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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) LEVY BILL 2018

**MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) LEVY COLLECTION
BILL 2018**

**MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) LEVY
(CONSEQUENTIAL AMENDMENTS) BILL 2018**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Regional Development, Territories and Local
Government, the Hon Dr John McVeigh MP)

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OUTLINE

The purpose of the Bills is to impose a levy on certain domestic commercial vessels. The Bills also address related matters, such as collection of the levy, and make changes to existing laws that are necessary as a result of the creation of this levy.

Background

Since 1 July 2013, the National System for Domestic Commercial Vessel Safety (national system) has regulated maritime safety requirements for 27,000 vessels and 66,000 seafarers under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*. Since the commencement of the national system, the states and Northern Territory have delivered national system services on behalf of the Australian Maritime Safety Authority (AMSA) as the National Marine Safety Regulator.

However, from 1 July 2018, AMSA will deliver all national system services, including the certification of vessels and seafarers and ensuring they comply with safety standards; the states and Northern Territory will cease delivery of services at this time. This change in service delivery arrangements will implement decisions of the Council of Australian Governments' Transport and Infrastructure Council and the Australian Government, and will realise safety, productivity and efficiency benefits by creating a truly national system.

The levy imposed by these Bills will ultimately recover AMSA's costs of delivering services under the National System for Domestic Commercial Vessel Safety (national system). No levy will be charged to industry in the first year of AMSA's service delivery to ensure fair and equitable treatment of all operators as charging arrangements are standardised and services transition across Australia. Levy charges will then increase gradually.

The levy will ultimately be AMSA's primary funding source for safety services under the national system, including development and maintenance of safety standards, safety education and support, compliance and enforcement activities, and administrative support.

New Acts of Parliament

The Bills will create two new Acts of Parliament.

The *Marine Safety (Domestic Commercial Vessel) Levy Act* will:

- impose an annual levy on defined vessels;
- define persons liable to pay this levy in respect of a leviable vessel; and
- provide that the Minister may make rules to set the amount of levy after seeking advice from the Australian Maritime Safety Authority (AMSA).

The *Marine Safety (Domestic Commercial Vessel) Levy Collection Act* will:

- define when the levy is due and payable for both full-year and pro-rata circumstances;
- provide that the levy may be paid by instalment;
- create a late payment penalty;
- address administrative matters including that the levy may be paid in advance and that overpayments of the levy, instalments of the levy, or penalties must be refunded;
- provide that the Minister may make rules about matters prescribed or required by this Act, and
- provide that the Minister may make rules about matters necessary or convenient to carry out or give effect to this Act.

The Bills will also amend existing laws:

- Amendments to the *Australian Maritime Safety Authority Act 1990* will expand existing provisions addressing payment of levies to AMSA to include payments under the new domestic commercial vessel levy to AMSA.
- Amendments to the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991* will clarify that leviable domestic commercial vessels are exempt from the Marine Navigation (Regulatory Functions) Levy.
- Amendments to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* will expand AMSA's existing powers to suspend or revoke certificates of survey or detain a domestic commercial vessel to allow AMSA to exercise these powers in response to non-payment of an amount or instalment of the new domestic commercial vessel levy.

Financial impact statement

AMSA's costs of delivering services under the national system from 1 July 2018 will be met through a combination of transition funding by governments, fees for services paid by individuals, and a gradual phasing in of this levy on Australia's domestic commercial vessel fleet. Costs and charging arrangements for AMSA's delivery of the national system have been agreed by the Australian Government and comply with the Australian Government Charging Framework.

Transition funding provided by governments will allow the levy for the national system to be phased in gradually to allow time for industry to adjust and prepare for changes to service delivery and charging arrangements. On 6 December 2017, the Transport and Infrastructure Council announced a \$102.4 million package to be provided jointly by the Commonwealth, states and Northern Territory. This package responds to industry feedback received through consultation in 2016 by increasing the level of government funding over the next 10 years from \$10 million to over \$100 million to support industry and ease transition to new arrangements.

No levy will be charged to industry in the first year of AMSA's service delivery to ensure fair and equitable treatment of all operators as charging arrangements are standardised and services transition across Australia. Levy charges will then increase gradually.

The levy will ultimately be AMSA's primary funding source for safety services under the national system, including development and maintenance of safety standards, safety education and support, compliance and enforcement activities, and administrative support.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Marine Safety (Domestic Commercial Vessel) Levy Bill 2018

Marine Safety (Domestic Commercial Vessel) Levy Collection Bill 2018

Marine Safety (Domestic Commercial Vessel) Levy (Consequential Amendments) Bill 2018

These Bills are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Legislative Instrument

The purpose of the Bills is to impose a levy on certain domestic commercial vessels. The Bills also address related matters, such as collection of the levy, and make changes to existing laws that are necessary as a result of the creation of this levy.

Background

Since 1 July 2013, the National System for Domestic Commercial Vessel Safety (national system) has regulated maritime safety requirements for 27,000 vessels and 66,000 seafarers under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*. Since the commencement of the national system, the states and Northern Territory have delivered national system services on behalf of the Australian Maritime Safety Authority (AMSA) as the National Marine Safety Regulator.

However, from 1 July 2018, AMSA will deliver all national system services, including the certification of vessels and seafarers and ensuring they comply with safety standards; states and the Northern Territory will cease delivery of services at this time. This change in service delivery arrangements will implement decisions of the Council of Australian Governments' Transport and Infrastructure Council and the Australian Government, and will realise safety, productivity and efficiency benefits by creating a truly national maritime safety regulator.

The levy imposed by these Bills will ultimately recover a portion of AMSA's costs delivering services under the National System for Domestic Commercial Vessel Safety (national system). No levy will be charged to industry in the first year of AMSA's service delivery to ensure fair and equitable treatment of all operators as charging arrangements are standardised and services transition across Australia. Levy charges will then increase gradually.

The levy will ultimately be AMSA's primary funding source for safety services under the national system, including development and maintenance of safety standards, safety education and support, compliance and enforcement activities, and administrative support.

New Acts of Parliament

The Bills will create two new Acts of Parliament.

The *Marine Safety (Domestic Commercial Vessel) Levy Act* will:

- impose an annual levy on defined vessels;

- define persons liable to pay this levy in respect of a leviable vessel; and
- provide that the Minister may make rules to set the amount of levy after seeking advice from the Australian Maritime Safety Authority (AMSA).

The *Marine Safety (Domestic Commercial Vessel) Levy Collection Act* will:

- define when the levy is due and payable for both full-year and pro-rata circumstances;
- provide that the levy may be paid by instalment;
- create a late payment penalty;
- address administrative matters including that the levy may be paid in advance and that overpayments of the levy, instalments of the levy, or penalties must be refunded;
- provide that the Minister may make rules about matters prescribed or required by this Act, and
- provide that the Minister may make rules about matters necessary or convenient to carry out or give effect to this Act.

The Bills will also amend existing laws:

- Amendments to the *Australian Maritime Safety Authority Act 1990* will expand existing provisions addressing payment of levies to AMSA to include payments under the new domestic commercial vessel levy to AMSA.
- Amendments to the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991* will clarify that leviable domestic commercial vessels are exempt from the Marine Navigation (Regulatory Functions) Levy.
- Amendments to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* will expand AMSA's existing powers to suspend or revoke certificates of survey or detain a domestic commercial vessel to allow AMSA to exercise these powers in response to non-payment of an amount or instalment of the new domestic commercial vessel levy.

Human rights implications

These Bills engage human rights without imposing unacceptable limitations.

The safety regulation of domestic commercial vessel activity is not new and regulation has occurred under state and territory legislation for some time. Owners and masters of domestic commercial vessels are aware that the safety requirements pertaining to domestic commercial vessels are subject to regulatory oversight, and by applying for permissions to operate as a commercial vessel they are implicitly accepting their compliance with the regulatory requirements will be monitored.

Penalty provisions in these Bills expand compliance requirements to include timely payment of the levy. The levy will ultimately be the primary source of funding for the regulation and provision of safety services by AMSA to Australia's domestic commercial vessel industries from 1 July 2018.

Marine Safety (Domestic Commercial Vessel) Levy Bill 2018

The Levy Bill engages Article 7 of the International Covenant on Economic, Social and Cultural Rights, which recognises the right of everyone to the enjoyment of just and favourable conditions of work, including safe and healthy working conditions.

The Levy Bill imposes a levy on defined domestic commercial vessels that will ultimately fund AMSA to deliver safety services to Australia's domestic commercial vessel industries under the national system, in combination with fees for services.

The levy will ultimately be AMSA's primary funding source for safety services under the national system, including development and maintenance of safety standards, safety education and support, compliance and enforcement activities, and administrative support.

On this basis, the Levy Bill is compatible with human rights and supports and protects the right to safe and healthy working conditions for Australia's domestic commercial vessel industries.

Marine Safety (Domestic Commercial Vessel) Levy Collection Bill 2018

The Collection Bill engages Article 14 International Covenant on Civil and Political Rights, which provides that every person shall have the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, and the right to be presumed innocent until proven guilty according to law.

The Collection Bill creates a penalty for late payment of the levy. Section 10 of the Collection Bill provides a range of safeguards to ensure the penalty is proportionate and does not unduly limit human rights, including that:

- the penalty is limited to 20 per cent per annum of the assessed levy;
- AMSA may remit the penalty if AMSA is satisfied a person did not contribute to the delay in payment or has taken reasonable steps to mitigate the causes of delay;
- should AMSA decide to refuse to remit all or part of a penalty in response to an application, AMSA must give written notice of the decision to the applicant; and
- applications may be made to the Administrative Appeals Tribunal for review of a decision of AMSA to refuse to remit all or part of a penalty.

Further, section 11 of the Collection Bill requires AMSA to pursue non-payment of the levy and/or late payment penalty through the courts. It is envisaged that pursuit of amounts of levy through the courts would only be a last resort, following failure of a range of other deterrents to non-payment that will be available¹ to AMSA, including show cause notices, suspension or revocation of safety certification, or detention of a vessel.

On this basis, the levy Collection Bill is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to the objective of protecting revenue to adequately fund AMSA to regulate and provide safety services to Australia's domestic commercial vessel industries.

Marine Safety (Domestic Commercial Vessel) Levy (Consequential Amendments) Bill 2018

The Consequential Amendments Bill also engages Article 14 International Covenant on Civil and Political Rights.

The Consequential Amendments Bill expands AMSA's existing powers to suspend or revoke certificates of survey under sections 41 and 42 of the *Marine Safety (Domestic Commercial*

¹ Expansion of AMSA's existing powers of under the national law to suspend or revoke certificates or detain domestic commercial vessels is addressed in explanatory notes on the *Marine Safety (Domestic Commercial Vessel) Levy Consequential Amendments Bill*.

Vessel) National Law Act 2012 (national law) to allow AMSA to exercise these powers in response to non-payment of an amount or instalment of the domestic commercial vessel levy.

However, the Bill also expands existing safeguards at section 72 of the national law, which require AMSA to issue a ‘show cause notice’ before suspending or revoking a certificate. This provision ensures certificate holders are given notice in writing that they are invited to show cause, within a reasonable period specified in the notice, why the certificate should not be suspended or revoked.

Further, existing safeguards under section 139 of the national law will be expanded to define decisions of AMSA to suspend or revoke a certificate in response to non-payment of the levy are as ‘reviewable decisions’ under the national law. This will allow applications to be made to AMSA and then, if required, the Administrative Appeals Tribunal to review such decisions. Similarly, the Consequential Amendments Bill also expands existing powers of marine safety inspectors to detain a domestic commercial vessel to allow these powers to be exercised in response to non-payment of an amount or instalment of the domestic commercial vessel levy.

The power to detain a vessel in response to non-payment of a levy is consistent with existing powers under the existing levy legislation that funds all AMSA’s activities promoting maritime safety and protection the marine environment. These powers are specified at:

- section 10 of the *Marine Navigation Levy Collection Act 1989*
- section 9 of the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991*
- section 12 of the *Protection of the Sea (Shipping Levy Collection) Act 1981*

The amendments ensure the power for a marine safety inspector to detain a vessel is proportionate and does not unduly limit human rights because the amendments also provide that a vessel is to be released from detention when the amount is paid.

Again, existing safeguards under section 139 of the national law will be expanded to define decisions of a marine safety inspector to detain a vessel in response to non-payment of the levy as ‘reviewable decisions’ under the national law, allowing applications to be made to AMSA and then, if required, the Administrative Appeals Tribunal to review such decisions. On this basis, the Consequential Amendment Bill is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to the objective of protecting revenue to adequately fund AMSA to regulate and provide safety services to Australia’s domestic commercial vessel industries.

Conclusion

These Bills are compatible with human rights because, to the extent that the Bills may limit rights to a fair hearing or the presumption of innocence, those limitations are reasonable, necessary and proportionate to the objective of protecting revenue to adequately fund AMSA to regulate and provide safety services to Australia’s domestic commercial vessel industries. Further, the objective of the Bills supports and protects the right to safe and healthy working conditions for Australia’s domestic commercial vessel industries.

**Minister for Regional Development, Territories and Local Government,
the Hon Dr John McVeigh MP**

NOTES ON CLAUSES

These notes explain clauses of the *Marine Safety (Domestic Commercial Vessel) Levy Act 2018*, the *Marine Safety (Domestic Commercial Vessel) Levy Collection Act 2018*, and the *Marine Safety (Domestic Commercial Vessel) Levy (Consequential Amendments) Act 2018*.

For clarity, these will be referred to as the Levy Act, the Levy Collection Act, and the Consequential Amendments Act.

Clause 1: Short Title

1. This is a formal provision that specifies:
 - i. the Levy Act may be cited as the *Marine Safety (Domestic Commercial Vessel) Levy Act 2018*;
 - ii. the Levy Collection Act may be cited as the *Marine Safety (Domestic Commercial Vessel) Levy Collection Act 2018*; and
 - iii. the Consequential Amendments Act may be cited as the *Marine Safety (Domestic Commercial Vessel) Levy (Consequential Amendments) Act 2018*.

Clause 2: Commencement

2. This clause sets out when parts of each Act enter into legal force:
 - i. the whole of the Levy Act would commence the day after the Levy Act receives Royal Assent.
 - ii. Clauses 3 to 20 of the Levy Collection Act and Schedule 1 of the Consequential Amendments Act commence at the same time the Levy Act commences because these clauses are necessary to give full effect to the levy imposed by the Levy Act. However, these clauses can only function effectively once the Levy Act commences. Accordingly, in the event the Levy Act did not commence, these interdependent clauses also would not commence.
 - iii. the remainder of the Levy Collection Act and the Consequential Amendments Act commence the day after those Acts receive Royal Assent;

SCHEDULE 1 – *Marine Safety (Domestic Commercial Vessel) Levy Act 2018*

Section 3 – Definitions

3. The items listed are defined for clarity, to give effect to the levy, or to align the levy with the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (national law). The national law provides the legal framework for the National System for Domestic Commercial Vessel Safety (the national system) which regulates safety for domestic commercial vessels.

‘*AMSA*’ means the Australian Maritime Safety Authority.

‘*certificate of survey*’ has the same meaning as in the national law.

‘*domestic commercial vessel*’ has the same meaning as in the national law.

‘eligible financial year’ means:

- (a) the financial year beginning on 1 July 2019, because this is when levy charging is expected to commence. As a result of transition funding by governments no levy will be charged during the financial year commencing 1 July 2018, when AMSA assumes full responsibility for the national system or
- (b) a later financial year, this refers to all years after the 2019-20 financial year.

‘leviable domestic commercial vessel’ has the meaning given by section 4 of the Levy Act.

‘Marine Safety (Domestic Commercial Vessel) National Law’ has the meaning given by section 17 of the national law.

‘National Standard for Commercial Vessels’ has the same meaning as in the national law.

‘owner’ of a vessel has the same meaning as in the national law.

‘partnership’ has the same meaning as in the national law.

‘trust’ has the same meaning as in the national law.

‘trustee’ has the same meaning as in the national law.

‘Uniform Shipping Laws code’ has the same meaning as in the national law.

‘vessel’ has the same meaning as in the national law.

Section 4 – Leviable domestic commercial vessel

4. This section creates a definition of ***‘leviable domestic commercial vessel’***, and creates a specific power for the Minister to make rules that exempt particular groups of vessels from this definition after consulting with AMSA.
5. In effect, this will mean any vessel defined as a ‘domestic commercial vessel’ under the national law will be liable to pay the levy unless the Minister creates an exemption.

Sections 5 and 6 – Extension to external Territories and extraterritorial operation

6. These clauses clarify the levy will apply to leviable domestic commercial vessels regardless of whether they are located in Australia, an external territory, or outside Australia.
7. This ensures vessels that will receive the benefits of regulation under the national system will accordingly pay their share of costs through the levy.
8. These sections ensure vessels cannot avoid their legal obligation to pay the levy by relocating away from Australia at the time the levy becomes payable, then return to Australia and enjoy the benefits of the national system without payment.

Section 7 – Act to bind Crown

9. This is a technical legal provision which defines how the levy will be applied to the Commonwealth, states and territories.
10. Some domestic commercial vessels may be used in connection with government activities. Such vessels will be liable to pay the levy, except where the Constitution precludes this. The Commonwealth cannot technically charge itself, so a provision for ‘notional payments’ will be created (see notes on clauses of the Collection Act).

Section 8 – Imposition of levy

11. This section provides that, in general, the levy will be imposed annually at the start of a financial year (on 1 July) in respect of the following 12 month period.
12. However, if a vessel becomes a leviable domestic commercial vessel part-way through a financial year, it will be liable to pay an amount of levy proportionate to the remainder of the financial year.
13. A vessel may not be a leviable domestic commercial vessel until after 1 July, when the levy would become payable, if:
 - i. it does not exist until after 1 July – for example, if a vessel under construction was completed after 1 July and then became a leviable domestic commercial vessel; or
 - ii. a vessel did not meet the definition of a leviable domestic commercial vessel until after 1 July – for example, if:
 - a vessel that was exempt from the levy on 1 July ceased to meet the criteria for that exemption, or
 - if a vessel did not meet the definition of a leviable domestic commercial vessel until after 1 July: for example, if a recreational vessel, such as a jet ski for purely private use, was later used in a commercial hire-and-drive setting, making it subject to regulation under the national system and liable to pay the levy.
14. If a vessel that pays the ‘pro-rata’ levy in a particular year is still a leviable domestic commercial vessel on 1 July of the following financial year, it would then be liable to pay the full-year levy.

Section 9 – Amount of levy

15. This section provides the Minister with a specific power to make rules to set, and later adjust, the rate of the levy. Which is consistent with similar levies, such as the Marine Navigation Levy and the Marine Navigation (Regulatory Functions) Levy.
16. Providing the Minister with power to set and adjust the rate of levy also creates flexibility for the rate of a levy to be adjusted in response to changing circumstances – for example, should an increase in efficiency of services warrant an adjustment.

17. This section also provides the formula for calculating the amount of a pro-rata levy if required, and specifies the amount calculated using this formula will be rounded to the nearest whole dollar.

Sections 9 and 10 – Advice by AMSA

18. Sections 9 and 10 together create a safeguard intended to ensure the levy charged to Australia’s domestic commercial vessel industry recovers the full cost of AMSA delivering the safety services and activities.
19. In effect, the Minister must seek and have regard to AMSA’s advice regarding appropriate cost recovery arrangements before making rules about the rate of levy.
20. This will ensure the levy charges remains appropriate over time, and can respond in a timely manner to changing circumstances such as the size of the domestic commercial vessel fleet, changes in demand for services, or changes in AMSA’s activity costs.
21. Section 10, Subsection (2) explicitly excludes from the calculation of levy any services or activities that are to be recovered by charging fees to individuals for services – for example, certification of vessel survey or seafarer certification. This ensures activity costs and charges under the levy and fees remain separate so that industry will not be charged twice for the same activity or service.
22. Section 10, subsections 4 and 5 empower the Minister to make rules to exclude activities or amounts of funding from the levy calculations. This is a critical mechanism that will allow implementation of transition funding arrangements announced by the Transport and Infrastructure Council on 6 December 2017. This mechanism will also allow the Minister to not charge the levy in the first year and then introduce levy charges gradually from 1 July 2019 by excluding the amount of government transition funding from levy calculations in each subsequent year.
23. These provisions will also provide flexibility for the Minister to respond to possible future events or policy changes by changing levy charges, as has occurred with similar levies.

Section 11 – Persons liable to pay levy

24. The domestic commercial vessel levy is imposed in respect of a vessel; however, a vessel cannot pay a levy. Consequently, this section defines the person or people liable to pay the levy in respect of a vessel.
25. Where a single person is responsible for a vessel – that is they are the sole owner of the vessel and, where relevant, the holder of that vessel’s certificate of survey under the national law – that person is liable to pay the levy.
26. Where multiple people are responsible for a vessel – this may include the holder of that vessel’s certificate of survey and one or more owners – those people are ‘jointly and severally’ liable to pay the levy.

27. Where a group of people are ‘jointly and severally’ liable to pay the levy, the levy can be recovered by imposing the charge on any individual, some of the group, or the entire group, depending on circumstances – for example, one owner may be exempt from liability to pay the levy.
28. For clarity, the joint and several liability provisions do not allow charges to be imposed multiple times; the total amount of levy payable in respect of a single vessel can only be recovered once per financial year. For example, where three people might be responsible for a vessel, the levy could be imposed on them as a group, any subset of the group, or any individual as appropriate. However, the full amount of levy could not be imposed three separate times on each of the three members of the group because this would recover three times more money than is appropriate for that vessel.

Sections 12 to 14 – Treatment of partnerships, unincorporated associations, and trusts with multiple trustees

29. These provisions clarify that where responsibility for a vessel is more complex – for example if a vessel is owned or partly owned by a company, association or trust – the levy is still imposed on that responsible party as if it was a person.
30. Any individual member of a partnership, committee of management for an association, or trustee may pay the relevant levy on behalf of their organisation.

Section 15 – Act does not impose a tax on property of a State

31. This section recognises Section 114 of Australia’s Constitution which prevents the Commonwealth from imposing any tax on property of any kind belonging to a State.
32. Consequently, this levy cannot be imposed to a vessel if that vessel meets the definition of ‘property of any kind belonging to a State’ under the Constitution. This can be a complex legal matter to test and individuals or organisations seeking to determine whether a particular vessel would be exempt from liability to pay the levy on this basis should seek legal advice.

Section 16 – Disallowance of certain rules

33. Where the Minister makes rules that impose an amount of levy (under subsection 9(2)), these do not take effect until both Houses of Australia’s Parliament have had opportunity over 15 sitting days to consider and potentially disallow the rules in accordance with parliamentary processes in accordance with section 42 of the *Legislation Act 2003*.

Section 17 – Incorporation of material

34. This section permits rules to be made to provide for any matters by applying, adopting or incorporating any matter contained in any written instrument including, but not limited to, the National Standard for Commercial Vessels (NSCV) and the Uniform Shipping Laws Code (USL Code). These documents have served as the foundation of the safety regulation framework for domestic commercial vessels since their introduction in 2002 and 1970 respectively. The NSCV and USL Code are readily and freely available on AMSA’s website: www.amsa.gov.au.

35. Use of this section is expected to be limited to Part B of the NSCV, which sets out key definitions and concepts – such as ‘operational area’, ‘service category’, and ‘measured length’ – that are familiar to industry and necessary for consistent and transparent calculation of the amount of levy payable in respect of a vessel. The ability to incorporate other material retains flexibility to respond to possible future changes, such as advances in safety or maritime technology.
36. This section presents a low risk of introducing retrospective laws. The NSCV and USL Code are longstanding foundation documents which are not expected to be subject to change in future. Additionally, should any unforeseen changes to material incorporated under this section be considered in future, the *Australian Maritime Safety Authority Act 1990* and the national law require AMSA to consult with any appropriate government authorities, persons, associations and organisations

SCHEDULE 2 – Marine Safety (Domestic Commercial Vessel) Levy Collection Act 2018

Section 3 – Simplified outline of the Act

37. This section provides a short summary of the Act to assist with accessibility:

Section 4 - Definitions

38. The items listed are defined for clarity, to give effect to the levy, or to align the levy with other legislation:

‘AMSA’ means the Australian Maritime Safety Authority.

‘eligible financial year’ has the same meaning as in the Levy Act.

‘Finance Minister’ means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

‘late payment penalty’ means the penalty imposed under this Act (see section 10).

‘legislative rules’ means rules made under this Act (see section 20).

‘leviable domestic commercial vessel’ has the same meaning as in the Levy Act.

‘levy’ means the levy imposed by the Levy Act.

‘Marine Safety (Domestic Commercial Vessel) National Law’ has the meaning given by section 17 of the national law.

‘partnership’ has the same meaning as in the national law.

‘trust’ has the same meaning as in the national law.

‘trustee’ has the same meaning as in national law.

Section 5 and 6 – Extension to external Territories and extraterritorial operation

39. Consistent with sections 5 and 6 of the Levy Act, these sections clarify the levy will apply to leviable domestic commercial vessels regardless of whether they are located in Australia, an external territory, or outside Australia.
40. This ensures vessels that will receive the benefits of regulation under the National System will accordingly pay their share of costs through the levy and cannot avoid this obligation by temporarily relocating outside Australia.

Section 7 – Act to bind Crown

41. This is a technical legal provision which defines how the levy will be applied to the Commonwealth, states and territories.
42. Some domestic commercial vessels may be used in connection with government activities. Such vessels will be liable to pay the levy, except where the Constitution precludes this. The Commonwealth cannot technically charge itself, so a provision for ‘notional payments’ will be created (see notes on Section 15 of this Act).

Sections 8 and 9 – when full-year and pro-rata levy are due and payable

43. These sections define the timeframe in which persons liable to pay the levy must make payment.
44. Where a person pays a full-year levy, this amount of levy becomes due and payable at the end of 28 July of the relevant financial year. In effect, this provides four weeks for the levy to be paid, noting that under the Levy Act, the levy is generally imposed at the start of a financial year on 1 July.
45. Similarly, where a pro-rata levy applies, this becomes payable 28 days after the vessel becomes a leviable domestic commercial vessel.
46. The Minister may make rules to allow individuals and groups to elect to pay the levy in quarterly instalments instead of a single annual payment. This will provide flexibility to businesses and assist them in managing their cash flow by allowing them to elect the levy payment frequency that suits their circumstances.

Section 10 – Late payment penalty

47. This section creates a late payment penalty if the levy payment, whether a full payment or an instalment, has not been paid by the due date. The purpose of the penalty is to encourage timely payment of the levy and thereby ensure funding certainty for AMSA’s provision of safety services to Australia’s domestic commercial vessels.
48. The Minister may make rules to specify the penalty rate per annum noting it must not exceed 20 percent on the amount unpaid.
49. This section also creates a range of safeguards to ensure the penalty is proportionate and implemented fairly, including the power to remit the late payment penalty.

50. However, if AMSA decided to refuse to remit all or part of a penalty in response to an application, AMSA must give written notice of the decision to the applicant; and applications may be made to the Administrative Appeals Tribunal for review of a decision of AMSA to refuse to remit all or part of a penalty.

Section 11 – Recovery of levy and late payment penalty

51. This section clarifies that the levy charges, instalments of levy charges, and late payment penalties are all technically debts to the Commonwealth.

52. Consequently, AMSA may recover these amounts through Australia’s court system if necessary. However, this option is expected to be used as a last resort. AMSA will have a range of other powers it may exercise in response to non-payment of levy, including suspension or revocation of a vessel’s certificate of survey, or detention of that vessel.

Section 12 – Assessments

53. This section allows AMSA to make and amend assessments in writing of the amount of levy imposed on a leviable domestic commercial vessel. Such an assessment must be provided as soon as practicable to a person liable to pay the levy.

54. Where an assessment is produced as part of a civil proceeding, such as a review of a decision or court process, the document is to be presumed to be genuine. In such a proceeding, should a party claim that an assessment is incorrect, that party is responsible for proving their claim.

Section 13 – Advance on account of levy

55. The levy may be paid in advance, including in increments. If more levy is paid than will be owed, AMSA must refund any excess.

Section 14 - Refund of overpayments

56. If an amount or instalment of levy or a late payment penalty are overpaid, AMSA must refund any excess.

Section 15 - Notional payments by the Commonwealth etc.

57. This is a technical provision to allow AMSA to charge the levy to other Commonwealth entities where those entities are responsible for leviable domestic commercial vessels, unless that entity is an untaxable Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013*. This mechanism is required because the Commonwealth cannot technically charge itself.

58. As required, the Finance Minister may make rules to give effect to this intent.

Sections 16 to 18 – Treatment of partnerships, unincorporated associations, and trusts with multiple trustees

59. Similar to the Levy Act, these provisions clarify that where responsibility for a vessel is more complex the levy is still imposed on all responsible parties as if they are people.
60. Any individual member of a partnership, committee of management for an association, or trustee may pay the relevant levy on behalf of their organisation.

Sections 19 – Delegation

61. In accordance with section 58 of the *Australian Maritime Safety Authority Act 1990*, AMSA may delegate any power conferred on AMSA by the Levy Collection Act or legislative rules made under the Levy Collection Act to members of AMSA's staff.
62. AMSA requires this ability to delegate powers within the limits of its workforce to be able to operate effectively and deliver services to the 27,000 domestic commercial vessels around and across Australia.
63. Powers are expected to be delegated appropriately to specific, expert offices within AMSA through an instrument of delegation signed by AMSA's Chief Executive Officer. For example, the power to detail a vessel is expected to be delegated to marine safety inspectors, while the power to make written assessments of amounts of levy payable and the power to refund an amount of levy are expected to be delegated to administrative officers.
64. Additionally, the Chief Executive Officer's delegation instrument is expected to: set minimum qualifications, training and experience requirements for delegates specific to each power and function; set conditions and requirements to be satisfied by a delegate when exercising a power; and be supported by AMSA governance policies and processes to ensure delegates understand how to exercise powers appropriately and consistently.

Section 20 – Legislative rules

65. This section empowers the Minister to make rules about matters prescribed or required by the Levy Collection Act, or matters necessary or convenient to carry out or give effect to the Levy Collection Act, including refunds and powers conferred on AMSA.
66. Subsection 20(2) outlines what the legislative rules may not do, such as creating an offence or civil penalty or imposing a tax.
67. For clarity, the domestic commercial vessel levy will be imposed by the Levy Act. The Levy Collection Act, the Consequential Amendments Act, and legislative rules will not 'impose' taxation; rather, they will perform separate but related legal functions such as prescribing the amount of levy, or when and how the levy is to be paid.

SCHEDULE 3 – Marine Safety (Domestic Commercial Vessel) Levy (Consequential Amendments) Act 2018

Section 3 - Schedules

68. This is a formal clause that provides that other Acts will be amended as specified and set out in Schedule 1 of the Consequential Amendments Act

Schedule 1 – Amendments

Australian Maritime Safety Authority Act 1990

69. These clauses will expand the existing provisions of the *Australian Maritime Safety Authority Act 1990* that address payment of existing levies to AMSA to include payments under the new domestic commercial vessel levy to AMSA.

Marine Navigation (Regulatory Functions) Levy Collection Act 1991

70. These clauses clarify that leviable domestic commercial vessels are exempt from the Marine Navigation (Regulatory Functions) Levy.

71. This is appropriate because regulatory services for domestic commercial vessels will be provided under the national system, rather than under AMSA’s current suite of services, so should not be charged both levies.

72. However, for clarity, should a leviable domestic commercial vessel also be liable to pay the Marine Navigation Levy or the Protection of the Sea Levy, they will pay these levies in addition to the domestic commercial vessel levy.

Marine Safety (Domestic Commercial Vessel) National Law Act 2012

73. These clauses will expand AMSA’s existing powers to suspend or revoke certificates of survey or detain a domestic commercial vessel to allow AMSA to exercise these powers in response to non-payment of an amount or instalment of the new domestic commercial vessel levy.

74. Encouraging timely payment of the levy is critical to ensure effective ongoing funding of AMSA’s provision of safety services to Australia’s domestic commercial vessels.

75. Accordingly, an escalating series of disincentives to late payment or non-payment of levy has been designed comprising a late-payment penalty, issue of a show cause notice, suspension or revocation of a vessel certificate, detention of a vessel, or pursuit of non-payment as a civil matter through Australia’s court system.

76. Stronger sanctions are designed primarily to serve as a disincentive and are expected to be exercised infrequently as a last resort.

77. As previously outlined, each sanction contains inbuilt safeguards. All decisions by AMSA or its staff are reviewable, including if required through the Administrative Appeals Tribunal or courts. Additionally, individuals will receive timely advice of when levy payments will become due and payable, and must be issued a show cause notice before AMSA could exercise its power to suspend or revoke a certificate.
78. AMSA's staff are already appropriately trained, qualified and empowered to exercise these powers in response to other contraventions of the national law. AMSA staff are also trained, qualified and empowered to detain international ships in response to non-payment of the marine navigation, regulatory functions and protection of the sea levies.
79. The Chief Executive Officer's delegation instrument is expected to empower appropriate experts within AMSA to exercise these powers. That instrument is expected to: set minimum qualifications, training and experience requirements for delegates specific to these powers and functions; set conditions and requirements to be satisfied by a delegate when exercising these powers; and, be supported by AMSA governance policies and processes to ensure delegates understand how to exercise the powers appropriately and consistently.