

**WA Department of Transport Maritime**  
**Response to Phase 1 Draft Interim Safety Report**  
**Domestic Commercial Vessel Safety Legislation Review**

Dear Mr Walsh and Mr Harrison,

Thank you for the opportunity to comment on the Independent Review of Australia's Domestic Commercial Vessel Safety Legislation - Phase 1 Draft Interim Safety Report.

As the National Law has never been fully applied in WA, there are currently some unique challenges with commercial vessels peculiar to WA. However, WA's Department of Transport Maritime (DoTWA) is currently finalising drafting its application law and it's hoped the Bill will be introduced to State Parliament in early 2023.

DoTWA provides the following comments in relation to the Report's recommendations:

**Recommendation 1**

Assuming all DCV will continue to be required to have Unique Identifiers, we are not averse to moving to a more risk-based approach to which vessels require Certificates of Survey and Operation. However, DOTWA suggests developing a mechanism to allow all states and the NT to be involved in determining what constitutes 'higher risk'. The Productivity Commission's consultation with jurisdictions ('Strawman paper') is ongoing, as far as we know. One option presented was to define risk on a characteristic-based test. DoTWA are keen to continue discussions about the Strawman options.

DOTWA has consistently supported a single, national framework for commercial vessels. Having a single system is preferable to having disparate regulatory schemes around the states, a situation DoTWA would not like to return to. A single regulatory approach also avoids blurring accountability by having different laws, rules and regulators for certain classes.

**Recommendation 2**

DoTWA unreservedly supports this recommendation. Application of grandfathering clauses continues to be of significant concern as it perpetuates inconsistencies between state regimes, complicates compliance activities and discourages investment in new vessels and equipment.

Vessels taking advantage of grandfathering provisions are likely to be the oldest vessels and at highest risk. The National Law's distinction between recurrent survey requirements for new vessels versus grandfathered vessels is counterintuitive, as new vessels are more likely to achieve compliance with construction safety standards. The lack of sunset provisions for grandfathering clauses de-incentivises owners of older vessels from transitioning to modern safety standards.

Perhaps unsurprisingly, grandfathered vessels have been linked to numerous incidents and fatalities in WA and other jurisdictions. As the Draft Report notes, WA's State Coroner investigating deaths from the *Returner* incident noted the effect of grandfathering clauses on the vessel's safety.<sup>1</sup>

---

<sup>1</sup> Inquest into the deaths of Murray Turner, Mason Carter and Alan Fairley (WA State Coroner, 28/17)

### **Recommendations 3 and 4**

It is outside the scope of DoTWA's responsibility to comment on matters relating to workplace health and safety. These matters would be more appropriately addressed by the work health and safety regulator WorkSafe.

### **Recommendation 5**

With regards to the points in this recommendation, DoTWA has no comment on due diligence re safety duties, scaling of infringement penalties, or aligning prosecution limits with WHS law. We support the introduction of a power for courts to suspend or revoke certificates as this power is outside our jurisdiction.

However, we do not support an explicit, specific mention of negligent navigation in the National Law, as this is currently the states' responsibility. It will increase confusion about who is responsible for compliance and enforcement for breaches of good order and prevention of collisions provisions and create a confusing overlap between the two regimes.

### **Recommendations 6 and 7**

DoTWA agrees with these recommendations and thinks these are reasonable approaches. A Ministerial statement would provide clarity to industry.

### **Recommendation 8**

DoTWA does not agree with this recommendation and thinks that reporting to just one agency is unrealistic. AMSA may wrongly assume an incident has been reported to ATSB and vice versa. Instead, there needs to be an improvement in how ATSB and AMSA share reports and agree on who investigates which incidents.

Currently, if incidents involving DCV are reported to DoTWA, we advise the owner or master they also need to report it to AMSA, and we share reported information with AMSA.

### **Recommendation 9**

DoTWA does not agree with this recommendation and does not think that Australian taxpayers should fund long-term safety engagement for DCV. Instead, under the user pays principle, the National Regulator should cost recover from the industry, using funding from fees and charges to cover education and compliance costs.

### **Recommendation 10**

DoTWA has no comment on this recommendation.

### **Recommendation 11**

DoTWA strongly disagrees with this recommendation for the following reasons:

- We do not think that getting agreement from state Transport Ministers is a true impediment to flexibility or to amendment of National Law regulations, and therefore is not a valid argument for removing the requirement for unanimous agreement.
- An example of the challenges removing this requirement could create is that currently Transport Ministers from all jurisdictions need to agree what is and what is not a vessel. Any unilateral changes to this definition would be very problematic and have significant

impacts on some, if not all, jurisdictions. Therefore, it's imperative there is agreement by all states prior to any changes being made.

- Even if unilateral decisions did save the National Regulator time, the craft 'displaced' from the National Law will be forced into a legislative 'gap' and be unregulated until the relevant State authority scrambles to amend, or introduce, legislation to cover them. This would likely have a negative impact on safety outcomes.
- Despite the time spent building a national consensus about which craft the law would regulate and which would be left to the states, there have been increasing moves to push some craft/ classes back to the states, leaving the scope of the National Law in an apparent state of flux.
- Agreement on some issues but not others would create confusion and inconsistency. It would defeat the purpose of having a single national system, which was cited in the Report as a reason for removing the requirement for unanimous agreement.

### **Recommendation 12**

DoTWA supports this recommendation. We are leading an Australian Recreational Boating Safety Committee (ARBSC) Work Program project into management of novel/ emergent recreational craft which seeks to:

- understand how jurisdictions are currently managing novel craft and the issues involved;
- develop guidelines for classifying and managing novel craft; and
- facilitate ongoing discussions on new types of craft emerging around Australia.

The proposed taskforce should consider consulting the ARBSC with regards to this project.

In addition, DoTWA thinks that low risk non-survey DCV could be required by the National Law to have an Australian Builders Plate (ABP). If this was the case, the ABP Standard should be reviewed to ensure it is fit for purpose.

Thank you again for the opportunity to give feedback.