



Submission to the Productivity
Commission

Response Draft Report of PC into
National Transport Regulatory
Reform

15 January 2020

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Date: 15 January 2020

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.

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 provides a full suite of maritime knowledge and expertise for operators of both Regulated Australian Vessels and Domestic Commercial Vessels. This gives us a unique perspective.

MIAL's vision is for a strong, thriving and sustainable maritime enterprise in the region.

1. Introduction

MIAL has had the opportunity to consider the draft Productivity Commission (PC) Report into National Transport Regulatory Reform and welcomes the opportunity to make further submissions in relation to the draft report. In doing so, MIAL will attempt to provide further information which is sought by the PC.

MIAL has provided a submission to the PC inquiry into National Transport Regulatory Reform and commends those submissions, without repeating them in this response to the draft report, including AMSA's well-earned reputation as a firm but fair regulator throughout its many years as a flag and port state inspectorate of international shipping.

2. Information provided to the Productivity Commission

2.1 Submissions received

MIAL notes that the PC inquiry undertook to assess the impacts of regulatory reform in three distinct industries – heavy vehicle, rail and maritime, and that of the 44 submission received, on MIAL's assessment, only a handful go to the implementation of the Maritime Single National Law (MSNL). Accordingly, the report appears to have sourced information from a variety of other sources including submissions made to the Senate Inquiry into the performance of the Australian Maritime Safety Authority (AMSA). While presumably the submissions to the Senate Inquiry have relevance to the role AMSA has had as the single regulator having assumed responsibilities for domestic commercial vessels (DCVs), those submissions were made in response to separate terms of reference. Accordingly, this should be acknowledged in the final report, where information has been extracted extensively from those submissions.

MIAL supports statements within the report that "Regulators should ensure that these cross subsidies are removed wherever practicable." (pg216 draft report). The report appropriately notes that there has been a progressive dialogue about the costs associated with AMSA's responsibility as a regulator for DCVs. However, a high level of cross subsidisation remains a feature of the current funding of AMSA's regulatory duties as was pointed out by the Australian National Audit Office and repeated in MIAL's previous submission. While clearly there are challenges in applying a costs recovery model in the DCV space where for many years services to this industry have been heavily subsidised, the current practice where Navigation Act vessels are funding services provided to DCVs cannot continue.

3. Further information sought by the Productivity Commission

3.1 Draft Findings and recommendations

Draft Finding 4.3

MIAL agrees with the statement that grandfathering was intended to smooth the transition to the MSNL. Grandfathering does inherently mean that there will be different standards applied to vessels, which will not necessarily complicate enforcement in a strict sense would in all likelihood mean that assessing for compliance is complicated. This is because assessment would occur against the standard

which applied to the vessel, which, while grandfathering is in place is not universal. MIAL does not necessarily agree that grandfathering discourages investment in new vessels, but it does not necessitate investment in new vessels and equipment where existing vessels and equipment can lawfully operate.

Draft Recommendation 4.2

MIAL has no particular comment to make, except to emphasise that AMSA only assumed control of the MSNL in 2018. As such, phasing out of Service Level Agreement arrangements could conceivably take some time.

Draft Recommendation 5.4

MIAL supports the draft recommendation to encourage the increase of incident reporting by owners and operators of domestic commercial vessels.

Public disclosure of safety incidents can incentivise efforts to improve safety outcomes. However, it is worth noting that there is also a risk that where reporting is used as a tool to “name and shame”, this may operate to discourage reporting of incidents. There are many benefits obtained as a result of incident reporting, including providing information for root cause analysis to assist operators to better understand the risk factors that lead to significant incidents and feed back into safety management systems, raising general safety awareness among crew and other employees, provide data for regulators to target education and inspection regimes, and importantly, drive improvements to general safety culture in the workplace.

It is critical to ensure that any reporting and disclosure framework does not inadvertently detract from these key objectives of reporting. There is an immature safety culture within some sectors of the domestic commercial vessel industry and any measure that has the potential to result in further reduced reporting, and hold back the development of safety culture within the industry should not be pursued.

MIAL also sees the Australian Transport Safety Bureau (ATSB), the body which currently conducts investigations into major maritime incidents as the logical place for investigating and reporting of incidents. The recommendation that the Australian Government request and fund the ATSB to conduct investigations and publish research on safety incidents is reasonable. However, given the current state of uncertainty regarding funding for regulatory and compliance activities for DCV's, and the resource constraints that the ATSB currently operates within, this ATSB function must be resourced via additional funding from the Commonwealth and other parts of the industry should not be cross subsidising this activity.

Draft Recommendation 5.5

MIAL agrees that grandfathering should be phased out, so as to ultimately ensure harmonised standards across the DCV space. However, imposing an arbitrary deadline where, as the PC correctly notes, there is limited data to determine what kind of timeline might best reflect the risk profile of domestic commercial vessels is not supported.

As the draft report itself notes, DCV's are long term assets, often with a viable commercial life spanning 30 years and beyond, during which time many of the structural changes that would be required to be made if grandfathering were to cease within the suggested timeframe would not be viable, resulting in a large number of stranded assets, having a significant and unreasonable impact on a large portion of the industry.

The Productivity Commission must consider that the COAG reforms to create a single national jurisdiction were first flagged with industry in a meaningful sense in 2009, but at that time there was little detail about how the single national jurisdiction might impact individual operators. It is not until the advent of the National Law (Domestic Commercial Vessel) Act 2012 that a greater level of clarity around DVC requirements would be revealed.

MIAL does however accept that some concessions to move towards greater consistency is appropriate. If it is the contention of the PC that vessel safety standards are intrinsically linked to the age of the vessel (a proposition that MIAL does not necessarily accept or agree with) then a scaled approach to grandfathering may be the most palatable approach. This could mean a shorter period of grandfathering for older vessels (which would hasten their retirement from commercial service) while newer tonnage has a slightly longer grace period, provided the operator can satisfy the regulator that it can continue to operate safely.

Recommendation 6.5 The Australian Maritime Safety Authority should monitor compliance and administrative costs created by the national regimes and report on the level and change in these costs periodically – initial reporting in 2020.

MIAL supports monitoring and regular reporting of compliance costs to industry. AMSA's new jurisdiction as the single national regulator will have meant that infrastructure costs will have been incurred to transfer existing records from state and territory regimes to AMSA, as well as training and IT costs. It is also important to understand which constituents within AMSA's jurisdiction can be attributed which costs. As a representative of both regulated Australian vessels (which have always been within the purview of AMSA) and DCV's who have come under AMSA's jurisdiction in July 2018, it is imperative that it is clear where costs of AMSA are being incurred and that future funding models appropriately acknowledge where compliance costs sit.

Draft Finding 7.2 Broad scope of AMSA's responsibilities is an impediment to effective regulations of DCVs.

The diversity of vessel types which are capable of constituting DCV's was always likely to pose a challenge to AMSA as the regulator, particularly given AMSA's existing expertise of Port and Flag state control for internationally regulated vessels. While MIAL may not be best placed to comment on sectors which it does not represent (i.e. hire and drive vessels) the suggestion that these vessels are akin to recreational vessels save for the commercial aspect of hiring the vessel is reasonable.

Draft Recommendation 7.4 the Australian Government should seek to return responsibility for Class 4 DCV's to State and Territory Agencies and consider costs and benefits of returning regulatory responsibilities for other types of vessels to state and territory governments.

Relieving AMSA of some regulatory responsibilities where another regulator is better placed to handle these duties may produce a more efficient and effective regulation across the board. For class 4 commercial vessels, MIAL agrees that these vessels operate similarly to recreational vessels, which remain the purview of states and territories, and that the regulation of these vessels could be transferred back to the States.

However, there should be sound rational and reasoned justifications for steps that would effectively unpick the outcome of a single national jurisdiction for the maritime industry. Consideration of what other types of vessels could be conferred to the states for regulation should be done very carefully.

Draft Recommendation 8.2 – development of the National Data Freight Hub

We understand that the design of the National Data Freight Hub is subject to a separate consultation process being conducted by the Department of Infrastructure Transport Cities and Regional Development. It is challenging to provide a response to this recommendation while a parallel consultation process is taking place.

Draft Recommendation 8.3 The Australian government should impose a general safety duty on all parties with a significant influence over the safe operation of autonomous transport technologies. The creation of a general safety duty should not preclude the use of prescriptive rules where the assessed risks are high.

MIAL understands that significant work is taking place at the International Maritime Organization (IMO) about the application of its regulatory framework while looking at trials involving Autonomous Surface Ships. While the concept of a general duty is well understood under Australian law, steps taken at IMO could quite properly influence Australian regulation in this area.

- (a) **Information request 9.1** safety implications of commercial contracts in industries covered by the MSNL including the effectiveness of safety duties applying to businesses through supply chains.

Maritime businesses generally recognise the importance of safety as a business imperative and tendering processes frequently include a requirement to demonstrate sound and effective approaches to safety management.

4. Conclusions drawn within the draft report

MIAL notes that on a number of occasions statements from submissions to separate enquiries have been utilized in the text of the report. It's important to note that submissions to as separate enquiry would have been formulated basis of different terms of reference and context.

For example, there was a recent Senate inquiry into the performance of AMSA where submissions shared their experiences with AMSA as a regulator. These were shared as part of that inquiry but have been referenced within the PC report. While we are not in a position to comment on the experiences of those Organisations, some of the experiences they report are inconsistent with those reported by some of our members. Notwithstanding this, MIAL considers it important to recognize these submissions were formulated under different circumstances and not with the terms of the PC inquiry in mind.

Annex 1

Figure 1: The National System Legislative Landscape

