

# **National Approach to Maritime Safety Reform:**

## **Consultation Regulation Impact Statement**

**SEPTEMBER 2008**

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## **GLOSSARY**

AMSA – Australian Maritime Safety Authority

ATC – Australian Transport Council

ATSB – Australian Transport Safety Bureau

COAG – Council of Australian Governments

DOFD – Department of Finance and Deregulation

IGA – Intergovernmental Agreement

ILO – International Labour Organization

IMO – International Maritime Organization

MARPOL – International Convention for the Prevention of Pollution from Ships

NMSC – National Marine Safety Committee

NSAMS – National Standard for the Administration of Marine Safety

NSCV – National Standard for Commercial Vessels

OTSI – Office of Transport Safety Investigations

RIS – Regulation Impact Statement

RTO – Registered Training Organisation

SOLAS Convention – Convention for the Safety of Life At Sea

STCW – Standards of Training, Certification and Watchkeeping

USL Code – Uniform Shipping Laws Code

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## EXECUTIVE SUMMARY

### THE DIRECTION

On 25 July 2008, the Australian Transport Council (ATC) representing all federal, state and territory transport Ministers agreed to support a national approach to maritime safety regulation in relation to commercial vessels, subject to the outcome of a regulation impact assessment (the RIS process). For the purpose of this Consultation RIS, commercial vessels are defined as all non-recreational vessels.

The ATC stated that in achieving a national approach, they were inclined towards broadening the application of the Commonwealth *Navigation Act 1912* to apply to all commercial vessels. This reform is being considered as part of a broader suite of initiatives on national uniformity of transport regulation.

### THE RIS PROCESS

This document is a Consultation RIS. Its purpose is to inform stakeholders about perceived problems with the current framework, the objectives of reform, and the options for addressing the problems with the current regulatory arrangements. It is intended to generate feedback about the costs and benefits of the options which will be reported and assessed in the final RIS. The final RIS will incorporate this feedback in a detailed cost-benefit analysis, and recommend a preferred approach. Emphasis will be given to best-practice regulation as set out by the Office of Best Practice Regulation.

The Australian Government Department of Infrastructure, Transport, Regional Development and Local Government and the Australian Maritime Safety Authority (AMSA) and the relevant state and territory maritime agency will visit cities and regional centres during September and October 2008 to meet with stakeholders and discuss the proposed reforms. Following the period of consultations, a RIS will be prepared for consideration by the ATC.

### THE PROBLEM

There are currently eight different regulatory systems (the Australian Government, six states and the Northern Territory) governing the operation of commercial vessels in Australian waters. These jurisdictions are regulated by over 50 Acts of legislation and sub-ordinate instruments. It is not possible to build, register and crew a vessel in one state then operate in, or relocate to, any other state or the Northern Territory (NT) without being required to re-apply and comply with different regulatory and administrative requirements in relation to the same national safety standards.

There is no accurate count or profile of Australia's commercial fleet (no national database linking ownership with incidents or compliance) and sub-optimal policy and planning decisions are likely being made based on incorrect information; there are two crew qualification and training systems that are not concurrent, preventing a seamless career path for seafarers; and identical vessels face different design, construction, operating and survey requirements when operating in different states or the NT. The present arrangements result in reported confusion for businesses, contribute to higher compliance costs and create duplication in regulatory activity.

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While there have been past agreements between the jurisdictions to apply national maritime safety standards, their application has been inconsistent across the states and the Northern Territory because of differences in interpretation, application, enforcement, and the use of exemptions from compliance granted to individual vessels.

## THE OBJECTIVE

The objective of reforming maritime safety regulation is to achieve effective, consistent, efficient and uniform maritime safety regulation.

Reform will enable maritime safety legislation to reflect modern concepts of risk and safety management, to achieve better safety outcomes in the most efficient manner, and to ensure a more seamless consistency with international ship standards.

These reforms are aimed at:

- Promoting a maritime safety culture with less prescriptive regulation;
- Minimising the legal and administration costs of certification and compliance;
- Eliminating constraints on competition and trade; and
- Acknowledging differences in risks and costs of compliance and monitoring.

## THE OPTIONS

Three options are considered in this RIS. The options have common guiding principles and elements designed to achieve a national approach to maritime safety regulation.

It is intended that a national approach would specify the standards for:

- vessel design, construction and equipment;
- vessel operations, such as safety management systems; and
- the certification standards of crew competency and manning requirements.

A national approach would also contain provisions relating to:

- the administration of a national registration scheme to record commercial vessels and survey requirements;
- the issue of crew competency licences/certificates; and
- inspection, compliance monitoring, investigation of potential offences, auditing and other ancillary powers.

Two options allow for state and NT maritime safety agency involvement in delivering regulatory services.

Option 2 establishes a national system through an applied laws approach that relies on legislation being passed in one state and then being adopted without variation in other states. It also suggests the creation of a new national regulatory agency to administer the legislation.

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One of the options (Option 3) allows for private sector involvement in the delivery of services such as survey, operational safety assessment and crew training and certification. Private sector involvement is also a characteristic of Option 1 (Status Quo), but to a much lesser extent across the states and the NT.

Option 3 describes a single national system administered by the Australian Maritime Safety Authority (AMSA) through a broadening of the application of the Commonwealth *Navigation Act 1912*. The broadened Act would allow AMSA to take on the role of national regulator including developing, applying and enforcing standards for commercial vessels.

This option is designed to ensure that technical standards, certification requirements and administrative procedures are determined and applied on a national basis, not dependent on states to individually introduce legislation. It would also establish uniformity in broader aspects of maritime regulation, such as compliance monitoring. This is the ATC's preferred option.

All options will be subject to cost/benefit analysis in the next part of the RIS process.

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## 1. INTRODUCTION

In May 2008, Australia's transport ministers endorsed a new policy framework for the transport sector entitled, '*A New Beginning for Transport*', identifying a number of key national reforms designed to cut down red tape in the transport and logistics sector and deliver more consistency in the way transport is regulated across Australia.

They noted their vision for Australia's transport future as a safe, secure, efficient, reliable and integrated national transport system that supports and enhances the nation's economic development and social and environmental well-being. They noted that calls for a seamless national transport system had come from both industry and the community, and were reflected in discussions at the 2020 Summit in early 2008.

The principles underpinning this transport policy framework are:

<i>National Regulation</i>	A national perspective should be adopted where regulation is required.
<i>National Markets</i>	Encourage national markets where possible.
<i>Infrastructure pricing</i>	Sending the appropriate signals to influence supply and demand for infrastructure.
<i>Competitive Markets</i>	Establishing competitive markets wherever possible to minimise the need for regulation.
<i>Private Sector</i>	Involve the private sector, where it is efficient to do so, in delivering outcomes.
<i>Customer</i>	Customer-focussed and equitable access for all users.

In July 2008, the Australian Transport Council (ATC) agreed to recommend to the Council of Australian Governments (COAG) meeting in October 2008 that, subject to the outcomes of regulation impact assessments, COAG agree to the establishment of a single national system for maritime safety regulation administered by the Australian Maritime Safety Authority (AMSA).

The ATC supported this national approach to maritime safety regulation and were inclined towards broadening the application of the Commonwealth *Navigation Act 1912* to apply to all commercial vessels. AMSA would become responsible for regulating vessel design, construction, and equipment, vessel operation (e.g. safety management systems) and crew certification and manning.

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## 2. REGULATION OF MARITIME SAFETY IN AUSTRALIA

Responsibility for regulating maritime safety in Australia is shared between the Australian Government, the States and the Northern Territory under the 1979 Offshore Constitutional Settlement.

**The Australian Government** currently is primarily responsible for regulation of trading vessels engaged on interstate and international voyages, fishing vessels engaged on overseas voyages and ships belonging to Australian Government departments and authorities. It also regulates navigation and marine aspects of offshore industry mobile units (eg drilling vessels) and certain offshore industry vessels (mainly supply vessels).

The Australian Government also is responsible for ensuring Australia meets its obligations under international maritime treaties, which establish the global framework of safety and environment protection standards for the international shipping industry.

The Australian Maritime Safety Authority (AMSA) is a Commonwealth statutory authority that administers the Commonwealth *Navigation Act 1912* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, which are the main laws governing ship safety and environment protection standards.

AMSA is responsible for Australian flag ships being subject to a system of inspection and survey before they are issued with the required safety certificates to confirm that they meet international convention standards. AMSA delegates these functions to seven approved classification societies, which are all full members of the International Association of classification societies. Shipowners choose one of these classification societies to perform the statutory survey and certification work for their ships and pay the classification society's fees. AMSA has entered into an agreement with each approved classification society outlining their responsibilities and AMSA regularly audits their performance.

AMSA administers the Commonwealth *Shipping Registration Act 1981*, which confers nationality on Australian flag ships in line with international convention requirements. The Act requires that a vessel owned by an Australian entity shall be entered in the Australian Register of Ships administered by AMSA.

**The States and Northern Territory** currently are responsible for regulating ship safety standards for trading ships on intrastate voyages, fishing vessels, pleasure craft and vessels on inland waterways. Generally, the commercial vessels coming within the state and territory jurisdiction are smaller ships of less than 35 metres in length or 500 Gross Tonnes.

Ship safety standards for smaller vessels are set by the Uniform Shipping Laws (USL) Code or the National Standard for Commercial Vessels (NSCV). The USL Code was first developed in 1979 as a means of improving harmonisation of marine safety administration across state, territory and Commonwealth jurisdictions for smaller vessels. It covers standards relating to the survey, manning and operation of smaller commercial vessels in Australia.

The provisions of the USL Code do not have the force of law except to the extent that they are adopted in Commonwealth, state or territory legislation. In practice, the USL Code and its



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subsequent amendments since 1979 have been adopted over time in various ways by the different state and territory jurisdictions. Hence, there are now significant variations in the standards applying across the jurisdictions as well as variations in the application of those standards and the granting of exemptions from compliance with standards for specific vessels.

The USL Code also has been criticised as being highly prescriptive and lacking the flexibility and responsiveness necessary to meet the needs of modern shipping regulation.

In 1997, the Australian Government and state and Northern Territory governments established the National Marine Safety Committee (NMSC), comprising the heads of their maritime safety agencies. One of the major tasks undertaken by the NMSC has been the development of the NSCV, which ultimately is to replace the USL Code.

The NSCV reflects the modern safety management systems approach to regulation and aims to provide uniform application of safety standards across all Australian jurisdictions. Only Tasmania has legislated to adopt the NSCV in its entirety to date, while the other states and territories are applying different versions of the USL Code and also may incorporate some standards from the NSCV.

Some states maintain registers of ships and small craft that are subject to their jurisdiction, but these are not registers of ownership or nationality accorded to ships under the *Shipping Registration Act 1981*. It is estimated that there are over 18,500 commercial vessels under state/territory regulation. However, as not all jurisdictions operate a vessel registration system and these systems do not capture the entire vessel population within the jurisdiction; further information needs to be sourced to confirm the potential impact of the proposed regulatory change.

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### 3. NATURE OF THE PROBLEM

Australia's federal system of government means that there are currently eight different regulatory systems (the Australian Government, six states and the Northern Territory) governing the operation of commercial vessels in Australian waters. There are more than 50 Acts and subordinate legislative instruments that pertain to maritime safety and eight separate maritime safety regulatory agencies in Australia, including AMSA. While all governments have generally agreed and remain supportive of a nationally applicable standard, such as the NSCV, the consistent adoption of such a standard into legislation and standardised administrative procedures has not been achieved to date.

Detailed cost-benefit analysis of the problems created by the current regulatory framework and the potential impacts of possible options to address these problems will be undertaken as part of the next phase of work on the RIS.

There are general benefits from the national approach to maritime regulation through the opportunity to:

- Reduce confusion and administrative complexity for vessel owners wanting to operate non-recreational vessels in more than one jurisdiction through the application of a single set of regulatory standards to be applied consistently across all Australian jurisdictions;
- Reduce administration overheads for vessel owners and regulatory agencies;
- Streamline regulation across related areas of the maritime industry, through, for example, future development of a national database of commercial vessels.
- Achieve consistent adoption and application of the USL Code and the NSCV for smaller vessels;
- Provide for the regular review and updating of vessel safety standards while maintaining national consistency;
- Remove impediments to mutual recognition of vessel survey and safety certification and crew qualifications;
- Provide uniform national standards for crew training and competencies compatible with international standards so fostering seamless career path progression for seafarers;
- Adopt modern shipboard safety and risk management practices across Australia and strengthen a maritime safety culture where participants are encouraged to take greater responsibility for their own safety;
- Allow for a consistent regulatory approach to the operation of unconventional craft and the adoption of technological advances.

#### 3.1. INCONSISTENCIES WITHIN AND BETWEEN JURISDICTIONS

There are inconsistencies across the seven state/territory jurisdictions in maritime safety regulatory requirements, the mutual recognition of ship survey and safety certification and

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qualifications of crew, and considerable variations in the level and nature of ongoing monitoring of compliance with safety standards.

Each jurisdiction has its own administrative processes, creating the potential for duplication and inefficiency. For instance, few, if any, recognise the safety certification of a vessel issued by another jurisdiction for a period over 12 months, at which point the vessel must be reassessed by the new jurisdiction. Separate data records (itself an unnecessary administrative duplication) has safety implications when essential information, such as vessel modifications, is not shared between jurisdictions.

### **3.1.1. Design and construction standards**

The application of design and construction standards is often linked to the initial inspection (survey) or state registration requirements. These survey and registration requirements vary between jurisdictions, creating inconsistencies in their application at a national level and preventing proactive monitoring of compliance across Australia's fleet of commercial vessels.

More fundamentally, state and territory laws do not apply the same standards. Some jurisdictions apply different versions of the USL Code, and others include standards from the NSCV. This can result in different technical requirements applying to the same vessel in different jurisdictions. At a minimum, it creates a confusing state of affairs which makes it difficult for commercial vessel owners, operators and manufacturers to understand their obligations, particularly where vessels operate in different jurisdictions.

It is not a straightforward process to have certifications issued in one jurisdiction recognised in another. A vessel built in a particular state or territory for use elsewhere may need to be certified during construction by a surveyor from the receiving jurisdiction, with corresponding costs for the surveyor's time and travel expenses.

### **3.1.2. Registration and survey standards**

There is no consistency in state and territory registration requirements for recording all non-recreational vessels in their jurisdiction. Generally, vessels must be registered in New South Wales, Queensland, South Australia and Tasmania, but are not required to be registered in the Northern Territory, Victoria or Western Australia. To increase the difficulty in comparing registration regimes, in the states where registration is required, there are different requirements and exemptions for certain vessels from being registered.

Consequently, there are no reliable numbers for Australia's commercial vessels based on registration. For example, in Queensland in 2007 there were 5,710 vessels registered in the non-recreational fleet (including 678 fishing vessels), however an additional 5,000 fishing vessels were exempt from registration. Other jurisdictions have different approaches to their fleets, so there is no consistent approach to identifying the total number of commercial vessels and therefore no consistent way of identifying the range of vessels that should be subject to safety regulatory oversight.

Survey inspections are carried out in the design/construction stage and initial registration of a vessel, and then in some cases periodically to ensure that a vessel complies and continues to comply with the relevant standards. While theoretically all non-recreational vessels in all states and the NT are subject to an initial survey (Queensland surveys are carried out by

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private sector providers who supply a Certificate of Compliance), there are in practice numerous exemptions across the states.

Exemptions from initial survey are based on length or power, type (fishing boats depending on length, tenders, training ships, ferries etc) and operational area. For example, vessels less than 6 metres are exempted from initial survey in Tasmania, New South Wales (class 2 only) and Queensland (some classes only). In the Northern Territory they are exempted if less than 5 metres in length and operating in certain areas and in Western Australia they are exempted if they are less than 8 metres, of class 2 and operating in certain areas.

In regards to periodic survey to ensure continuing compliance: no Queensland vessels are subject to periodic survey; class 2 vessels in Tasmania of less than 7.5 metres have biennial surveys and some vessels less than 12 metres and with engines of less than 250 kilowatts are exempted; certain classes of fishing boats in New South Wales are exempted, in South Australia fishing boats require survey every two years, but fishing boats in Tasmania less than 7.5 metres are exempt from periodic survey.

In regards to vessel movements, a vessel transferring between states and the Northern Territory is required to contact AMSA to ensure that the vessel meets Commonwealth regulatory requirements to undertake the initial interstate voyage. It also needs to contact the destination state or territory for recognition of their safety certification. Both the Commonwealth and the destination state or territory may have different technical requirements to the originating state.

### **3.1.3. Crew qualification standards and vessel crewing requirements**

Each state and territory operates separate crew qualifications systems based on crew competency standards specified in the USL Code sections 2 and 3, or Part D of the NSCV. However, the complexity of the legislative arrangements and the methods by which states have attempted to enact standards causes significant differences between the jurisdictions. For example, New South Wales applies the 1984 version of Sections 2 and 3 of the USL Code with modifications and exemptions allowing the 1991 USL Code to operate. Queensland applies parts of sections 2 and 3 of the USL Code with modifications. Similarly, South Australia applies parts of those sections (but not the same sections as Queensland), the Northern Territory and Victoria apply sections 2 and 3 without modification, and Tasmania applies NSCV Part D, the most recent standards agreed to by all states and the territory.

At the national level, AMSA administers the qualification system for seafarers serving in large commercial ships, which meets the standards of training and certification established by the Standards of Training Certification and Watchkeeping (STCW) Convention. The requirements for issue of a State or Territory qualification do not generally meet the full range of competencies required to comply with the STCW Convention standards. In addition, State or Territory qualifications may include conditions or limitations on their use that restrict the holder to be engaged on certain vessels that only operate in a specific area. If holders of State or Territory qualifications want to serve on larger commercial vessels, they need to obtain an endorsement from AMSA under the STCW Convention of their State or Territory certificate to confirm that their training and experience meet the STCW Convention standards. This often involves the State or Territory qualification holder having to undertake additional training to attain the higher standards required under the STCW Convention compared to the State or Territory qualification requirements.

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In relation to minimum vessel crewing requirements, New South Wales, Tasmania, Western Australia, the Northern Territory and Victoria generally base their requirements on sections 2 and 3 of the USL Code or Part D of the NSCV. However, the Northern Territory and Victoria assess each vessel's requirements and provide a determination of minimum crew for the vessel while the other states apply a 'deemed to satisfy' minimum crewing requirement. South Australia assesses each trading vessel's minimum crew and provides a determination for the vessel with a 'deemed to satisfy' crewing requirement applying to fishing vessels. Queensland does not do either of the above, but obligates Masters and owners to assess the crew members required to operate the vessel, comply with emergency safety procedures, fulfil OH&S obligations and comply with the vessel's safety management plan.

#### **3.1.4. Compliance monitoring, investigation of offences and enforcement**

Vessels are subject to random and risk-based inspections with the extent and frequency varying between state and territory jurisdictions. The inspections are carried out by a range of state and territory government agencies. Some jurisdictions relax some prescriptive requirements for some classes of vessels. The nature, level and extent of work undertaken by each jurisdiction in regards to random sampling of compliance appear to vary significantly. Even where the regulatory requirements are the same (or essentially similar), there are considerable differences in the interpretation and application of those requirements.

### **3.2. WHY INCONSISTENCIES ARE A PROBLEM**

Inconsistent standards mean that ship operators are incurring higher compliance costs to meet different standards for vessels operating between jurisdictions. This varied application of national standards fails to meet best regulatory practice. Further, they can also place a cost burden on those who would wish to supply a national market for labour, equipment or vessels.

#### **3.2.1. Servicing national markets for vessels and labour**

Inconsistencies in jurisdictional requirements may encumber markets for vessels and labour. The development of national markets is a key principle of the transport reform agenda. For some vessel operators, the benefits of being able to move at little or no cost to another jurisdiction may not be significant. However, for those engaged in shipbuilding, equipment manufacture or seasonal activities, the benefits may be quite substantial.

#### **3.2.2. Markets for labour**

An important factor in improving availability of maritime skills is to enhance the ability of seafarers to progress from entry-level State/Territory issued qualifications for small ship operations to the highest certificates provided under the STCW Convention for large ship operations. A vital element is creating a seamless career path by the harmonisation between the national training and certification requirements and the State/Territory qualifications systems.

The current division of responsibilities, and the consequent two tier system that has developed in regard to crew qualifications between the Commonwealth and the states and Northern Territory, is impeding the flow of qualified personnel from moving between vessels under state jurisdiction and those under Commonwealth jurisdiction.

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There is also evidence that operators who seek to operate within one state or territory for part of a year and then move to another state on an seasonal basis may be hindered from doing so by the fact that their qualifications may not be recognised by the new jurisdiction (which would require recertification) or are recognised, but only at a cost. Overall, a mobile workforce is more likely to be able to meet demand for labour in remote locations and for seasonal employment.

Changes in the maritime workforce demographic and global increases in seafarer labour demand are leading to a potential maritime skills shortage in Australia. The number of younger deck officers presently holding Chief Mates' Certificates of Competency will be insufficient to replace the current holders of Masters' Certificates of Competency when they eventually retire. The majority of Engineer Officers holding superior qualifications are also close to retirement age.

Australian seagoing personnel also are required to fill shore based occupations such as fleet management, marine surveying, government service, ship building, pilotage, port management or education and training. The supply, education and training of all crew, coupled with the necessary seagoing experience, is an important aspect of maintaining an adequate pool of knowledge to be drawn on in future years for the prosperity of Australia's maritime industry.

### **3.2.3. Markets for vessels and equipment**

The fact that standards for safety equipment and vessels vary across states and territories requires manufacturers to comply with a range of jurisdictional regulations, and in some cases could prevent them from marketing the same product to customers for use in different jurisdictions. Inconsistencies can also lead to the size of shipbuilding industries in different jurisdictions reflecting the relative strictness of regulatory requirements rather than efficiency considerations. Overall, a single set of safety standards would support a national market and encourage more competitive services to Australia's non-recreational vessels.

The efficiency of the operation of a national market for businesses supplying equipment or services to vessels in different states is affected by inconsistent jurisdictional arrangements. As mentioned, a vessel built in a particular state or territory for use elsewhere may need to be certified during construction by a surveyor from the receiving jurisdiction, with corresponding costs for the surveyor's time and travel expenses.

These inconsistencies may also affect the second-hand market for commercial vessels by restricting the possible buyers to those within the state/territory because of difficulties in registering older vessels in other jurisdictions.

It is also possible that Australia would be better served by international providers of equipment if Australia offers a uniform market for commercial vessels.

### **3.2.4. Development of a national database of commercial vessels**

A comprehensive national database of commercial vessels operating in Australian waters does not exist. Information about the maritime industry that could be drawn from such a database would have benefits for planning and policy development by government and

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industry. The widespread exemptions currently applied by states and NT prevent a reliable count or profile of national vessel numbers.

### **3.2.5. Adoption of risk-based profiling for compliance monitoring**

Compliance monitoring through risk based targeting of inspections focusing on higher risk vessels is a more cost effective use of inspection resources. Random spot checking of vessels is likely to be a less efficient way of monitoring compliance because of the possibilities of repeat sampling and the probability of having to assess low-risk vessels. A national risk-profiling system of compliance monitoring would only be possible in conjunction with a national database of vessels.

AMSA has shown the benefits of adopting a sophisticated inspection targeting system that allocates risk ratings to each arriving eligible foreign ship visiting an Australian port based on factors such as type of ship, its age and inspection history. This ensures higher risk ships are more likely to be inspected and allows AMSA to allocate its inspection resources to focus on high-risk ships so using its inspection resources more effectively to detect unseaworthy and substandard vessels.

### **3.2.6. Increase the costs of insurance**

It is possible that differences in the maritime safety standards applying to different commercial vessels exposed to similar risks undermines markets for insurance and leads to higher costs. One possibility is that it may be more difficult for insurance companies to price contracts efficiently when faced with myriad regulations. Secondly, problems of 'adverse selection' can arise if insurance companies find it hard to differentiate between high-risk and low-risk vessel/operations combinations. Ultimately, the insurance company may set a premium that is too low for high-risk vessels and too high for low risk vessels.

The relevant marine insurance legislation (*Marine Insurance Act 1909*) is national and applies to all contracts of marine insurance. It is an implied warranty in all such contracts that vessels must be seaworthy and comply with all relevant regulations. It becomes difficult when all jurisdictions have different regulations. It is likely to have a cost impact on the national marine insurance market. There may also be related issues concerning compulsory insurance (such as pollution liability insurance) and differing requirements across the jurisdictions.

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## 4. THE DESIRED OBJECTIVES OF MARITIME SAFETY REFORM

The objective of reforming maritime safety regulation is to achieve effective, consistent, efficient and uniform maritime safety regulation.

Reform will enable maritime safety legislation to reflect modern concepts of risk and safety management to achieve better safety outcomes in the most efficient manner and ensure a more seamless consistency with international ship standards.

These reforms are aimed at:

- Promoting a maritime safety culture with less prescriptive regulation;
- Minimising the legal and administration costs of certification and compliance; and
- Eliminating constraints on competition and trade

In achieving these objectives, reform could deliver:

- An accurate register of Australian commercial vessels linking ownership, vessel details and inspection and survey history;
- A seamless career path for seafarers;
- Certainty for vessel owners, operators and suppliers on the standards that apply to design, construction, equipment, operation and qualifications across Australia;
- Clarity and simplification of administrative requirements to comply with maritime safety regulation;
- Efficiency gains by moving to a reformed system regulated by one national agency.
- Modern maritime safety legislation that better positions Australia in the highly competitive global shipping market.



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## 5. STATEMENT OF OPTIONS

Self-regulatory, non-regulatory and co-regulatory options are not considered realistic approaches when considering the most appropriate means to achieve the Australian community's expected level of maritime safety on commercial vessels. Regulation already exists in all states and NT and, although inconsistently applied and administered, all governments have agreed on national standards governing all aspects of maritime safety on commercial vessels.

Therefore, the consideration of options will focus on the following three options to achieve a single national safety regulatory system for commercial vessels operating in Australia:

**Option 1: Take no action**

**Option 2: The States and the Northern Territory individually apply legislation to achieve a single national system**

**Option 3: Broaden the application of the Commonwealth *Navigation Act 1912***

### 5.1. DISCUSSION OF OPTIONS

An outline of each option, including the advantages and disadvantages associated with each is described below. Further feedback is being sought through the consultation process and from state and territory agencies to allow a detailed cost-benefit analysis to be developed.

#### 5.1.1. Option 1 Take no action

Under this option the status quo remains. States and the NT continue to develop and review national standards under the terms of the 1997 Intergovernmental Agreement. States and the NT remain responsible to implement, administer and enforce nationally agreed standards through existing state/NT based legislation and associated instruments. The Commonwealth continues to regulate vessels subject to the *Navigation Act 1912*.

The disadvantages of this option are that:

- commercial vessel owners and operators are subject to inequitable safety requirements, determined by the state in which they operate rather than on a risk or performance-based assessment;
- the maritime industry (boat-builders, equipment manufacturers and suppliers, retailers etc) cannot supply one national market, leading to additional costs of production;
- there is no seamless career path for seafarers to progress from state-based vessels to international trading vessels;
- seven maritime safety agencies jointly develop and review national safety standards but continue to legislate, administer and apply them differently;

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- there are likely to be national cost and administrative inefficiencies in relation to compliance, compliance monitoring and enforcement activities of state and NT governments;
  - the 1997 Intergovernmental Agreement has proven ineffective in delivering consistency of legislative and administrative frameworks, and
  - the maritime sector is not part of the national reforms agreed by the ATC under their national action plan designed to cut down red tape and deliver more consistency in the way transport is regulated across Australia.

The advantages of maintaining the status quo are that some sections of the commercial industry that are currently exempt from a range of national safety standards and regulations will maintain those exemptions, and therefore not incur additional costs that may be associated with a national approach.

Delivery of services will continue to be provided by existing agencies and other providers, with fees set independently by those agencies according to state and territory policy decisions. In many states and the NT, many of these services are currently subsidised.

The discussion issues raised in Section 3 Nature of the Problem, also apply to this option.

#### **5.1.2. Option 2 The States and NT individually apply legislation to achieve a single national system**

The *Navigation Act 1912* continues to apply to all vessels covered by the International Convention for the Safety of Life at Sea (SOLAS), and foreign flagged vessels (currently administered by AMSA). New national legislation would be applied to non-SOLAS vessels used for a commercial purpose.

The national legislation would be passed in one jurisdiction and adopted by reference in the other jurisdictions without amendment. A new national agency would be established to administer the national legislation.

This option would ensure uniform standards apply. A new national body administering and overseeing the legislation would be necessary to ensure consistent application of standards and uniformity of approach. The body could delegate responsibility for operational delivery to the states and the NT. The body would be empowered to determine the national legislation for non-SOLAS vessels.

The outcome of this option would be separate Commonwealth and state systems, run by two national regulators. While AMSA could theoretically take on the role of regulating both systems under this option, there would be major practical difficulties with such an approach because of the split of Commonwealth (*Navigation Act 1912*) and state (new national legislation applying to vessels) responsibilities. For example, state and commonwealth inspectors may be exercising a combination of state and commonwealth powers depending upon the vessel they are examining.

This option is dependent on all state governments enacting legislation to adopt the national legislation. The option of a referral of powers by the states to the Commonwealth has not been pursued in this paper because the state and NT transport ministers, during discussions

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at the ATC in July 2008, noted that any national approach should be achieved with a view to avoiding the need to refer powers.

### **5.1.3. Option 3 Broaden the application of the *Commonwealth Navigation Act 1912***

The *Commonwealth Navigation Act 1912* is broadened to apply to all commercial (non-recreational) vessels and administered by AMSA. An Intergovernmental Agreement would underpin the legislative framework and describe consultative mechanisms. The design of the national system would allow for delivery of services by state and NT maritime safety agencies under agreements with AMSA.

This option would apply to all commercial vessels. Recreational vessels would remain outside the national law.

For vessels within its scope, the national law would specify the standards for:

- vessel design, construction and equipment;
- vessel operations, such as safety management systems; and
- the certification of crew competency and manning requirements.

The national law would also contain provisions relating to:

- the administration of registration or survey;
- the issue of crew competency licences and certificates; and
- Inspection, compliance monitoring, investigations, auditing and other ancillary powers.

Reform of maritime safety legislation across Australia is necessary to place greater emphasis on modern concepts of risk and performance management to achieve better safety outcomes in the most efficient and consistent manner. The legislative arrangements could be subject to periodic and independent review to ensure that stakeholder interests and policy priorities are reflected in the arrangements.

As the proposed administrator of the national system, AMSA has stated it does not intend to significantly expand to undertake all functions currently undertaken by State and Territory authorities. It would be guided by the following principles:

- Where appropriate, the private sector should be free to deliver services in accordance with competitive neutrality (competitive neutrality requires that government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership) principles and charge commercial fees for services provided;
- Services should be delivered by government agencies on a fee for service basis where appropriate to recover costs; and
- Standards setting, compliance monitoring and enforcement should be funded by the industry consistent with government guidelines on cost recovery.

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### **5.1.3.1 Survey**

It is not envisaged that survey services would be provided by AMSA. AMSA's role would be in certifying organisations and/or individuals; auditing delivery of service, in a similar manner as currently applies to larger Australian flagged ships under AMSA jurisdiction. Certified organisations could include both government and private sector and would issue Commonwealth certificates of survey across all states and territories. Survey fees would be set by the certified organisations.

Under the national system, it is likely that all vessels would be subject to some form of initial inspection or survey. Importantly, recurrent surveys will be based upon risk assessment for respective vessel classes, taking account of area and type of operation.

### **5.1.3.2 Crew competencies**

AMSA would maintain and review crew competency standards and the appropriate national databases. AMSA would audit all Registered Training Organisations (RTOs) involved in delivering training and assessment. RTOs may be public or private, although where both are present the issue of competitive neutrality arises. Certificates will be issued on behalf of the Commonwealth by AMSA.

RTOs could take on a greater role and responsibility for sea time assessment, recognition of prior learning and competency assessment; particularly for coastal certificates. Oral examinations could be conducted by RTOs up to Master Class IV and MED1.

### **5.1.3.3 Operational – Minimum Crewing**

As is the case now, the Safety of Life At Sea (SOLAS) Convention vessels would be required to present a safe manning case for approval by AMSA which will issue a Minimum Safe Manning Document. Following consultations with stakeholders, non-SOLAS vessels will probably be afforded a *deemed to comply* solution or may have to provide a safe manning case.

### **5.1.3.4 Compliance Monitoring**

It is proposed that the compliance monitoring function be carried out by state and territory agencies. Current mechanisms for compliance monitoring through water police, boating and fisheries patrols, and other bodies would need agreement and funding in order to continue. National compliance would be coordinated, audited and directed by AMSA. The Australian Transport Safety Bureau (ATSB) will examine the proposed changes and the implications for its responsibilities.

## **5.2. REGULATION REMAINING WITH THE STATES UNDER ALL OPTIONS**

Under all options the states and territories would retain control over matters such as state environment protection measures outside the international marine pollution convention (known as MARPOL) requirements, navigation in port areas, congestion issues and fishing and other commercial operating licenses. The national law would apply to the operation of commercial vessels and not to the waterways on which vessels operate. The national

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maritime safety law would not affect existing arrangements for crew safety standards covered by the International Labour Organisation; occupational health and safety and workers compensation; the regulation of marine pests, ballast water and biofouling; or the economic regulation of coastal shipping.

### **5.2.1. Application of MARPOL**

Under the proposed approach, all commercial vessels may be surveyed and certified in accordance with MARPOL requirements under Commonwealth law. Such implementation of MARPOL would come within the constitutional power of the Commonwealth, as this includes the ability to enact legislation which fulfils the obligations, and/or realises the benefits, of an international treaty.

The operational standards relating to MARPOL in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* will not initially be addressed in the process of broadening the *Navigation Act 1912*. These issues will be addressed after agreement has been reached with all jurisdictions on a national system for the operational implementation of MARPOL.

State and territories would continue to establish and apply any environmental obligations outside the scope of MARPOL.

### **5.2.2. Application of worker's compensation law**

In regards to Commonwealth occupational health and safety (OHS) legislation, the application of the *Seafarers Rehabilitation and Compensation Act 1992* and the *Occupational Health and Safety (Maritime Industry) Act 1993* is governed by the application of Part II of the *Navigation Act 1912*. The expanded application of the *Navigation Act 1912* need not impact upon the determination of whether a vessel is subject to these Commonwealth OHS and workers' compensation laws. In other words, it would be possible to ensure that the current reach of Commonwealth OHS and workers' compensation legislation is maintained.

State and Northern Territory occupational health and safety and workers' compensation legislation applies to all workplaces connected with the state or Northern Territory. The expanded *Navigation Act 1912* need not affect the application of the occupational health and safety and workers' compensation legislation. That is, the existing state and Northern Territory laws would continue to apply to commercial ships in the same way as they do now.

It is noted that there is a separate review being conducted by the Australian Government into model occupational health and safety laws.

### **5.2.3. Arrangements for safety investigation**

The proposed expansion of the *Navigation Act 1912* will not affect the jurisdiction of the safety investigation agencies, who will continue to exercise their independent jurisdiction regardless of the proposed changes to regulatory arrangements for commercial vessels. Administrative protocols are desirable to ensure that concurrent investigation of marine incidents by the various safety investigation agencies, and also by the various regulatory agencies, including AMSA, is done appropriately.

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## 6. PROCESS FROM HERE

This document is a Consultation RIS. Its purpose is to inform stakeholders about the perceived problems with the current framework, the objectives of reform and the options for reforming maritime safety regulation so that the costs and benefits of the proposed options can be assessed more fully following stakeholder feedback. The Commonwealth (including AMSA) and the relevant state agency will visit cities and regional centres in Australia during September and October to meet with stakeholders and discuss the proposed changes. Ultimately, a RIS will be prepared for consideration by ATC in November 2008. Key dates are shown below.

<i>September 2008</i>	Consultation RIS released for public comment. Regional visits to explain proposed changes and receive feedback regarding impacts on stakeholders.
<i>October 2008</i>	COAG considers ATC report on implementation of a single national approach to maritime legislation.
<i>November 2008</i>	ATC considers implementation plan for the national approach, including regulation impact assessment.
<i>December 2008</i>	Initial scoping of the national law and amendments to the Navigation Act and state and NT legislation.
<i>Early 2009</i>	COAG consideration of inter-governmental agreement to underpin national system
<i>March 2009</i>	If required, agreement between maritime and workplace relations ministers on details and mechanisms based on the preferred approach
<i>May 2009</i>	Final decisions by ATC on national system, including implementation date.

Please provide any written submissions on this Consultation RIS by **15 October 2008** to:

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or by post to:

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