



December 2022

**RE REVIEW OF DOMESTIC COMMERCIAL VESSEL SAFETY LEGISLATION
DRAFT INTERIM SAFETY REPORT**

Dear independent expert panel,

Please accept this document as a formal response from TSIC with respect to the Findings and Recommendations of the Draft Interim Safety Report.

2022 has brought with it many major reviews and inquiries, all of which TSIC has been required to review, research and provide input / formal written submissions. This has placed significant strain on me as Chief Executive, other TSIC staff and the TSIC Board. It is fair to say that I have a severe case of consultation fatigue.

Amongst staff and family COVID outbreaks, I have simply not been able to provide a submission within the deadline.

I am very grateful to the committee for accepting this late input.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Harrington', is written over a light blue circular stamp.

Julian Harrington
Chief Executive



The TSIC Board acknowledge the Palawa Tasmanian Aboriginal people as the traditional owners of Tasmania and Tasmanian Sea Country and we pay our respects to their elders past, present and emerging.

TSIC Overview

The Tasmanian Seafood Industry Council

The Tasmanian Seafood Industry Council (TSIC) is the peak body representing the interests of active wild catch fishers, marine farming businesses and seafood processing businesses in Tasmania.

TSIC Policy aims to support the interests and access rights of our fishers, marine farmers and seafood processors. Central to TSIC policy is support for three key seafood outcomes – 1) employment; 2) direct economic return to Tasmania, particularly in regional communities; and 3) provision of Tasmanian seafood to Tasmanian' either directly from fishers or through retail, wholesale and food service outlets.

TSIC also strongly advocates for reduced red tape, and simple streamlined bureaucratic processes, that are developed and delivered in a way that supports, not hinders business operations.

Safety is paramount for all Tasmanian seafood operations, and TSIC has invested significantly into maritime safety and safety initiatives.

The Tasmanian Seafood Industry

The Tasmanian seafood industry is a very complex industry. It includes large scale business structures right through to small sole-trader family business structures. In turn, the sector supports a diverse range of subsidiary businesses that are reliant on the seafood sector. The sector has an important footprint in regional communities.

The structure of the wild catch fishery supply chain is complex and includes investors who simply own quota; quota owners who actively fish; fishers / supervisors who lease in quota; processors; exporters; wholesalers; retailers and food service, amongst more. Each part of this supply chain has differing objectives, values and ideals, and needs.

Current challenges around COVID and market access have put significant pressure on operators.

Structure of this Submission

This draft report sets out the Independent Review Panel's findings on the extent to which the National Law framework is currently fit for purpose, and the challenges in existing arrangements under the National Law. The report includes 11 findings, which are directly related to the 12 recommendations included in the report.

This submission will address each of the key findings and the associated recommendations.

INDEPENDENT REVIEW OF DOMESTIC COMMERCIALVESSEL SAFETY LEGISLATION and COSTS AND CHARGING

Draft Interim Safety Report – phase 1

TSIC SUBMISSION

Preliminary Comment

The Tasmanian seafood industry comprises a diverse range of business structures, from the largest seafood business in Australia (Tassal) to lots of small sole-trader business structures. Of the 480 odd wild catch fishers and 60 odd marine farm businesses and 50 odd seafood processors in Tasmania, vast majority are sole trader / family business structures.

Large businesses simply 'buy in' expertise to ensure their operations meet any safety regulatory requirements, as cost is less of a burden for this type of business structure. These safety employees know the regulatory landscape, can interpret laws and rules, and can speak on the same level with regulators.

Family / sole trader business structures simply cannot do this, and instead rely on clear, 'easy speak' instruction from regulators and / or representative organisations such as TSIC to help them develop, implement and comply with regulatory safety requirements. This is no easy feat, especially in a world where safety regulatory speak is a different language to seafood operators.

To date, AMSA has simply failed to acknowledge this significant barrier to uptake, and instead continue to produce complex legalistic guidance, and to refer to sections of the Law when fishers ask questions.

It is no surprise that the Tasmanian seafood industry has in large struggled to understand and navigate the National Law and have regularly voiced concern and at times anger at AMSAs interpretation and delivery of the National Law. It is fair to say that AMSA have in recent times improved, but this is well overdue and there is a lot more room for improvement.

The cost of time and mental strain on fishers has been immense, and many of the findings of the draft interim safety report acknowledge this. But many of the recommendations will simply add to this strain if no implemented appropriately.

It is important for the committee to understand that even a relatively small cost to a small family business can be challenging. And if the proposed changes do not bring any meaningful safety benefits, then further angst will prevail.

Moving forward, it is important that this independent review process and report, and any resultant or future changes to the safety system are done using an appropriate evidence base, and in a manner that suits the end user needs. Throughout this process, it must be remembered that an evidence base in one sector or subsector of the DCV fleet is not justification to implement a holistic national scale change, as this will place unjustified burden on many vessels without a proven safety outcome.

Therefore, any implemented change must have an appropriate cost benefit evaluation to ensure that any proposed change has safety benefits that justify the time, physical cost and mental anguish imposed by the change.

Where costs are high, but safety benefits deemed beneficial, then the government must provide financial support and / or incentives to implement change.

Draft Interim Safety Report: TSIC Response to Findings & Recommendations

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.

TSIC agrees that the National Law framework has in some areas improved safety outcomes.

TSIC also believes that the National Law framework provides the relevant tools to appropriately manage safety.

The key issues is that the AMSA interpretation and delivery of the National Law framework has brought with it complexity, red tape and regulatory burden. The communication of the system, from the AMSA webpage to the AMSA Connect advice and right through to written communication is poor, and not at a level or language that suits small seafood businesses.

Furthermore, different AMSA staff have different understanding and interpretation of the National Law requirements, which means that TSIC members often received inconsistent, and sometimes conflicting advice from different AMSA staff; albeit it that advice has improved over time. And some parts of the National Law framework are too prescriptive, making it difficult for AMSA to evaluate against actual risk. Examples have been provided in previous submissions.

Together, the system has created significant mental strain on seafood operators as they try to navigate the legalistic language and a complex system.

Part of the issue is that AMSA is attempting to use the National Law framework to create a 'one size fits all' regulatory approach. This has not worked within the complexity and diversity of the DCV world, where similar vessels can operate in very different environments and with very different equipment. For example, operating a 7 m dinghy setting nets in estuarine waters of NSW or Qld has very different risks compared to the same dinghy working in the cold waters of SW coast of Tasmania, with two divers in the water, amongst rocks and breaking waves, and in some of the most powerful wave energy conditions in Australia.

Taking the lowest, highest or median common denominator, and applying safety controls across an entire fleet does not appropriately or adequately address safety. Instead, it imposes either unnecessary safety burden, or inadequate safety controls on different

vessels. Although AMSA accept this, it has created an even more complex system of exemptions and grandfathering arrangements.

The AMSA interpretation and delivery of the National Law framework has created a complex maritime safety system, which is near impossible for small, sole trader family business to navigate, and which does not necessarily achieve positive safety outcomes.

This is why the Tasmanian seafood industry in large continues to voice significant frustration and angst towards AMSA and the National Law framework.

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.

TSIC is supportive of reducing red tape and regulatory burden, but not at the expense of safety outcomes.

Whatever system is put in place, AMSA cannot compromise the two key safety controls that protect people working in the DCV fleet:

- 1) Competent people who are appropriately trained;

If you are a skipper of a DCV then you must undergo some form of recognised training / obtain a Certificate of Competency qualification. It is the view of TSIC that a recreational boating qualification is not sufficient to operate in the DCV space. This is the current AMSA position of the proposed Coxswain 3 qualification.

- 2) Vessels that can meet the environmental and operational requirements of use.

Any vessel operating in the DCV fleet must meet minimum safety requirements, which are accessed as part of the periodic survey regime.

It is these two controls that have in large been used to manage safety in Tasmania. The relatively good safety performance of the Tasmanian Class 3 fleet is testament to this being an effective management approach.

TSIC is unsure of what is meant by the terminology 'less risky segments of the DCV fleet'.

TSIC assumes that it refers to smaller vessels, as AMSA have historically aligned smaller vessels as having 'lower levels of complexity' and hence 'less risk'. This was reflected in previous cost recovery models, where smaller vessels had lower cost recovery compared to larger vessels.

In Tasmania, small vessels can be operating in some of the harshest environments in Australia.

A basic risk assessment shows that fatalities in the Tasmania seafood industry do not occur often, but when they do, they are just as likely in a small <7 m vessel as compared to a larger vessel.

Since 2001 (fishing only):

- 12 fatalities
- 11 in remote areas
- 80% less than 2nM from shore
- Just over 50% were in small vessels (dinghies)

TSIC believes that any erosion of training and vessel survey safety controls will bring with it an erosion of safety outcomes.

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.

TSIC support this observation.

TSIC notes that the seaworthiness of a vessel and competent and trained crew provides significant safety control for those working on the vessel - i.e. if the vessel is capable of working in the conditions, and the skipper is trained to operate the vessel in those conditions, then the vessel and crew are less likely to get into trouble

TSIC supports the ongoing need for a Certificate of Survey, and for this to be based on a survey schedule and / or a periodic audit to ensure the vessel complies with survey requirements.

TSIC does not see the ongoing need for a Certificate of Operation. Instead, this information could be included within a Certificate of Survey and potentially connected to the Certificate of Competency requirements of the skipper.

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:

- 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.

TSIC agrees that the Law should reflect a risk-based regulatory model, however, it must be evidence based. It must also be noted that the DCV fleet is very diverse, even within the Class 3 (Fishing) category alone. A high-risk vessel size in one state or fishery may in fact be a low-risk vessel size in another state or fishery. Subsequently, it is vital that AMSA rely on evidence when interpreting a risk-based regulatory model rather than attempting to fit a 'one size fits all' approach across the entire Australian DCV fleet.

When considering a risk-based regulatory model, TSIC cannot understand how AMSA propose to introduce a Coxswain 3 Certificate of Competency, which would allow the holder of a State recreational fishing licence to be in control of a <12 m vessel within 2 nM of the shoreline. TSIC reminds the Inquiry that the 2008 Coronial findings of Mr S Carey found training deficiencies for holders of a coxswain limited certificate of competency. He found this omission unsatisfactory as it does not ensure that persons engaged in the commercial fishing industry have the best possible training as to matters of safety in their workplace.

The introduction of a coxswain 3 certificate greatly erodes training as a safety control.

Finding 3 & Recommendation 2: Describes a process to progressively withdraw existing grandfathering arrangements to the extent they impact on safety would substantially improve safety outcomes. There is explicit reference to minimum design and construction standards, and grandfathered crewing and crew competency arrangements. The recommendation includes the establishment and an Industry Assistance Package to support the transition.

TSIC supports the transition of grandfathered vessels to minimum safety standards. Minimum safety standard requirements should be supported by an evidence base, which shows that if implemented will provide appropriate improvements to safety outcomes. Any framework must acknowledge that different vessels and operations of vessels have different risks and potentially different minimum safety standards.

Key areas for consideration in transitional minimum safety standards are already defined as:

- Safety equipment standards
- Stability and buoyancy
- Electrical – i.e. RCDs
- Fire suppression systems

It is important to note that stability does not necessarily require the expense and complexity of a Stability Booklet, and TSIC strongly recommends that AMSA explore alternative stability requirements. Options could include ‘class approvals’ for vessels from the same design / mould / builder and / or acknowledgement that a vessel may have worked in a sector of the Class 3 fishing industry for extended periods (more than 50 years) without a stability issue.

TSIC would like to highlight the financial and mental cost associated with transitioning to a minimum safety standard. AMSA must acknowledge these costs and ensure a proactive and supportive approach to any removal of grandfathering to minimise the financial and mental angst to operators.

This would include an appropriately resourced Industry Assistance Package, which could include long term industry free loans.

TSIC is concerned by the interim report’s use of the term ‘minimum design and construction standards’. TSIC believes that if AMSA was to implement minimum design and construction standards, a significant proportion of the Tasmanian fishing fleet, let alone the national fleet, would not and could not meet minimum standards. TSIC questions the safety benefits

of forcing vessels to comply with minimum design and construction standards, especially if a vessel has been operating without incident for significant periods of time.

TSIC is concerned that the AMSA philosophy is that old boats are less safe than new boats. This is not necessarily true.

If any new implemented system results in vessels not being able to comply, or comply within realistic financial (and mental) constraints, then AMSA must implement systems to allow the vessel to continue to operate until such time it can comply. In some instances, a new vessel may be required to be purchased or built. In such circumstances, the Government should consider incentives to support the purchase of new vessels or for a new vessel to be built.

In summary, TSIC supports minimum safety requirements as a mechanism to transition away from grandfathering but has concerns that minimum design and construction standards for grandfathered vessels would create unnecessary change, with many existing vessels not being able to comply with the standards.

The process of transitioning from grandfathered arrangements must be carefully planned and delivered. AMSA must give consideration to case-by-case scenarios, and acknowledge that some individuals with grandfathered arrangements will not be in the industry for many more years. For example, an older fisher who has been operating for the last 40+ years and has a grandfathered crewing arrangement should have a grace period that allows their exit out of the industry.

It must be remembered that 'grandfathering' was the main selling point that AMSA and the Australian Government used to convince the States to transition to the National System. On a multitude of occasions, AMSA hierarchy clearly stated that 'as long as you don't change your operations or vessel, you can continue doing what you have been doing - for ever.

Removing grandfathering will be a risk to AMSA and the Australian Government, so must be managed and delivered properly. As part of this management, it must be remembered that the majority of the Class 3 fleet in Tasmania are owned and operated by small, sole trader family business structures. These business have struggled financially and mentally through COVID and market disruption amongst more challenges. Transitioning away from grandfathered arrangements will place further financial and mental stress on these operators.

In delivering the proposed change, AMSA must do things differently to how they have traditionally operated. They must:

- Provide clear, laymen speak guidance on what needs to be done and by when.
- Provide one on one support as required.
- Provide appropriate time frames around changes
- Provide significant financial support, through an Industry Assistance Package, to minimise the financial and mental strain on small family businesses

Finding 4, 5 & 6 and Recommendations 3, 4 & 5: Relate to the confusing relationship between maritime safety law and work health and safety (WHS) law; offences; and penalties and enforcement powers for breaches.

TSIC supports the improved clarity over who has responsibility for maritime safety.

TSIC also supports the standardisation of offenses and penalties between maritime safety law and WHS. As part of this review, it must be determined what the appropriate penalty for different offences is. TSIC also supports improved powers for infringements and courts.

Any agreed sharing of duties must be clearly communicated with industry.

Finding 7 and Recommendations 6, 7 & 8: Relate to maritime investigations being conducted by ATSB, or delegated from the ATSB to a state safety investigator, separating the investigation from the Maritime Regulator (AMSA). IT also recommends that safety incident should be reported to one commonwealth maritime safety authority only (AMSA or ATSB).

TSIC believes there is significant benefit separating the role of maritime investigations from the regulator to ensure a no-blame approach to investigations and recommendations. AMSA itself is conflicted by setting, interpreting and enforcing the regulations. ATSB does not have this conflict and can provide independent recommendations against investigations.

Separating the reporting of incidents away from the regulator may remove some barriers to reporting accidents or close calls.

Finding 8 and Recommendation 9: Recommend AMSA lead, develop and foster a safety culture within the maritime industry through the establishment of a safety engagement program.

This finding and recommendation shows that to date, ASMA has failed to lead and foster an improved safety culture within the maritime industry.

Instead, AMSA have implemented legalistic, complex regulation, that is difficult to navigate, and often does not improve safety outcomes.

The Tasmanian seafood industry has in large become disengaged and even disinterested in AMSA and the National System and have instead just 'got on with business'.

This will make it difficult for AMSA to lead, develop and foster a safety culture within the maritime industry.

Furthermore, changing the culture around safety within the aging seafood industry will have considerable barriers – after all, it is hard to teach an old dog new tricks. Culture is best changed with the next generation of seafood workers.

TSIC has for some time suggested that all entry level Certificate of Competency qualifications include core safety units, such as Safety Management Systems. This will help engrain a new safety culture, built around the SMS practice, into the next generation of seafood workers.

TSIC supports the establishment of a safety engagement program, but any program must be delivered at a state / regional scale and in partnership with key DCV organisation.

Finding 9 and Recommendation 10: propose reviewing the marine surveyor accreditation scheme to make it fit for purpose; with a specific reference to increasing approval powers of marine surveyors.

Risk is best managed at the point it is observed, not sitting in an office in Canberra. Accredited surveyors should have increased powers for approvals and issuing of certificates, independent of AMSA. AMSA's role is to then approve accredited surveyors and audit their performance and decisions, and not have to approve every survey or piece of paperwork that a survey submits to AMSA.

This would create a much more time and cost-efficient system, and would ensure that risk was observed and managed at the right scale.

Finding 10 and Recommendation 11: Relate to removing the requirement for changes to certain regulations needing to be unanimously agreed by the States and NT.

TSIC understands the barriers faced by AMSA when all states are required to unanimously agree to changes to certain regulations. However, the support if the States provides a very important check and balance to ensure that proposed changes are fit for purpose at a regional scale.

If this current requirement is removed, there needs to be a clearly defined consultation process with the states and potentially impacted vessels, to ensure there are no unintended consequences of any proposed changes. This will require AMSA to listen and understand issues and concerns from different sectors.

Finding 11 and Recommendation 12: describe the need for the establishment of a taskforce to consider how to future proof the national law framework.

It is important for the National Law Framework to be future proofed. However, it is more important to have a more simplistic, cost-effective framework for current operators.