



**MARITIME  
INDUSTRY  
AUSTRALIA**  
L I M I T E D

**Independent Review of Domestic  
Commercial Vessel Safety Legislation  
and Costs and Charging Arrangements**

**29 November 2022**

**Feedback on**

**Phase 1 – The National Law Framework**

**Draft Report and recommendations**

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# Contents

<b>About MIAL</b> .....	2
<b>Executive Summary</b> .....	3
<b>Draft recommendations</b> .....	4
<b>Recommendation 1:</b> .....	4
<b>Recommendation 2:</b> .....	6
<b>Recommendation 3:</b> .....	7
<b>Recommendation 4:</b> .....	8
<b>Recommendation 5:</b> .....	8
<b>Recommendation 6:</b> .....	9
<b>Recommendation 7:</b> .....	9
<b>Recommendation 8:</b> .....	9
<b>Recommendation 9:</b> .....	10
<b>Recommendation 10:</b> .....	11
<b>Recommendation 11:</b> .....	12
<b>Recommendation 12:</b> .....	12

# About MIAL

Maritime Industry Australia Ltd (MIAL) is the voice and advocate for the Australian maritime industry. MIAL is at the centre of industry transformation, coordinating and unifying the industry and providing a cohesive voice for change.

MIAL represents Australian companies which own or operate a diverse range of maritime assets from international and domestic trading ships; floating production storage and offloading units; cruise ships; offshore oil and gas support vessels; domestic towage and salvage tugs; scientific research vessels; dredges; workboats; construction and utility vessels and ferries. MIAL also represents the industries that support these maritime operators – finance, training, equipment, services, insurance and more. MIAL provides a full suite of maritime knowledge and expertise from local settings to global frameworks. This gives us a unique perspective.

We work with all levels of government, local and international stakeholders ensuring that the Australian maritime industry is heard. We provide leadership, advice and assistance to our members spanning topics that include workforce, environment, safety, operations, fiscal and industry structural policy.

MIAL's vision is for a prosperous Australia with strong sovereign maritime capability.

MIAL's overarching position concerning maritime policy in Australia is that we ought to have a sustainable, viable maritime industry. This activity can occur anywhere – coastal, offshore, and international. This maritime activity should encompass anything – freight, tourism, passenger movement, port and harbour services, offshore oil and gas, construction, scientific/research, essential services, and government services.

MIAL is an advocate for a fiscal and regulatory regime that makes it attractive for shipping and maritime businesses to exist in Australia and affords those Australian businesses every opportunity to compete for work and participate in maritime activity worldwide.

# Executive Summary

Maritime Industry Australia Ltd (MIAL) welcomes the opportunity to provide feedback on the draft report and recommendations produced by the independent review panel as part of the Independent Review of Domestic Commercial Vessel Safety Legislation and Costs and Charging Arrangements (Report).

MIAL was afforded the opportunity to meet with the panel both prior to and after the provision of the report and the following submission aims to supplement the information provided directly to the Panel. Some of the concerns articulated by MIAL during those discussions have been set out below.

- The unknown basis for the classification of a vessel as high risk.
- Capacity of Operators to access appropriately trained crew.
- Mitigation of risks would have different requirements and outcomes if a vessel was required to comply with the Navigation Act as opposed to the National Law.
- Lack of clarity around the extra powers that inspectors would have.
- Passing on of costs in utilising the ATSB as the body to conduct investigations into Marine Incidents

Following the release of the Governments Independent Review Panels release of the Phase 1 draft report, there has been much trepidation from the Domestic Maritime Industry around the language used in the reports recommendation, and an apparent lack of details in the report in how the recommendations could be achieved – IE, what are the measurable Outcomes.

We cannot highly stress our view enough, and our members view, that any requirement for a Domestic Vessel Operator, to be required to move from the Domestic National Law to the Navigation Act, would have a large impact on the operations. In some cases, this maybe operators that were told by the regulator that they were required to operate as a DCV not a Regulated Australian Vessel. Their entire business model has been based around this direction.

# Draft recommendations

## 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.

*This recommendation aligns with findings 1 & 2:*

- **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.
- **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

### **Summary of panel finding/ recommendation:**

The findings of the Report largely reflect industries lived experience in so far as the relate to the complexity of the framework making it challenging for operators to understand and comply with. The conceptual finding that the inclusion of general safety duties, the requirements of which are assessed and met by operators with the assistance of the regulator, would reduce regulatory burden is largely supported. Additionally the assessment that some DCVs (given the breadth of the cohort) would benefit from having some unnecessarily regulatory requirements removed has merit in MIAL's view.

The Report uses terminology such as risky and less risky but with no real explanation as to what characterises a "risk" or "less risky" operation. Is risk determined by inherent risks in operation regardless of mitigations, potential casualties in the event of catastrophic failure or historical safety performance of vessels, types of vessels or operator. Absent this clarity it is hard to determine if the measures proposed are appropriate.

The draft report proposes a significantly altered regulatory framework which would see the designation of a currently undefined group of vessels classed as "high risk" which would see such vessels extracted from the domestic commercial vessel framework and have them included under the *Navigation Act 2012* (Nav Act). The Nav Act is the principal piece of maritime legislation implementing Australia's obligations under international conventions as

they apply to vessels involved in transport and trade internationally. Domestic commercial vessels are by their nature intended to operate in different, specific operating environments.

***MIAL response to recommendation:***

The “General Safety Duties” currently contained in the National Law were put in place as an aid to set a minimum standard to allow staff to move from vessel to vessel and still have a very broad understanding of their requirements under the National Law / Marine Orders. This approach to a minimum standard for a duty of care / responsibilities to allow individual operates to assess their operation risks having regard to their intimate understanding of their own operations works well for industry.

The requirement for all vessels to have both certificates of Operation and Survey, as we understand it may have had the consequential effect of assisting AMSA as the new National Regulator (in 2013) in ascertaining the number of vessels that would because of the law changes now fall under their regulatory jurisdiction.

MIAL does not support the recommendation from the panel that some domestical commercial vessels need not hold any certification (notwithstanding that a small number of vessel types are not required to hold certification currently). It may be that the current requirements are unnecessary (as the report notes) however some document against which minimum construction and design standards may be assessed, should be required. It may now be worthwhile to have all DCV’s move to only Certificate of Survey (howsoever described), with a simpler baseline requirement generated for those not currently required to hold any safety documentation. This may be labelled a “Certificate of Inspection” whereby a vessel that has been identified as having multiple defects or deficiencies, it may be a requirement that they are inspected more often (in line with the survey schedules noted in table 1 – Periodic Survey Schedule Marine Order 503, Pg 22) and vessels that are noted to be in better condition have less frequent inspections.

The requirement for “High Risk Vessels” to be classified as such and come under the auspices of the Navigation Act is not supported. There is no detail in the draft report on who declares or how a vessel is to be declared “high risk”. It is also unclear about how applying the Navigation Act to a domestic commercial vessel, results in a better safety outcome. Additionally, the use of the term high risk is used in other parts of the industry but for other purposes.

Furthermore, the moving of a current DCV from DCV status to what would effectively be deemed to be a Registered Australian Vessel (RAV) would lead to a lot of operators not being able to continue to operate. (An example, from the MUA submission – Stopping the Race to the Bottom – May 2021 Pg 7 – a vessel over 24m carrying more than 50 passengers, which would cover quite a lot of private charter vessels and passenger ferries, all operating in sheltered or partially smooth waters) as the regulatory requirements would be too burdensome for a small operator.

It also appears to us that this proposal would have the effect of being operated by crew with certification that cannot be obtained through experience (known in the industry as sea time or sea service) on that vessel. This is because sea service requirements on vessels under the Navigation Act are generally akin to those who work on internationally operating vessels,

governed by an international convention known as the Standards of Training Certification for Watchkeepers (STCW), which contain specific requirements around voyage length and vessel size and power in order for the service to “qualify” for the certification.

Risk is required to be managed by the Domestic Commercial Vessel operator under Marine Order 504. This regulatory regime has been generated with the domestic commercial vessel industry in mind, whereas the Nav Act is a regime that applies to ships that are or can trade internationally, and it is the mechanism by which many of the requirements of international conventions are implemented into domestic law. To determine a particular vessel is high risk (and there is no detail as to whether it is proposed that this be determined by size, operation type or the geographical breadth of the vessel's operation) without giving any explanation as to how the safety outcome is improved through adopting a regulatory regime which is designed to apply to ships that travel internationally without restriction is unreasonable., given that the nature of risk management is subjective, there should be no reference to high risk in the National Law (There are currently no references to “High Risk” in the National Law). This would mean that the top tier of the pyramid (PG 28 of the draft report) would not be required to be in the model, as the National Law and Marine Orders are able to cover off the requirements of the Navigation Act.

Having had the opportunity to speak with the Review Panel after its provision of the draft report, we understand that further consideration is being given to how this recommendation is to be articulated.

## 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
  - 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.

*This recommendation aligns with finding 3:*

- **Finding 3:** Progressively withdrawing existing grandfathering arrangements to the extent they impact on safety would substantially improve safety outcomes.

***Summary of panel finding/ recommendation:***

MIAL's view is and remains that a grandfathered vessel is not necessarily an unsafe vessel. An assessment of the continued appropriateness of grandfathered arrangements subject to assessments of risk is generally supported. Arbitrary determinations around size, type and time should be avoided with greater emphasis placed on the operators' efforts to ensure the vessel is adequately maintained and is able to continue to operate safely.

***MIAL response to recommendation:***

There is a concern in industry that grandfathered vessels would be labelled as "high risk". Notwithstanding MIAL does not support a separate designation of high risk as the review panel has not explained how to do so, and the proposed consequences of such a designation would improve safety, this should be clear in the final report. To avoid any doubt, MIAL does not see grandfather vessels, by virtue of them being grandfathered, as being of a different risk profile, subject to the steps taken by an operator to assess and manage risk in line with their regulatory and WHS obligations.

MIAL support's transitional arrangements based on operators' risk and risk control/mitigation strategies. There needs to be baseline standard that all vessels need to meet that would preclude needing to replace vessels just because they are old. Given the variation in standards, a risk-based approach is required to achieve broad improvement and the desired safety outcomes. Grandfathering should be linked to risk assessment and controls. Marine Order 504 is the appropriate mechanism to do this.

### Recommendation 3:

AMSA should:

- 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.

*This recommendation aligns with finding 4:*

- **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.

***Summary of panel finding/ recommendation:***

Strengthened MOU with communications will result in similar arrangements to the status quo remaining in place with requirement to comply with and understand both WHS and Maritime regulation and incident, investigation processes.

***MIAL response to recommendation:***

MIAL supports AMSA taking the lead regulatory authority role where incidents related to safety, whether they be operational or work and safety in nature, occur on board vessels. MIAL considers a clear delineation will incidents that happen from the shoreline remove any duplication or confusion.



MIAL recognises that such clarity may require legislative intervention in state WHS jurisdictions and so may beyond the power of the National Law Review Panel recommend. However, presumably a recommendation that regulatory action on board ships be undertaken by an experienced and competent regulator is well within the purview of the panel.

## Recommendation 4:

The offences and penalties in the National Law should be aligned to those in the WHS law to the extent practicable.

*This recommendation aligns with finding 5:*

- **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:
  - the low levels of penalties that can be imposed by the courts limits their deterrence effect; and
  - undermines the effectiveness of AMSA as the safety regulator of DCVs.

### **Summary of panel finding/ recommendation:**

MIAL has no particular view in relation to this recommendation, subject to the brief comments below.

### **MIAL response to recommendation:**

The definition of owner is slightly different between the Nav Act and National Law Act. The Nav Act deals better with the charter vessels and may have greater importance if certificates of operation are discontinued. It is important to note that 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 difficulty will be presented across multiple jurisdiction which have differing penalties for offences. By having the National Regulator responsible for the enforcement of the WHS policy on a vessel, eliminates confusion and duplication of the requirements.

## 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.

*This recommendation aligns with finding 6:*

- **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.

***MIAL response to recommendation:***

These recommendations would see a raft of additional penalties potentially imposed for breaches of duties. While MIAL has no specific comments in relation to whether the regulator requires additional powers, from industries perspective there must be clarity in respect of:

1. Parties that are potentially liable – i.e. clearly define who is the owner, who is an officer, who is a duty holder.
2. Which regulatory agency has the power to investigate and/or prosecute.
3. Clear guidance to assist industry to ensure they avoid committing offences under the Act (guidance etc).

## 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.

## Recommendation 7:

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

## 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.

*These recommendations align with finding 7:*

- **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

***Summary of panel finding/ recommendation:***

ATSB government funding and state investigator partnerships to be looked at via an MOU, there would still be one authority to report incidents too.

***MIAL response to recommendation:***

MIAL in principle supports a no blame confidential investigation process conducted under the auspices of the ATSB with the intent being to extract safety learnings which can be passed onto industry with a view to enhancing safety outcomes. MIAL is however unsure about how this expanded remit would be paid for given the second part of this review is considering in more detail financial implications for the DCV sector. Any expansion of the ATSB remit will have consequential resourcing, skills and budgetary implications which need adequate consideration.

The suggestion of formal arrangement to utilise state regulators for the purposes of an ATSB investigation may be problematic given the powers of each are different, and the purposes of conducting an investigation (including any consequential regulatory action) are different. There

appears to be an inherent conflict between purposes and MIAL would want to understand how it is proposed this be accommodated.

Note that the ATSB and regulators investigate incidents for different reasons (no blame versus prosecution).

If the ATSB uses state-based safety investigators, then they should not be authority based as it would conflict with the no blame mandate of the ATSB.

Would this be AMSA who would pass on appropriate incident investigations to ATSB because of AMSA's prosecution function or would the ATSB complete its investigation and if a party is found to be responsible for an incident, the information be progressed through AMSA as a separate parallel process?

MIAL supports ATSB involvement but there is a need to ensure that their mandate is not the same and by delegating to a body that investigates with a view to prosecute. Further, MIAL would submit that there be single point reporting to ensure a streamlined process. The information should then be passed onto the investigating body as required and the operator or person making the report advised that this is occurring.

## 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.

*This recommendation aligns with finding 8:*

- **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.

### **Summary of panel finding/ recommendation:**

Finding and Recommendation are mostly enabling statements for AMSA.

### **MIAL response to recommendation:**

AMSA as the national safety regulator for maritime has a duty to positively influence and educate industry on matters of operational and workplace safety. As an industry association MIAL supports and welcomes engagement from the regulator to educate and support industry in these critical areas. Certainly, MIAL would be interested in understanding AMSA's perspective on its strategic goals as well as its capacity to undertake such initiatives.

The 'white card' scheme has been raised previously in industry and was not supported. The recent amendments to MO505 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 MO504.

The only thing a “White Card” would do is to show that a person has completed a basic level of training, similar to the white card in the construction industry.

## 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.

*This recommendation aligns with finding 9:*

- **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.

### ***Summary of panel finding/ recommendation***

The Panel considers that improved quality of services provided by marine surveyors might be achieved through having a tiered accreditation scheme for the purposes of surveys, flexibility in who may be appointed as a marine surveyor, clearer guidance to assist them to perform their functions effectively and a formal continuing professional development program.

### ***MIAL response to recommendation:***

MIAL requires more information on the details for the proposed ‘increased approval powers’ and ‘formal rulings program’ to form a considered view as to whether such recommendations are appropriate.

There are possible negative impacts from the transactional nature of the relationship between industry owners/operators and the accredited surveyor. MIAL considers that this could be minimized through increased AMSA auditing. While MIAL does not have a particular view about a mandated continuing professional development requirement, given the importance of the work being undertaken, ensuring that marine surveyors are undertaking contemporary educations in a proportionate way appears a reasonable recommendation.

MIAL supports the recommendation for 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, subject to our comments above.

## Recommendation 11:

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

*This recommendation aligns with finding 10:*

- **Finding 10:** The current requirement that changes to regulations made under the National Law be agreed by all States and the Northern Territory is a barrier to flexibility and responsiveness to innovation

### **Summary of panel finding/ recommendation:**

Removing state and territory unanimous agreement on certain regulatory changes.

### **MIAL response to recommendation:**

MIAL recognises that a significant amount of work went into achieving federal regulation of the domestic commercial vessel industry in Australia. Based on discussions with the panel after the issuing of this draft report, we understand the intent of this is that there no longer needs to be agreements from the states for regulations, which are commonwealth/federal regulations, to be approved by any states or territories (whether this is unanimous or not).

It has been 10 years since the national law was made and 9 since AMSA assumed regulatory responsibility for the sector. It is not unreasonable to give the commonwealth government the sole power to make and rescind regulations (subject to parliamentary oversight) from a purely mechanical perspective. MIAL would expect that in doing so close consultation with industry so that both industry and regulators may understand the impact and any potential consequences would continue.

## 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.

*This recommendation aligns with finding 11:*

- **Finding 11:** There is a need to further consider how the National Law framework can be future ready.

### **Summary:**

Task Force for new and emerging technology.

### **Submission Points:**

While MIAL recognises that this recommendation is an attempt to stay ahead of innovation, its MIAL's concern that the creation of such a body may unintendedly stifle innovation in the

industry. If a taskforce were considered to be desirable, its remit should be carefully considered to ensure this does not occur.

***The resourcing implications of the recommendations made in the Interim Safety Report - Phase 1 will be considered in Phase 2 of the Review.***

***Submission Points:***

It is difficult to speak to any recommendation without the full appraisal of how resourcing is going to affect the maritime industry in terms of cost. On this basis MIAL intends to revisit its responses to some of the recommendations once there is greater visibility of cost implications.