



**Australian Government**  
**Australian Maritime Safety Authority**

# **Australian Maritime Safety Authority**

## **Amendment of Exemptions 1, 2, 3 and 5**

### **Consultation Feedback Report**

**June 2016**



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## Executive summary

The Australian Maritime Safety Committee (AMSA) reviewed and prepared draft new versions of the following exemptions:

- Exemption 1 (Vessel identifiers) 2016;
- Exemption 2 (Certificates of survey) 2016; and
- Exemption 3 (Certificates of operation) 2016.

In addition, it was proposed that Exemption 5: Marine Safety (Tenders and auxiliary vessels) Exemption 2013 be repealed, with the arrangements in Exemption 5 covered by Exemptions 1, 2 and 3.

The changes to these four exemptions:

- implement new non-survey arrangements for volunteer marine rescue (VMR or 'Scheme R') vessels and fire service vessels;
- align the exemptions with the new definition of tender vessel contained in Part B, General Requirements, of the National Standard for Commercial Vessels (NSCV);
- create more flexibility around the definition of existing vessel and the treatment of existing vessels being upgraded or modified, or which change operations or operational area;
- implement a new 'high risk' list, which identifies those vessels which are not eligible for non-survey status; and
- remove overlaps between the exemptions.

Other minor changes to Exemption 2 have been made which align terms used in the exemption with other instruments. For example, the definitions of fast craft and inshore operations have been aligned with Part B of the NSCV.

In addition, further changes to Exemption 3 have been made which exempt certain low risk vessels from the requirement to hold a Certificate of Operation.

Consultation on the proposed changes was undertaken online, and six submissions were received. All issues raised by stakeholders through the submissions are identified in this report, together with a response to each issue. It is emphasized that the comments contained in this report have been made by stakeholders, and do not necessarily reflect the views of the National Regulator.

The responses contained in this report reflect the views of the National Regulator and provide an overview of the way forward on each issue, including through amendments to the draft new exemptions. This report is divided into the four exemptions being amended. Comments not directly relevant to the four exemptions are contained in Chapter 5.

All of the revised exemptions will commence on 1 July 2016.

## 1. Exemption 1 (Vessel identifiers) 2016

### 1.1 Proposed changes

During the Streamlining Review of the National System for Domestic Commercial Vessel Safety, stakeholders suggested that tenders and auxiliary vessels be subject to the same treatment. As a result of this feedback, the issue was considered as part of a review of Part B of the NSCV, and a new definition of tender vessel was developed.

The proposed changes to Exemption 1 involve aligning the arrangements for tender and auxiliary vessels with the new definition of tender included in NSCV Part B.

The new definition of tender vessel included in Part B of the NSCV, and in the draft new Exemptions 1, 2 and 3, incorporates auxiliary vessels. As such, there is no longer any separate definition of auxiliary vessel in Part B or these instruments.

### 1.2 Comment: unique identifiers for tenders

One stakeholder noted that, for multi vessel operators such as the ones in the Tourism industry, it is not uncommon to have a fleet of vessels operating one tender each. Where an issue arises with a tender, which takes it out of service, a substitute tender is often sourced from another vessel within the operation. This then makes the “Tender to” identifier incorrect.

The stakeholder proposed that all allowance be made for these arrangements, by allowing for an identifier to read “Tender to Company Name”, followed by a specific identification number for each tender vessel.

#### Response

Exemption 1 has been amended to allow tenders to display:

- the words ‘Tender to’ followed by the name or unique identifier of its parent vessel; or
- the name of the owner of the vessel followed by the word ‘tender’; or
- the unique identifier of its parent vessel followed by ‘– T’.

Note that tenders can also obtain their own unique identifier, instead of meeting one of the above options.

## 2. Exemption 2 (Certificates of Survey) 2016

### 2.1 Proposed changes

There are four areas of proposed change to Exemption 2.

#### New non-survey arrangements for Scheme R and fire service vessels

Under the proposal, Scheme R and fire service vessels which are less than 12m in length, that operate only in sheltered (D and E) waters and which do not carry passengers, will be able to elect to be 'non-survey' vessels under the draft new Exemption 2. These vessels must comply with the National Standard for General Safety Requirements for Vessels, and declarations as to the vessels compliance must be completed when the vessel enters into service and yearly after that. The annual declarations must be kept in the safety management system that applies to the vessel.

Note that 'passengers' do not include volunteer personnel on board the vessel or rescued persons.

Note also that the grandfathering arrangements for standards and survey requirements continue for Scheme R and fire service vessels that are already in operation.

Importantly, the definition of VMR vessel contained in the draft new Exemption 2 was the same definition which was included in the draft new *Exemption 24 (Emergency services vessels) 2016* (Exemption 24). As a result of feedback received during consultation on Exemption 24, this definition was changed in both Exemption 24 and Exemption 2.

Similarly, changes were made to the definition of fire service organisation and fire service vessel as a result of feedback on Exemption 24. The definitions included in the final Exemption 2 have been aligned with the final Exemption 24.

#### Tenders and auxiliary vessels

As outlined above, a new definition of tender vessel was developed as part of the review of NSCV Part B. The proposed changes to Exemption 2 include aligning the arrangements for tender and auxiliary vessels with the new definition of tender included in NSCV Part B.

The new definition of tender vessel incorporates auxiliary vessels. As such, there is no longer any separate definition of auxiliary vessel in Exemption 2.

#### Changes to the definition and treatment of existing vessels

The proposed changes to the definition of 'existing vessel' address problems with the previous definition and implement policies identified in the 2012 *Regulatory Plan for domestic commercial vessels and their crew under the Maritime Safety National Law*.

Under the proposed new definition, and the new provisions included in Schedule 1, Division 5, of Exemption 2:

- the National Regulator can determine that a vessel which was out of service for longer than 2 years prior to 30 June 2013, is an existing vessel;
- the National Regulator can determine that an existing vessel which is altered, modified, or changes operations or area of operations, can continue to be treated as an existing vessel under Exemption 2. Where this occurs, the National Regulator can apply conditions to the determination; and
- an existing vessel which leaves commercial service for a 2 year period or longer will not be treated as an existing vessel if it re-enters commercial service (unless the National Regulator determines otherwise).

### New 'high risk' list

The 'high risk' list is used to subject vessels with certain 'high risk' attributes, such as carrying dangerous goods, being able to operate at high speeds or having a large deckload, to survey or to more onerous survey requirements than those which would otherwise apply to the vessel.

During the Streamlining Review, stakeholders submitted that there was a need to review the list of 'high risk' vessel attributes, in particular to reconsider the lifting or slewing potential criteria, the three tonne cut-off for cranes, the treatment of barges and the definition of fast craft. Stakeholders felt that the previous 'high risk' list did not capture some very risky operations, and yet did capture some relatively low risk operations.

The proposed new high risk list included in the draft Exemption 2 is shown in the following table, together with the current high risk list. Note that changes were made to the proposed high risk list as a result of comments received – see sections 2.3 – 2.8 below.

Current high risk list	Proposed high risk list
<p>High risk vessels are:</p> <ul style="list-style-type: none"> <li>▪ a powered barge that is: <ul style="list-style-type: none"> <li>- used to carry dangerous goods, including bulk petroleum or gas products;</li> <li>- used for living or entertainment;</li> <li>- used to operate a pile frame;</li> <li>- equipped with a crane or davit exceeding 3 tonne capacity;</li> <li>- equipped with dredging machinery having a total brake power of 500kW;</li> <li>- a landing barge;</li> <li>- primarily used for towage;</li> </ul> </li> <li>▪ a dredge with a total brake power of &gt;500kW or that is &gt;24 m measured length;</li> <li>▪ a vessel primarily used for towage;</li> </ul>	<p>High risk vessels are:</p> <ul style="list-style-type: none"> <li>▪ powered landing barges;</li> <li>▪ vessels which have a net reel, deck load, crane or lifting device the use of which the National Regulator has determined will have a detrimental effect on the stability or watertight integrity of the vessel;</li> <li>▪ vessels intended for towage operations as their primary operation;</li> <li>▪ vessel which carry Dangerous Goods, other than petroleum or gas products intended for use on the vessel;</li> <li>▪ support vessel in the offshore oil and gas industry;</li> <li>▪ vessels with an inboard petrol engine (except for personal watercraft);</li> <li>▪ fast craft; and</li> <li>▪ overnight hire and drive vessels.</li> </ul>

Current high risk list	Proposed high risk list
<ul style="list-style-type: none"> <li>▪ a vessel used for carrying dangerous goods, including bulk petroleum or gas products;</li> <li>▪ a vessel with a crane or davit exceeding 3 tonne capacity;</li> <li>▪ a support vessel in the offshore oil industry;</li> <li>▪ a vessel operating more than 5 nautical miles off the mainland;</li> <li>▪ overnight hire and drive; and</li> <li>▪ Class 4 personal watercraft.</li> </ul>	

## 2.2 Comment: marina tenders

One stakeholder asked whether the new NSCV Part B definition of tender was intended to include vessels that are not tenders to a parent vessel, provided the vessel carries no more than 12 people and operates in a marina or mooring area.

### Response

Yes, the new definition of tender vessel was intended to capture marina tenders, and tenders which operate to and from vessel moorings.

## 2.3 Comment: vessels operating more than 5nm offshore

One stakeholder noted that vessels operating more than 5nm offshore are no longer considered to be 'high risk'. This is of significance in Western Australia as the D operational area extends off Scarborough / City Beach approximately 24km from the mainland coast (15nm).

### Response

No changes have been made to the proposal.

The '5nm limit' had only limited impact, as generally D and E waters do not extend beyond 5nm (and non-survey vessels are limited to D and E waters). Removing the 5nm limit creates parity between operations as the operational area is determined by the designation of waters only. D and E waters have been designated in accordance with Part B of the NSCV, which includes requirements for wave height, wind pressure and distance from the shoreline and rescue facilities.

Concerns regarding the operation of specific non-survey vessels can be managed through the non-survey approval process and/or the Certificate of Operation application process, both of which allow operating conditions to be applied to the approval.

## **2.4 Comment: vessels which carry fireworks for use**

One stakeholder asked whether a vessel carrying fireworks for use on the vessel is a high risk vessel, due to the capture of vessels carrying dangerous goods as 'high risk'.

### Response

Exemption 02 has been amended to provide that fireworks intended for use on the vessel for a fireworks display are not dangerous goods.

## **2.5 Comments: powered landing barges**

One stakeholder submitted that that there had been a reduction in the number of powered landing barges operating due in part to the compliance costs associated with powered landing barges being classified as a 'high risk' vessel. The stakeholder noted that the stability risk characteristics varied with powered landing barges depending on the design and area of operation, and submitted that an assessment should be made as to what types of powered landing barges should be captured by the 'high risk' list.

### Response

This element of the high risk list has been amended to capture any landing barge the National Regulator has determined that the design or use of is likely to adversely affect its stability.

## **2.6 Comments: inboard petrol engines**

It was submitted that the risks associated with inboard petrol engines, including risks of fire and explosion, vary and are related to the engine technology used. The stakeholders supported treating these risks through the standard applied to the vessel (for example, through the the NSCV), rather than including inboard petrol engines in the 'high risk' list.

### Response

No changes have been made to the proposal.

Prior to the commencement of the National Law in 2013, vessels with inboard petrol engines were prohibited in a number of States and Territories, and the NSCV was silent as to their regulation. Since 2013, AMSA has undertaken significant consultation on the appropriate treatment of vessels with inboard petrol engines. The requirement for these vessels to undergo survey represents a balance between the competing views on the issue, and survey also provides an important mitigation to the risks of petrol inboards. Vessels with inboard petrol engines remain 'high risk' for the purposes of Exemption 02, and are not eligible for the non-survey arrangements (except for personal watercraft).

## **2.7 Comment: vessels with deck loads and net reels**

Fishing industry stakeholders raised concerns regarding the proposed treatment of vessels with deck loads or net reels which pose a risk to the stability of the vessel as 'high risk'.

### Response

No changes have been made to the proposal.

Fishing vessels with high deck loads and net reels have been involved in a number of fatalities since 2013, with coroners' recommending that such vessels be subject to survey. These changes to the high risk list also align the requirements for Class 3 (fishing) vessels with those which already apply to Class 2 (non-passenger) vessels.

A determination by the National Regulator will specify what deck loads and net reels will cause a vessel to be 'high risk' for the purposes of Exemption 02. The determination will take into account the size of the vessel as compared to the size of the deck load and net reel.

## **2.8 Comment: fast craft**

Concerns were raised regarding the definition of 'fast craft' and the exclusion of these vessels from the non-survey category.

### Response

Exemption 02 has been amended so that fast craft are not considered to be 'high risk' for the purposes of Exemption 02. This means that new fast craft may be eligible for the non-survey category, provided the other requirements are met.

## **2.9 Comment: low risk vessels carrying passengers**

A number of stakeholders submitted that some low risk vessels carrying passengers should also be eligible for the non-survey category.

### Response

Exemption 02 has been amended to include vessels <7.5m in sheltered waters, which carry up to four passengers and which are not high risk, in the non-survey category.

## **2.10 Comment: treatment of existing vessels**

One stakeholder queried how the changes to the definition of existing vessel outlined in the explanatory note had been implemented, as they were not reflected in the definition.

## Response

The changes to the treatment of existing vessels which provide more flexibility for the National Regulator to determine that a vessel which has been out of service for longer than 2 years, or which was out of service for longer than 2 years prior to 30 June 2013, is an existing vessel, are included in the existing vessel definition. See the words: “or in another period determined by the National Regulator”.

The changes to the treatment of existing vessels which provide more flexibility for the National Regulator to determine how an existing vessel which is altered, modified, or changes operations or area of operations, is treated, are included in Schedule 1, Division 5, of Exemption 2. See conditions 3 and 4.

### **2.11 Comment: existing vessels which move jurisdictions**

One stakeholder asked whether a vessel that was not required to hold a Certificate of Survey prior to 1 July 2013 could now move operational areas / jurisdictions under the proposal, without losing its grandfathered status.

## Response

The changes allow the National Regulator to consider what requirements would be appropriate for a grandfathered vessel which seeks to move, or change the way it operates. For example, it may be appropriate to recognise the standard to which the vessel was built (for example, the USL Code), but require the vessel to obtain a Certificate of Survey.

The proposal allows for the policy outlined in the 2012 Regulatory Plan to be implemented. The Regulatory Plan stated:

If the vessel seeks to change its operations, is modified, or seeks to move its geographic area of operation, the existing survey arrangements will not be grandfathered and it will be reassessed under the NSCV. The assessment process will consider the risks of the vessel to identify safety gaps arising from any non-compliance with the national standards. This will include consideration of the vessel’s survey regime, and whether any alteration of the survey regime will be required to address risks.

### **2.12 Comment: survey requirements for existing vessels**

One stakeholder asked whether an existing vessel should be required to comply with the “survey” requirements that applied to the vessel on 30 June 2013.

## Response

Existing vessels which were subject to survey prior to 1 July 2013 are not eligible for Schedule 1, Division 5 of Exemption 2. These arrangements only apply to existing vessels which were not required to hold a Certificate of Survey prior to 1 July 2013.

### 3. Exemption 3 (Certificates of Operation) 2016

#### 3.1 Proposed changes

As outlined above, a new definition of tender vessel was developed as part of the review of NSCV Part B. The proposed changes to Exemption 3 include aligning the arrangements for tender and auxiliary vessels with the new definition of tender included in NSCV Part B.

The new definition of tender vessel incorporates auxiliary vessels. As such, there is no longer any separate definition of auxiliary vessel in Exemption 3.

In addition, the minimum crewing requirements for tender vessels have been amended to provide more flexibility to the National Regulator. Under the proposal, the National Regulator determines the appropriate minimum crewing for tender vessels.

No comments were received on this proposal.

Exemption 03 has also been amended to implement a new exemption from the Certificate of Operation requirement for the following vessels:

- Class 2 and 3 vessels which are <7.5m, operate in sheltered (D or E) waters, do not carry passengers and are not 'high risk';
- recreational training vessels <7.5m in inshore waters;
- human powered vessels;
- sail craft <7.5m with no auxiliary engine or an auxiliary engine  $\leq 3.5\text{kW}$ ;
- Class 2 and 3 personal watercraft; and
- vessels affiliated with Yachting Australia, Surf Lifesaving Australia, the Australian Waterski Federation and similar organisations in inshore waters.

Vessels which perform poorly during an inspection, audit or other compliance activity may be required to obtain a Certificate of Operation.

'High risk' vessels are:

- powered landing barges the design or use of which the National Regulator has determined will have a detrimental effect on the stability of the vessel;
- vessels which have a net reel, deck load, crane or lifting device the use of which the National Regulator has determined will have a detrimental effect on the stability or watertight integrity of the vessel;
- vessels intended for towage operations as their primary operation;
- vessel which carry Dangerous Goods, other than:
  - petroleum or gas products intended for use on the vessel; and
  - fireworks carried only for use on the vessel for the purposes of fireworks display;
- support vessels in the offshore oil and gas industry;
- vessels with an inboard petrol engine (except for personal watercraft);
- fast craft;
- hire and drive vessels which operate before sunrise or after sunset (including overnight hire and drive vessels); and
- any other vessel the National Regulator determines is high risk.

Note that there are some differences between the 'high risk' lists in Exemption 02 and Exemption 03. These differences reflect the different certificates involved – some risks are appropriately managed through survey, while others are better managed through operational conditions.

## **4. Exemption 5 (Tender and auxiliary vessels) 2016**

### **4.1 Proposed changes**

The proposal involve repealing Exemption 5, so that the arrangements for tender and auxiliary vessels are covered under Exemptions 1, 2 and 3 only. This removes duplication between the exemptions and simplifies the arrangements.

### **4.2 Comments**

All comments received were supportive of this proposal, as a means of simplifying the regulations.

## 5. Other comments

This chapter identifies comments received that were not directly relevant to Exemptions 1, 2, 3 or 5.

### 5.1 Compass adjustments

One stakeholder submitted that three yearly compass adjustments were costly and not required. The compasses are never significantly out, and the compass is no longer a prime requirement for navigation. In remote areas, paying for a compass adjuster to travel is costly.

#### Response

As part of the 2014-2015 Streamlining Review of the National System, compass adjustment requirements were reduced for certain vessels operating in C, D or E waters. For many of these vessels, masters, owners or operators of the vessel can conduct an annual compass swing themselves, with compass adjustments required only in certain circumstances. See Generic Equivalent Solution GES 2015/2 for more information (<https://www.amsa.gov.au/forms-and-publications/fact-sheets/AMSA518.pdf>).

In regards to other vessels, the submission will be considered by the Vessel Safety Unit, which is responsible for looking at equivalent solutions to the requirements of National Standards.

## **Appendix A**

### **List of submissions received**

Brett McCallum and John Harrison, WA Fishing Industry Council

Department of Transport, Western Australia

Haydn Webb

Marine Safety Queensland

Roads and Maritime Services NSW

Travis Clarke, Quicksilver Cruises