

Deputy Premier
Treasurer
Minister for Infrastructure and Transport
Minister for Planning

Level 10, Executive Building, 15 Murray Street, Hobart
Public Buildings, 53 St John Street, Launceston
GPO Box 123, Hobart TAS 7001
Phone: (03) 61 65 7701; Email: Michael.Ferguson@dpac.tas.gov.au



31 OCT 2022

Ms Carolyn Walsh & Mr John Harrison
Review of Domestic Commercial Vessel Safety Legislation
By email: dcvsafetyreview@infrastructure.gov.au

Dear Ms Walsh and Mr Harrison

TASMANIAN GOVERNMENT SUBMISSION TO THE INDEPENDENT REVIEW OF DOMESTIC COMMERCIAL VESSEL SAFETY LEGISLATION (PHASE 1 INTERIM REPORT)

Thank you for the opportunity to comment on the Independent Review of Domestic Commercial Vessel (DCV) Safety Legislation (the Review). The Tasmanian government is pleased to provide this submission which addresses the findings and recommendations made by the review panel in the interim report for phase 1 of the review.

Recommendation 1

As outlined in Recommendation 1, amending the law to adopt a risk-based regulatory model that is flexible and able to adapt to innovation and emerging technologies is a logical approach. However, it is not possible to provide considered feedback on this proposal without greater clarity regarding which types of vessels would fall into the relevant risk categories.

The recommendation suggests that vessels undertaking higher risk operations are to comply with the *Navigation Act 2012*. In principle, this makes sense. An example would be vessels operating in sheltered waters compared to open waters, and the types of cargo carried (particularly if dangerous goods are involved).

Marine and Safety Tasmania's (MAST) experience is that the vessels AMSA considers low-risk often have a poor compliance record and can be overly represented in coronial inquests. It would not be appropriate, as the recommendation suggests, that these low-risk vessels operate solely under workplace health and safety obligations and penalties, which are managed by states and territories. This comment is also relevant to Recommendation 4.

This raises questions in relation to the general use and safety of these low-risk vessels:

- Would crewing requirements be equal or potentially less than that currently required on recreational vessels operating under state legislation?
- Would the standards applied to these vessels relating to buoyancy, load capacity, propulsion power etc., be less than is currently required for recreational vessel registration through application of an Australian Builders Plate?

Finally, the Interim Report implies that the majority of compliance and enforcement activities for low-risk vessels should be undertaken by state and territory governments, while AMSA allocates its finite resources to managing higher risk vessels. This appears to align with AMSA's submission suggesting that all vessels less than 7.5 metres that are low-risk should be excluded from the National Law and therefore managed solely through state and territory legislation. The issues associated with such arrangements are covered in more detail in relation to recommendation 11, noting that it is the Tasmanian government's preference to have input into changes that may impact the state's responsibilities.

Recommendation 2

The management of grandfathering arrangements are complex. Design and construction standards for commercial vessels evolve over time and any policy around grandfathering arrangements must consider the transitional arrangements that apply to all vessels each time a new standard is approved. This may be reasonably simple for operational requirements or equipment upgrades (which do not require any material structural changes to the vessel) but is far more complex when changes relate to design and construction provisions, which may not be able to be retrospectively complied with.

Therefore, any significant changes to the current grandfathering arrangements may result in a large number of DCVs needing to be retired from service. The draft report recommends that the Australian government establish and fund an industry assistance package with a suite of incentives to assist in attaining transitional standards. The Tasmanian government supports this recommendation, noting it is critical that assistance is provided to impacted industries. It is also important that any government funding considers the management and costs associated with proper end-of-life vessel disposal to ensure a large number of old DCVs do not become sunken or derelict vessels, causing significant environmental damage to state waterways and requiring costly intervention by state and territory governments for removal.

Recommendation 3

It is noted that AMSA acts as the occupational health and safety inspectorate for prescribed ships (Navigation Act vessels etc.) in accordance with the *Occupational Health and Safety (Maritime Industries) Act 1993*. This eliminates the duplication between regulatory safety functions and workplace health and safety functions on these vessels as both are administered by AMSA.

Recommendation 5

One point in Recommendation 5 identifies the need for the National Law to be expanded to include a penalty for negligent navigation. This represents the complex relationship in the division between state and Commonwealth responsibilities. It would seem inconsistent to have penalty requirements that apply to noncompliance with the Collision Regulations administered under state legislation and penalties relating to negligent navigation in the same waters also applicable under Commonwealth legislation. This is further complicated by the assumption identified in Recommendation 1 relating to compliance and enforcement for low-risk vessels being undertaken by state-based officers.

Recommendation 7

Tasmania does not currently have a safety investigator that is independent from the marine safety regulator, which undertakes investigations into marine incidents on a no blame basis.

Recommendation 8

There is logic in the consolidation of incident reports being provided to one single government entity and distributed to other relevant parties once received. However, this is not solely a matter relating to

AMSA and the ATSB. Many incident reports relate to matters that are relevant to waterways management issues and compliance, which remain the matter of state maritime agencies.

Recommendation 10

A review of the marine surveyor accreditation scheme is supported, noting that a review should consider industry concerns consistency of AMSA and surveyor recommendations.

Recommendation 11

If a decision is made to amend the regulatory scope of the National Law, then the effect of either including or excluding a specific type of vessel will result in a change in regulatory responsibility for both the Commonwealth and states/territories.

The draft report identifies that *'it is expected that changes to the Regulations will be to include vessels within the definition of DCV rather than exclude.'* However, the submission made by AMSA in relation to the review suggested aligning the National Law Act with risk by amending the National Law Act to exclude the following from the scope:

- I. vessels under 7.5 metres in length that are low risk
- II. human powered vessels
- III. government vessels not used for a commercial purpose, research vessels and volunteer marine rescue vessels
- IV. domestic commercial vessels used for higher-risk operations.

It is estimated that that such an exclusion may involve up to 50 per cent of the vessels currently classed as a DCVs operating in Tasmanian waters.

The definition of a DCV, both in terms of what constitutes a vessel and the nature of its activity, was discussed in detail during the drafting of the National Law.

It is Tasmania's view that any legislative changes that can materially affect the scope of the National Law must involve a collegial arrangement between Commonwealth, state and territory governments.

Recommendation 12

This recommendation relates specifically to AMSA giving consideration to the National Law framework; however, this cannot be considered in isolation from the comments provided in relation to Recommendation 11 and the need for any changes to the scope of the National Law to continue to involve consent from Commonwealth, state and territory governments.

Once again, thank you for the opportunity to respond to the Interim Report. The Tasmanian government looks forward to further engagement on this review.

Yours sincerely



Michael Ferguson MP

Deputy Premier

Minister for Infrastructure and Transport