



**The Hon. David Elliott MP**  
Minister for Transport  
Minister for Veterans  
Minister for Western Sydney

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Ref: BN22/00802

Secretariat – Domestic Commercial Vessel Safety Review  
Department of Infrastructure, Transport, Regional Development  
and Communications  
GPO Box 594  
CANERRA ACT 2601

Dear Review Panel

**NSW submission – Draft Interim Report on the Independent Review of Domestic Commercial Vessel Safety Legislation and Costs and Charging**

Thank you for the opportunity to comment on the Phase 1 Draft Interim Safety Report. Transport for NSW (TfNSW) welcomes the Panel's invitation to help shape the future of the national framework and better address safety concerns in the NSW marine environment and waterways.

TfNSW supports in principle most findings and recommendations, although some issues require clarification and further consideration, which will hopefully assist the Review Panel in preparing its final report. These responses are enclosed.

If you have any queries about this submission, please do not hesitate to contact Mr Peter Harvey, Director Maritime and Transport Safety Strategy and Policy TfNSW, through email at [peter.harvey@transport.nsw.gov.au](mailto:peter.harvey@transport.nsw.gov.au) or via mobile on 0491 210 527.

NSW looks forward to further engagement on this Review.

Yours sincerely

**The Hon. David Elliott MP**  
Minister for Transport  
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Encl. TfNSW Submission on the Draft Interim Safety Report

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TfNSW Submission on the Draft Interim Safety 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:**

- **retaining general safety duties on all parties that have a duty under the current law;**
- **removing the universal requirement for all Domestic Commercial Vessel (DCVs) 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 National Standard for Commercial Vessels (NSCV) 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.**

Supported in principle – suggested consideration

The move to simplify the National Law is generally supported.

However, any removal of the universal requirement for all DCVs to have Certificates of Survey and Operations presents risks. In the absence of any paperwork or reference material generally, reliance should not be placed on an expectation that vessel operators would know, understand and apply their safety obligations, operational limits or requirements. Equally, compliance officers and law enforcement generally will require a mechanism to determine exactly what a vessel can be used for, and if it is being used correctly. How best all operators and compliance officers can be fully aware of relevant obligations under a risk-based model is therefore key. TfNSW suggested in its previous feedback that these risks could be managed by Codes of Practice, education and training.

Clarification is required on how the option of a single Certificate (either Survey or Operations) would work in practice, and whether this presents any regulatory gaps. One option which the Review Panel may wish to consider is whether there are elements of the Certificates of Operations that could be moved to the Certificate of Survey. This would create space for the States to better regulate operations within their geographic jurisdictions.

Introducing a requirement to comply with the Navigation Act may confuse the industry further by introducing an additional layer of compliance. The Review Panel could consider approaching compliance with the Navigation Act by modifying the NSCV to incorporate some of the standards for a range of vessels that engage in high-risk operations.

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

- **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**

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- 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.

Supported in principle – suggested consideration

Winding back grandfathering is supported in principle, however further consultation across jurisdictions and with industry is requested to clearly understand all impacts and resulting risks, and thereby determining appropriate timeframes. For NSW, any agreed timeframes need to accommodate the impacts on State owned vessels as well as DCV operators who currently operate under grandfathered arrangements and hold service contracts with TfNSW, so as to not disrupt customer services.

The financial and operational costs imposed on affected owners/operators could be significant and operators' business models may not be able to continue. Removal grandfathering is expected to be strongly resisted by industry and a likely outcome is decommissioning of grandfathered vessels and these being abandoned or re-sold as recreational vessels. How this will be managed requires planning and assistance to prevent this outcome.

**Recommendation 3: AMSA should:**

- review its Memorandums of Understanding with State and Territory Work Health and Safety (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 Australian Maritime Safety Authority (AMSA) and WHS Authorities work practically to reduce any duplication of effort and regulatory burden, including reporting requirements.

Supported in principle

TfNSW supports in principle, however consistency will be needed between the National Law and the differing State based WHS regulations.

**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 in principle – suggested consideration

Currently, general safety duties apply to a vessel's Master, crew and any person on board that may through their actions endanger the safety of a person or the vessel or the environment. For officers and crew onboard, duties can be prescribed in the vessel's Safety Management System (SMS). It is not clear whether this recommendation is therefore to make the officers' responsible for the fulfillment of the owner's safety duties, and if so, to what purpose. Further clarification on this point is requested.

The recommendation for scaled infringement notice penalties is supported.

The recommendation for negligent navigation is not supported at this stage. The National Law (at s6) explicitly provides that it does not apply to a law of a State or Territory so far as:

- *(viii) speed limits, navigation aids, traffic management plans, rules for prevention of collisions, no wash zones, the management of events on waterways, wrecks, salvage, passing dredges, towing objects, bar crossings and local knowledge requirements;*

Further consideration is requested as to how the gap identified for negligent navigation can be rectified, taking into account elements of offences which State regulators would consider essential to keep within State jurisdiction.

For reasons of scale, efficiency and immediacy, TfNSW considers a better position would be to allow States to manage 'on the spot' compliance, whereby enforcement and prosecution capacity by the NSW Police Force and State regulators can manage individual driver conduct.

**Recommendation 6: The Australian Transport Safety Bureau (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 in principle – suggested consideration

Please refer to response at Recommendation 7.

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

Supported in principle – suggested consideration

In NSW, the division of responsibility for investigations between the Office of Transport Safety Investigations (OTSI) and TfNSW is described by both legislation and a Memorandum of Understanding (MoU). OTSI is empowered to investigate systemic issues and TfNSW has responsibility for individual incidents which may result in prosecutions (and broader investigations designed to produce recommendations to prevent a recurrence of an accident see Part 8 Division 3 *Marine Safety Act 1998*). The MoU ensures that the two agencies do not impede each other.

Most DCV related incidents in NSW are a result of the manner with which an individual has operated a vessel, not as a result of a systemic failing. This means that if the ATSB were to engage OTSI to undertake its functions in NSW, there is the potential to create a conflict between a criminal investigation and the no-blame investigation.

In such cases, TfNSW will require primary responsibility for coordinating on-site investigatory activity, unless the site is under the control of the NSW Police. There is a need to coordinate activity at the site to ensure that evidence is not destroyed or contaminated. There is an expectation that if a person commits an offence, they will be prosecuted, and the no-blame investigation conducted by ATSB should not impede or preclude this.

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In summary, any expansion of the ATSB's role and the involvement of OTSI should be subject to:

- Further analysis being undertaken to identify the legislative, resourcing and budgetary implications of the proposal (noting that the resourcing implications are to be considered in Phase 2)
- Particular attention being given to the possible role of OTSI (as agent for the ATSB) in undertaking DCV investigations, noting OTSI's role is currently generally limited to investigating ferry incidents under the *Passenger Transport Acts 1990 and 2014*
- Ensuring OTSI is adequately resourced to undertake this expanded role so as not to jeopardise the exercise of its primary statutory duties and functions under the *Passenger Transport Acts 1990 and 2014*
- Consideration given to identifying whether any amendments would be required to NSW transport and/or passenger transport laws to enable/facilitate OTSI undertaking this expanded role, or whether this would be done solely under the terms of a collaboration agreement between OTSI and ATSB in similar terms to the existing collaboration agreement covering rail safety investigations
- Consideration of the NSW safety regulator's jurisdiction (SafeWork NSW).

It would also be helpful if the result of any expansion of the ATSB powers included the creation of a common platform which included States, Territories and Federal data – for the collection of safety related issues which could be accessible by the public.

**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 in principle – suggested consideration

Please refer to response at Recommendation 7.

**Recommendation 9: 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 'white card' scheme; and
- develop simple and accessible guidelines for ease of compliance.

Supported

Overall, there is an opportunity to improve the information flows between the Australian and State governments which can also lead to reduced regulatory burden on stakeholders. The most obvious example of this (as highlighted in the NSW submission on the Consultation Aid) is the opportunity to streamline the reporting process so that, in the event of an incident, separate reports do not need to be made to both AMSA and the relevant state authorities.

Also please refer to the response on Recommendation 7 above regarding a publicly accessible safety issue information platform – a safety engagement program could be designed to target different commercial operators (for example, hire and drive, fishers, etc.) and be supported by further education for AMSA's own customer facing staff to provide consistent information to the public.

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**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):**

- 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.

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

Supported

TfNSW strongly supports this recommendation. The Accreditation Scheme should also take into consideration experience of a surveyor for assigning relevant accreditation.

Continued education and further guidance for surveyors is required, and also greater transparency of exemptions issued and information provided to a surveyor. Similar to the response to Recommendation 1, compliance staff and law enforcement will need to know how they can determine exactly what a vessel can be used for and if it is being used correctly.

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

Supported in principle – suggested consideration

TfNSW considers there is some merit with this recommendation, however more detail is requested on which matters would be captured by this recommendation.

The recommendation could be clearer to better reflect why the removal of unanimous agreement by States and Territories is being proposed, and that reference to 'administrative arrangements' also be explained in more detail.

The Draft Interim Report notes that to accommodate innovative vessels that do not meet the definition of a DCV, AMSA uses its exemption framework, rather than seeking agreement from State and Territory Ministers to amend the definition. However, the current definition of a DCV and the existing regulatory framework may be a bigger barrier to innovation than the requirement for Ministers to agree amendments to definition of a DCV.

It is also noted that the explanation provided for Finding 10 centres on enabling greater flexibility in ensuring that new and emerging technologies are appropriately regulated under the National Law. It is expected that changes to the Regulations will be to include vessels within the definition of DCV rather than exclude them. The background being States and the Northern Territory were initially responsible for service delivery of the National System as delegates of AMSA, and that unanimous agreement for changes to scope, operational and technical matters in regulations is not necessary since the Intergovernmental Agreement terminating.

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Overall, more detail is requested on which matters would be captured by this recommendation, so that State and Territory Ministers have an appropriate level of oversight of the regulatory framework given not all State and Territories are equally affected by changes to the law and regulation.

**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.**

- **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.**

Supported

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**Additional matters**

Further to comments on Recommendation 11, the Review should also consider the role of State and Territory Ministers more broadly – that is, their role in overseeing the performance of the law, regulatory framework and AMSA, particularly if it transitions to a more risk-based regulatory model.

Although State and Territories do not have explicit responsibility for DCVs under the National system, they still have responsibility for other related areas of maritime safety. The implications of regulatory changes may also not be equally felt across States and Territories, as the size of their respective DCV fleets varies significantly. As a result, State and Territories still have an interest in the overall performance of the National system, which could become more pertinent with new and emerging technologies.

As noted in the previous NSW Submission (on the Consultation Aid), there is a need to consider amendments to the Law to ensure that State and Territory Ministers have an appropriate level of oversight of the performance of the National System – including policy decisions, legislative instruments and AMSA’s performance.

The level of oversight that these Ministers have over the National system should be commensurate to other comparable national transport regulatory frameworks (such as rail and heavy vehicles) and the regulatory framework being developed for automated vehicles which will also be established under a Commonwealth complementary law approach.