

## EXPLANATORY STATEMENT

### Select Legislative Instrument 2013 No. 97

Issued under the authority of the Minister for Infrastructure and Transport

*Marine Safety (Domestic Commercial Vessel) National Law Act 2012*

*Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*

The *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the Act) creates a new National Law for the regulation of domestic commercial vessel safety and establishes the Australian Maritime Safety Authority (AMSA) as the National Marine Safety Regulator (the National Regulator). The policy basis for the National Law derives from the Council of Australian Government (COAG) Inter-governmental Agreement on Commercial Vessel Safety Reform (the IGA), which was signed on 19 August 2011. The Act forms part of the national transport reform package, which is intended to improve safety and reduce the regulatory burden and costs on the Australian rail, heavy vehicle and maritime industries.

Paragraph 6(2)(a) of the Act provides for regulations to prescribe laws of a State or Territory as laws relating to marine safety that can continue to apply to domestic commercial vessels.

Subsection 159(1) of Schedule 1 to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the National Law) provides that the Governor-General may make regulations necessary or convenient for carrying out or giving effect to the National Law.

Subsection 163(1) of the National Law provides that for certain matters, if subordinate legislation is required, regulations and not Marine Orders must be made. For the purposes of this regulation, these matters include the definitions of ***domestic commercial vessel*** and ***vessel***.

Subsection 165(3) of the National Law provides that certain provisions of the National Law may be modified by regulation, with the provisions then having effect as if they were modified.

Subsection 165(4) of the National Law provides that the regulations may provide that a specified identifier (such as a vessel registration number), document, licence, certificate or exemption (however described) issued, whether before or after the commencement of the National Law, under a law of a State or the Northern Territory is taken to be a specified identifier, document, licence, certificate or exemption issued under the National Law, subject to such requirements and modifications as are prescribed.

This Regulation along with the Marine Orders implements the National Law. In particular, the Regulation will do the following:

- Prescribe for paragraph 6(2)(a) of the Act, provisions of laws of Queensland that will continue to apply to marine surveyors. Marine surveyors in Queensland are not employed by a Government agency, as they are in all other jurisdictions. This provision will provide a continuing legislative basis for acceptance of their reports in deciding whether to issue certificates of survey.

- Also prescribe for paragraph 6(2)(a) specific provisions of State laws, as well as any laws dealing with requirements for qualifications for hirers of hire and drive vessels, dealing with marine safety for domestic commercial vessels, that will be able to operate along with the National Law.
- prescribe for the definition of *domestic commercial vessel*:
  - (a) the circumstances when a vessel, owned by a prescribed kind of community group or school, will be considered a domestic commercial vessel; and
  - (b) the circumstances when a volunteer search, rescue, or search and rescue vessel will be considered a domestic commercial vessel; and
  - (c) the circumstances when a vessel is not to be considered a domestic commercial vessel.
- prescribe for the definition of *vessel* the kind of thing that is, and is not, a vessel.
- provide the transitional requirements for:
  - (a) an identifier that been issued or assigned by an agency of a State or the Northern Territory before commencement of the National Law and the display of the vessel identifier; and
  - (b) a certificate of survey that has been applied for, or issued by the Commonwealth, a State or the Northern Territory, before commencement of the National Law and the conditions to which the certificate is subject; and
  - (c) a certificate of operation that has been applied for, or issued by a maritime safety authority of the Commonwealth, a State or the Northern Territory, before commencement of the National Law and the conditions, requirements and limitations to which the certificate is subject, including display requirements; and
  - (d) a certificate of competency that has been applied for, or issued by a maritime safety authority of a State or the Northern Territory, before commencement of the National Law, and the conditions and requirements to which the certificate is subject; and
  - (e) approval of training organisations.

Further details of the Regulation are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Office of Best Practice Regulation was consulted in the development of this regulation and a Regulation Impact Statement exemption was granted on 25 July 2012 (reference 14031).

The proposed Regulation commences on 1 July 2013, to coincide with the commencement of the Act.

Authority: Subsection 159(1) of the

*Marine Safety (Domestic  
Commercial Vessel)  
National Law Act 2012*

**Consultation**

A draft of the proposed instrument was placed on the AMSA external website for public comment. Consultation has been undertaken on the development of this instrument with the states and the Northern Territory, including through the Standing Council on Transport and Infrastructure (SCOTI), the Transport and Infrastructure Senior Officials Committee (TISOC) and the Maritime Agencies Forum. On 9 November 2012, SCOTI unanimously agreed to the text of the Regulation made for subsections 7(4) and (5) of the National Law as is required under subsection 159(6) of the National law.

**Documents incorporated by reference**

This instrument refers to:

- (a) National Standard for Commercial Vessels; and
- (b) National Standard for the Administration of Marine Safety.

## **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) National Law Regulation 2013***

This Legislative Instrument is 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 Legislative Instrument**

The Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013 will:

- Prescribe the kinds of community groups whose vessels will not be considered domestic commercial vessels, subject to prescribed restrictions on purposes and activities for use of the vessels;
- Prescribe vessels that are or are not domestic commercial vessels, and clarify what things are or are not vessels for the purposes of the national system; and
- Include transitional arrangements in relation to the holding of certificates of competency, unique identifiers, certificates of survey and certificates of operation, and for approval of training organisations.
- Prescribe, for paragraph 6(2)(a) of the Act, provisions of laws of Queensland that will continue to apply to marine surveyors and specific provisions of State laws, as well as any laws dealing with requirements for qualifications for hirers of hire and drive vessels, dealing with marine safety for domestic commercial vessels, that will be able to operate along with the National Law. Marine surveyors in Queensland are not employed by a Government agency, as they are in all other jurisdictions. The scope of this provision is to allow for existing state arrangements to continue to apply once the National Law comes into effect. This provision will provide a continuing legislative basis for acceptance of their reports in deciding whether to issue certificates of survey. These laws, and the others being prescribed, were previously subject to parliamentary debate and we will not be introducing new legislation through this means.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Minister for Infrastructure and Transport, the Hon Anthony Albanese MP**

## **ATTACHMENT**

### **Details of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013***

#### **Part 1 Preliminary**

##### **Section 1 – Name of Regulation**

Section 1 sets out the title of the Regulation which is the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*.

##### **Section 2 – Commencement**

Section 2 provides for the regulation to commence on 1 July 2013, to coincide with the commencement of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

##### **Section 3 – Authority**

Section 3 provides for the Regulation to be made under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

##### **Section 4 – Definitions**

Section 4 sets out the definitions necessary for the interpretation of the legislative instrument.

##### **Section 5 – Relationship with State and Territory laws**

Subsection 6(1) of the Act provides that the Act overrides any State or Territory law relating to the same matters of marine safety for domestic commercial vessels provided in the Act. However, the Act was not intended to exclude any application or mirror legislation enacted in a State and Territory.

Section 5 prescribes, for paragraph 6(2)(a) of the Act, the application Laws of the National Law for New South Wales (item 1), Victoria (item 3), South Australia (item 14), Tasmania (item 17) and the Northern Territory (item 18) so that they are not excluded from operation by the Act. Section 5 does not yet include laws for Queensland or Western Australia as they have not yet introduced application legislation. The Australian Maritime Safety Authority is working separately with those States to provide for administration of the National Law until their application legislation is made.

Section 5 also prescribes for paragraph 6(2)(a) of the Act, provisions of laws of Queensland (at items 8 and 9 of the table) that will continue to apply to marine surveyors and specific provisions of State laws, as well as any laws dealing with requirements for qualifications for hirers of hire and drive vessels, dealing with marine safety for domestic commercial vessels, that will be able to operate along with the National Law. Marine surveyors in Queensland are not employed by a Government agency, as they are in all other jurisdictions. This provision will provide a continuing legislative basis for acceptance of their reports in deciding whether to issue certificates of survey.

## **Part 2            National Law**

### **Division 2.1   Definitions**

#### Section 6 – Definition of *domestic commercial vessel* – prescribed community groups

For the purposes of subparagraph 7(3)(d)(ii) of the National Law, section 6 prescribes a kind of community group. If a vessel is owned by a community group as described in subsection 6(2), that vessel is not a domestic commercial vessel under the National Law.

#### Section 7 – Definition of *domestic commercial vessel* – prescribed purposes for use of vessel

Section 7 prescribes the purposes under paragraph 7(4)(a) of the National Law, that will capture a vessel owned by a school or community group as a domestic commercial vessel, even though the vessel is excluded from the definition in paragraph 7(3)(d) of the National Law.

#### Section 8 – Definition of *domestic commercial vessel* – prescribed activities for use of vessel

Section 8 prescribes the activities under paragraph 7(4)(b) of the National Law, that will capture a vessel owned by a school or community group as a domestic commercial vessel, even though the vessel is excluded from the definition in paragraph 7(3)(d) of the National Law.

#### Section 9 – Definition of *domestic commercial vessel* – things that are domestic commercial vessels

Section 9 clarifies that a volunteer search, rescue or search and rescue vessel is considered to be a domestic commercial vessel under paragraph 7(5)(a) of the National Law unless it is a surf lifesaving vessel operating in sheltered waters or within two nautical miles of the low water mark.

#### Section 10 – Definition of *domestic commercial vessel* – things that are not domestic commercial vessels

Section 10 clarifies under paragraph 7(5)(b) of the National Law when a vessel is not a domestic commercial vessel. These circumstances include when a vessel is being sponsored during a sporting event or if a vessel is being operated by a paid crew. Subject to subsection 10(2), vessels owned by state and territory sporting bodies under paragraph 10(1)(c) are also not considered to be domestic commercial vessels.

#### Section 11 – Definition of *vessel* – things that are vessels

Section 11 specifies the things that fall within the definition of vessel for the purposes of paragraph 8(3)(a) of the National Law. Seven types of vessel are specified.

## Section 12 – Definition of vessel – things that are not vessels

Section 12 specifies the things that do not fall within the definition of vessel for the purposes of paragraph 8(3)(b) of the National Law. There are 15 types of things specified that might be used as craft, but are excluded.

## **Division 2.2 Transitional matters**

Division 2.2 relies on section 165 of the National Law, to provide for a transition from current State and Territory administrations to administration by the National Regulator. In particular, it uses the power in subsection 165(3) to modify the effect of certain provisions of the National Law so that current identifiers and certificates can be recognised for a transitional period.

## Section 13 – Definitions for Division 2.2

Section 13 provides a definition for ‘increased level of risk’ that is necessary for the interpretation of the Division 2.2.

## Section 14 – Unique identifiers

Subsection 14(1) set out the definitions necessary for the interpretation of section 14.

Subsection 14(2) will provide for the purposes of subsection 165(4) of the National Law, that an old identifier issued or assigned by an agency of a state or the Northern Territory before 1 July 2013 is taken to be a unique identifier issued by the National Regulator.

Subsections 14(3) and (4) provide for the purposes of subsection 165(3) of the National Law, that sections 34 and 35 of the National Law are modified, so that, (i) an old identifier may continue to be displayed on the outside of the vessel if it is being displayed in accordance with a State or Northern Territory law at time of issue; or (ii) an old identifier, displayed otherwise than on the outside of the vessel, may continue to be displayed for three years after commencement provided it is displayed in accordance with a State or Northern Territory law at time of issue. An old identifier issued to a fishing vessel, which would be removed from the vessel if ownership of the vessel or fishing licence was transferred, or the fishing licence ceased, is not a unique identifier for the purposes of the Regulation.

## Section 15 – Certificates of survey

Subsection 15(1) sets out the definitions necessary for the interpretation of section 15.

Subsection 15(2) provides for the purposes of subsection 165(4) of the National Law that a certificate of survey applied for, or issued by the Commonwealth, a State or the Northern Territory, before 1 July 2013, is taken to be a certificate of survey issued by the National Regulator. The old certificate of survey is taken to be a new certificate of survey until three years after commencement, unless the vessel or its operation changes before then or the certificate expires in that period.

Subsection 15(3) provides for the purposes of subsection 165(3) of the National Law, that section 38 of the National Law is modified, so when a vessel has been issued with an old certificate of survey in force, the operator must continue to comply with the conditions applying at time of issue, and either (i) the survey requirements applying at time of issue, or (ii) demonstrate compliance with the conditions or requirements of



section 4 of the National Standards for the Administration of Marine Safety, published by the National Marine Safety Committee. Transitional requirements of subsection C7A of the National Standard for Commercial Vessels also apply.

Subsection 15(5) provides for the purposes of subsection 165(3) of the National Law, that section 38 of the National Law is modified, so that a certificate of survey remains in force for a vessel issued with an old certificate of survey, the trigger date as defined under subsection 2.3(1); or for any other vessel, the day specified in the certificate.

#### Section 16 - Certificates of operation

Subsection 16(1) sets out the definitions necessary for the interpretation of section 16.

Subsection 16(2) provides for the purposes of subsection 165(4) of the National Law that a certificate of operation applied for, or issued by the maritime safety authority of the Commonwealth, a State or the Northern Territory, before 1 July 2013, is taken to be a certificate of operation issued by the National Regulator. The old certificate of operation is taken to be a new certificate of operation until three years after commencement, unless the vessel or its operation changes before then or the certificate expires in that period.

Subsection 16(3) provides for the purposes of subsection 165(3) of the National law, that section 48 of the National Law is modified, so that when a vessel has been issued with an old certificate of operation in force, the operator must continue to comply with the conditions, requirements and limitations applying at time of issue. A class 4 vessel (hire and drive vessel) must comply with operational requirements mentioned for a class 4 vessel in Part F of the National Standard for Commercial Vessels from 1 year after commencement.

Subsection 16(5) provides that for subsection 165(4) of the National Law, a certificate of operation must be displayed in a prominent manner, unless it is impractical to do so.

#### Section 17 – Certificates of competency

Subsection 17(1) set out the definitions necessary for the interpretation of section 17.

Subsection 17(2) provides for the purposes of subsection 165(4) of the National Law that an old certificate of competency applied for, or issued by a maritime safety authority of a State or Northern Territory, before 1 July 2013, is taken to be a new certificate of competency issued by the National Regulator. The old certificate of competency is taken to be a new certificate of competency until it would have expired under state or Northern Territory law.

Subsection 17(3) provides for the purposes of subsection 165(3), that section 60 of the National Law is modified, so that when a certificate of competency has been applied for, or issued by a maritime safety authority of a State or Northern Territory, before commencement, the certificate is subject to the conditions and requirements applying at time of issue.

Section 18 – Approved training organisations

Subsection 18(1) set out the definitions necessary for the interpretation of section 18.

Subsection 18(2) provides for the purposes of subsection 165(4) of the National Law that an old approval of a training organisation by a maritime safety authority of a State or the Northern Territory given before 1 July 2013 is taken to be an approval given under the National Law. The old approval is taken to be a new approval only until 3 years after commencement or before then if it would have expired under State or Northern Territory law.