for the vessel from a person referred to in paragraph (a) or (b).

For the purposes of paragraph (b), a person is not taken to have overall general control and management of a vessel merely because he or she is the master or pilot of the vessel.

Further Comment and Content

A summary of comments is provided against the report findings and recommendations. This submission in response to the draft report also includes a profile of Svitzer and SMIT Lamnalco who combined cover approximately 80% of the Australian towage sector and operate a combined 167 vessels (125 Svitzer; 42 SMIT Lamnalco).

Sincerely,



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Summary Table of Findings/Recommendations - Switzer and SMIT Comment

| Finding(s) | Recommendation(s) | Submission points |
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| <p>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.</p> <p>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.</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>Recommendation 1 – point 1: Support that general safety duty is maintained</p> <p>Recommendation 1 – points 2&4: It is difficult to provide comment as there is no definition of “less risky” vessels only examples (small workboats and human powered vessel) to ascertain the impact of changing the requirement for COO and COS and AMSA's regulatory concentration.</p> <p>Recommendation 1 – point 4: Switzer and SMIT do not support DCV being covered under the Navigation Act.</p> <p>There is no definition of 'high risk vessels' or detail provided on how the vessels/operations are categorised other than an example from AMSA's submission as larger, higher risk vessels that are involved in more complex operations and vessels carrying hazardous and noxious substances. There is also no details provided on how and by whom the risk level is determined.</p> <p>Switzer and SMIT advocates that length of vessel, area of operation and/or hazardous operations are not single measures for establishing high risk vessels and that the Navigation Act is not appropriate legislation to address DCVs risk. A complex operation that has identified risks and adopts strategies and controls to mitigate the risks, reduces the risk profile as required by M0504. High risk operations under a risk based framework can through this process reduce their risk and therefore the regulatory approach. Towage is an industry sector that is largely covered by the National Law and has demonstrated mature, complex safety management and risk control processes.</p> <p>Switzer and SMIT need to understand the risk based approach, what is the framework for establishing risk level and who is doing this. Is it AMSA or the operator or is it a joint risk profiling strategy?</p> <p>We do not support a risk based framework that suggests moving a DCV operating under state/territory and now National Law to the Navigation Act</p> |

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| | | <p>will result in a valid safety outcome. How will the increased cost; crewing difficulties and regulatory burden of the Navigation Act reduce risk and improve a vessel or operations safety?</p> <p>Some other comments practical implications of a change from DCV to regulated Australian Vessels (RAV) for the Australia towage fleet that provide no improvement in safety:</p> <ul style="list-style-type: none"> • Increased survey and equipment requirements for some vessels at cost to company. • May require many legislative changes in Marine Orders referencing or grandfathering DCV's etc. • Will require much heavier interaction with Flag State Division in AMSA rather than AMSA Connect for DCV's. Increased workload and resourcing for AMSA. • Will require much more interaction with the Shipping Registration office which is already swamped. • Likely increase to charges for levies • The STCW Convention requires skill, knowledge, experience and sea service that is difficult or cannot be obtained on NC harbour and short voyages, examples <ul style="list-style-type: none"> ▪ M071 Master <500 GT - at least 24 months served on vessels on voyages of at least 24 hours duration ▪ M072 Engineer Class 2 - if the machinery is in use or immediately available for use for less than 8 hours in a 24 hour period and the seafarer is on duty or on call for that period, the sea service is taken to be the actual period the machinery is in use or available for use plus 25% of that time. ▪ M073 Integrated Rating (who cannot act as Mate) - completed 9 months documented qualifying seagoing service of which at least 5 months was served as a rating forming part of a navigational watch and engine-room watch on an appropriate vessel |
| <p>Finding 3: Progressively withdrawing 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 | <p>Switzer and SMIT are not adversely affected by the grandfathered vessels arrangements. However, we support transitional arrangements based on operators' risk and risk control/mitigation strategies.</p> |

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| | <p>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.</p> <ul style="list-style-type: none"> ● 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. <ul style="list-style-type: none"> ○ 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. | <ul style="list-style-type: none"> ● Support a baseline standard which precludes needing to replace vessels just because they're old, depending on what baseline standards were implemented. ● Given the variation in standards, a risk-based approach is required to achieve broad improvement and continuous improvement. ● Grandfathering should be linked to a risk assessment and risk controls. M0504 is the mechanism to do this. ● Any change to grandfathering provisions should be risk based. Therefore, the risk should be understood in practice, rather than assumed to exist just because a vessel operates under grandfathered provision. |
| <p>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.</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 Law, and how AMSA and WHS Authorities work practically to reduce any duplication of effort and regulatory burden, including reporting requirements. <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>Support AMSA taking the lead regulatory authority role on all maritime WHS from shore to outer limit of the EEZ with WHS taking the lead to the gateway to remove any duplication or confusion.</p> <p>It is important for operators to know which legislation and jurisdiction applies ashore, onboard and at sea/underway.</p> |
| <p>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:</p> <ul style="list-style-type: none"> ● the low levels of penalties that can be imposed by the courts | | <p>The definition of Owner in the Navigation Act is preferable to the current National Law definition. This should be considered in line with a review of penalties and WHS/AMSA regulatory jurisdiction.</p> |

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| <p>limits their deterrence effect; and</p> <ul style="list-style-type: none"> undermines the effectiveness of AMSA as the safety regulator of DCVs. | <p>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.</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>In light of Finding 4, 5 and 6 and Recommendation 3, 4 and 5 – it needs to be very clear under which legislation an owner, officer or other will be prosecuted.</p> <p>Switzer and SMIT would like confirmation on whether it will be WHS or AMSA legislation for prosecution?</p> |
| <p>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.</p> | <p>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.</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>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.</p> <p>Recommendation 9: AMSA should establish and support an Australian Government funded long-term safety engagement program with all sectors of the DCV industry to:</p> <ul style="list-style-type: none"> 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. | <p>Noting that the ATSB and regulators investigate incidents for different reasons (no blame versus prosecution).</p> <p>Switzer and SMIT would not support a different arrangement for DCVs and would consider the benefits of the current arrangements of how ATSB work with AMSA for investigations which fall under the Navigation Act.</p> <p>We would also like clarity on whether a dual investigation with the ATSB for 'no blame' learning and AMSA for prosecution increase costs that would be passed on to industry.</p> <p>It is not clear in the report if it would this be AMSA who would pass on appropriate incident investigations to ATSB because of AMSA's prosecution function.</p> <p>AMSA should not need a review or change to the National Law to foster safety culture etc.</p> <p>White card scheme has been raised in several industry forums and has not been supported. Although this would not impact Switzer or SMIT, a mandatory 'white card' scheme is not supported as the recent amendments to M0505 have scope for uncertified general purpose hands and when certified crew are needed. There is also a Shipboard Safety Skill Set in the MAR nationally accredited training package and safety training is a risk based approach through M0504.</p> |
| <p>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.</p> | <p>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.</p> <p>Recommendation 9: AMSA should establish and support an Australian Government funded long-term safety engagement program with all sectors of the DCV industry to:</p> <ul style="list-style-type: none"> 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. | <p>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.</p> <p>Recommendation 9: AMSA should establish and support an Australian Government funded long-term safety engagement program with all sectors of the DCV industry to:</p> <ul style="list-style-type: none"> 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. | <p>AMSA should not need a review or change to the National Law to foster safety culture etc.</p> <p>White card scheme has been raised in several industry forums and has not been supported. Although this would not impact Switzer or SMIT, a mandatory 'white card' scheme is not supported as the recent amendments to M0505 have scope for uncertified general purpose hands and when certified crew are needed. There is also a Shipboard Safety Skill Set in the MAR nationally accredited training package and safety training is a risk based approach through M0504.</p> |

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| <p>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.</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; • 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. <p>The review should consider a reasonable timetable for implementation of the proposed reforms.</p> | <p>Although Switzer and SMIT use Class surveyors for the majority of our fleets, we would like more information on the details for the proposed 'increased approval powers' and 'formal rulings program'.</p> <p>There are possible negative impacts from the transactional nature of the relationship between industry owners/operators and the accredited surveyor. We support that this could be minimized through increased AMSA auditing including compliance to a continued professional development program.</p> <p>We support a tiered surveyor accreditation scheme which would provide greater flexibility in accrediting surveyors and cater for new and emerging technologies supported by a formal continued professional development scheme.</p> |
| <p>Finding 10: The current requirement that changes to National Law be agreed by all States and the Northern Territory is a barrier to flexibility and responsiveness to innovation.</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>Clarity needed on what 'certain regulations' are would better inform a response to this finding and recommendation.</p> <p>However, in principle we support removing the state and territory unanimous agreement if the regulatory consultation process remains including industry reference group participation.</p> |
| <p>Finding 11: There is a need to further consider how the National Law framework can be future ready.</p> | <p>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.</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>Considering Findings 9 and 10 and Recommendations 10 and 11, and that new and emerging technologies are dynamic, we would like clarity on how a task force would deal with innovation, so companies are not held back by waiting for changes to legislation i.e., a performance based legislation, where the owner/operator commits to performance and safety measures and the regulator ensures they follow their own regime.</p> <p>An example of legislation adapting to new technologies is engineering certification. With increased technology in marine engines and the decreased requirements for near coastal engineers to operate independently of shore support and original equipment manufacturer service support, performance based engineering certification would be more appropriate by could allow for appropriate increase in kW for marine engine drivers and Engineer Class 3.</p> |

SVITZER AUSTRALIA

Firstly, Svitzer would like to thank the panel for their time and the discussion on the National Law review and draft report on 19 September 2022. As part of our response to the draft report, we offer a description of Svitzer and relevant points on how our company operates.

Who We are

Svitzer as part of Maersk

Svitzer is part of A.P. Moller Maersk and has unique financial stability and access to in depth industry knowledge and insights which we use to provide safe and innovative customised solutions to our customers. Founded in 1833, Svitzer is globally recognised for excellent performance within towage and marine related services, operating in 34 countries and 120 ports across the globe with a fleet of 460 vessels and 4,079 employees.

Svitzer Australia

Svitzer Australia combines our strengths to leverage scale and scope of everything we do through coordination of assets, crews, processes and services. By coordinating what we do and sharing knowledge and best practices globally, we enable our people in providing our customers with safe, reliable and efficient services at locally competitive prices.

- Svitzer Australia operates in 2 countries (Australia and PNG)
- 28 ports and 5 terminals
- 746 offshore employees
- 137 onshore employees
- 125 vessels (117 under National Law and 8 under the Navigation Act)
- 399 crew with near coastal certificates of competency
- 347 crew with STCW certificates of competency

Svitzer Australia Accreditations

- Offshore Vessel Management and Self Assessment (OVMSA) Stage 2
- Class Certification (Lloyds)
- ISO Certifications
 - 9001: 2015 (Quality Management System)
 - 14001: 2015 (Environment Management System)
 - 45001: 2018 (Occupational Health & Safety Management System)
- Compliance to International Convention for Safety of Life at Sea
- Safety Management Certificate
- Document of Compliance
- Internal and external audit regime

HMS (Global Safety Management System)

- Quality manual and policy
- Management of documentation
- Exceeds legislative requirements - voluntarily adoption of Oil Companies International Marine Forum (OCIMF)
- Global and regional Marine Standards team

Sertica Planned Maintenance System

- Class Society approved fleet management software
- Planned Maintenance and inventory management

- Procurement
- Certificates
- Dockings
- Analytics and reporting

Learning Management and Certification System

- Seafarer certification tracking with individual and manager email reminders of expiry
- Reporting function of compliance and audit
- Digital learning catalogue – Svitzer tailor made and Maersk catalogue
- Mobile App
- Aligned with the Svitzer global and Australia seafarer training matrix
 - Mandatory inductions, training and training manuals



Smit Lamnalco (Australia) Pty Ltd

Smit Lamnalco (Australia) is a joint-venture between Boskalis and the Rezayat Group, each owning 50% of the company. Boskalis and Rezayat have a long history of successful cooperation over more than 50 years, including the Smit Lamnalco joint venture, which commenced operations in 1963.

Smit Lamnalco operates a diverse fleet of Harbour & Terminal Tugs as well as Offshore Support Vessels. Our Harbour & Terminal Tug fleet is fit for purpose in providing reliable marine services to Oil, Gas and LNG terminals as well as Port operations. Smit Lamnalco operates DP1 & DP2 Offshore Support Vessels which are designed to provide a wide range of offshore support duties around floating production facilities (F(P)SO, FLNG, FSRU, SPM).

- Smit Lamnalco Australia operates in 2 countries (inc. PNG)
- 320 offshore employees
- 30 onshore employees
- 42 vessels (38 under the National Law)
- 280 crew with near coastal certificates of competency
- 40 crew with STCW certificates of competency

Smit Lamnalco Accreditations

- Offshore Vessel Management and Self Assessment (OVMSA) Stage 2
- Class Certification (Lloyds)
- ISO Certifications
 - 9001: 2015 (*Quality Management System*)
 - 14001: 2015 (*Environment Management System*)
 - 45001: 2018 (*Occupational Health & Safety Management System*)
- Compliance to International Convention for Safety of Life at Sea
- Certificate of Operation Certificates
- Internal and external audit regime

SLIMS (Global Safety Management System)

- Safety & Quality manual and associated policies
- Management of documentation
- Exceeds legislative requirements - voluntarily adoption of Oil Companies International Marine Forum (OCIMF)
- Global and regional SHEQ team

MARAD Planned Maintenance System

- Class Society approved fleet management software
- Planned Maintenance & Inventory Management
- Procurement
- Certificates
- Dockings
- Analytics & Reporting

Learning management and certification system

- Seafarer certification tracking with individual and manager email reminders of expiry
- Reporting function of compliance and audit
- Digital learning catalogue – Smit Lamnalco Australia tailor made
- Mandatory inductions, training and Masters training manual

