

## Response to information requests

The following broadly addresses those matters that the Productivity Commission has requested further information to support the inquiry.

### INFORMATION REQUEST 5.2

The Commission is seeking additional information about the operation of the vessel survey regime, including:

- the appropriateness of the existing survey requirements for each vessel category
- any serious impacts on safety outcomes following the changes to the vessel survey regime.

In terms of any impacts on safety outcomes following the changes to the survey regime, AMSA considers it is too soon to examine and review the survey regime changes. As the collection and consistent treatment of national data is built over the medium to longer term, this could be used to support a review of the national system, and to better understand the cost and benefits of the measures implemented.

### INFORMATION REQUEST 5.3

The Commission is seeking additional information about the situations where greater clarity is required between the operational jurisdiction of national transport regulators and workplace health and safety regulators and overlaps in their responsibilities. What options for rectification would be desirable?

The national law was developed on the basis that it would apply alongside certain Commonwealth, state and territory laws, such as waterways management (including local speed limits, drug and alcohol laws and local licensing issues such as for public transport or hire and drive operations), fisheries management (including commercial fishery entitlements and catch limits), work health and safety, environmental protection requirements and standards, electrical and gas safety licensing.

These laws apply to domestic commercial vessel operators, but are developed, administered and enforced by other national, state or territory regulators. State and territory laws generally impose separate and distinct obligations on operators. However, at times these laws impose obligations which:

- duplicate the requirements in the national law, or in other laws administered by AMSA
- impose substantially the same, yet slightly different, requirements, or
- conflict with the requirements of the national law or of other laws administered by AMSA.

At other times, there may be gaps in requirements, or in compliance and enforcement activities, between the regulatory regimes.

AMSA, State/NT work health and safety regulators and energy safety regulators all have jurisdiction over domestic commercial vessels. This can be a source of some confusion in terms of what legislation applies (Commonwealth or state/Northern Territory or both), who investigates incidents that cross jurisdictional boundaries, and how seafarers are compensated (Seacare or state/Northern Territory scheme).

AMSA has put in place some mechanisms to facilitate cooperative arrangements with co-regulators. This includes memoranda of understanding with most of the state and territory work health and safety regulators, which require AMSA and the work health and safety regulators to:

- consult on policy and legislative change
- collaborate on educational opportunities aimed at improving safety, and
- share research and findings relevant to safety in the maritime industry.

#### **INFORMATION REQUEST 7.1**

Is the wording of the Marine Safety National Law an impediment to effective enforcement by Australian Maritime Safety Authority? Would a positive requirement that operators 'must ensure' safety be more consistent with providing the regulator with the powers it requires?

The general safety duties set out in Part 3 of the national law require each person who is engaged with a domestic commercial vessel and its operations to 'do all that is reasonably practical to ensure the safety of the vessel and its operation'. There may be merit in refining the scope of the general safety duties to:

- limit the scope of the relevant duties on operators, designers, builders and suppliers to the design, construction, survey, operation and crewing of a vessel, and
- make compliance with the general safety duties easier by providing that meeting a relevant standard or requirement will constitute compliance with the general safety duties. Accordingly, non-compliance with a relevant standard or requirement may result in a breach of the general safety duties.

#### **INFORMATION REQUEST 7.2**

Are there activities within the Australian Maritime Safety Authority's responsibilities that the Council of Australian Governments should consider returning to State and Territory oversight?

There would be merit in considering whether some responsibilities should be returned to state and territory governments. For example, regulation of human-powered kayaks and canoes.

The definition of 'vessel' in the national law captures all craft that are capable of being used in navigation in water. The national law then contains a list of things that are vessels (such as boats) and things that are not vessels (such as paddleboards). The key problem with the current approach is that the list of inclusions and exclusions is not exhaustive.

**INFORMATION REQUEST 9.1**

The Commission is interested in further information regarding the safety implications of commercial contracts in the industries covered by the Heavy Vehicle National Law (HVNL), Rail Safety National Law (RSNL), and the Marine Safety (Domestic Commercial Vessels) National Law (MSNL). In this regard, the Commission would be interested in understanding the effectiveness of safety duties applying to various businesses through the supply chain (for example, Chain of Responsibility, Workplace Health and Safety).

Under the Marine Safety (Domestic Commercial Vessels) National Law, the general safety duties create a 'chain of responsibility' whereby obligations are placed on all persons who contribute to the safety of a vessel and its operation—from a boat or equipment designer, builder, manufacturer, to the operator, master, crew, passengers, and any other person whose actions may place the safety of the vessel, or persons on board the vessel, at risk.

The definition of 'owner' in the national law includes a person with overall management and control of a vessel, as well as the legal owner. This could include a company contracted to operate a vessel or a fleet of vessels, with the effect that these operators take on the obligations and duties of 'owners'.

**INFORMATION REQUEST 9.2**

To what extent are changes needed to the administration of the Marine Safety National Law, workplace health and safety regulation, and environmental regulation of fisheries? How might the interface between regulators and operators be made more effective?

There is merit in improving awareness and removing duplication and inconsistency through development of a strategy for engaging with co-regulators which identifies:

- how domestic commercial vessel operators remain up to date with local requirements, including work health and safety requirements, that apply to their operation
- opportunities to create greater national consistency in Commonwealth, state and territory requirements, including through legislative change
- points of engagement with co-regulators throughout the policy development, implementation, communication and compliance and enforcement process
- opportunities to reduce duplication by leveraging off the requirements of other regulatory regimes, and
- action to be taken where non-compliance with other laws is identified.

There may also be merit in co-regulators working together to:

- identify and communicate environmental and pollution prevention requirements to operators
- develop a national approach to the compliance and enforcement of the International Convention for the Prevention of Pollution from Ships (MARPOL) which includes regulations aimed at preventing both accidental pollution and pollution from routine vessel operations, and other environmental protection requirements
- ensure that fisheries and other industry-specific arrangements are consistent with contemporary operational safety requirements for vessels.