

**EXPLANATORY STATEMENT**  
**SELECT LEGISLATIVE INSTRUMENT NO. 167, 2014**

Issued by the authority of the Minister for Infrastructure and Regional Development

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

*Marine Safety (Domestic Commercial Vessel) National Law  
Amendment (Surveyor Accreditation) Regulation 2014*

The *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the Act) establishes the cooperative scheme between the Commonwealth, the States and the Northern Territory that provides for a single national framework for ensuring the safe operation, design, construction and equipping of domestic commercial vessels. Schedule 1 to the Act establishes the Australian Maritime Safety Authority (AMSA) as the National Regulator for domestic commercial vessels, general safety duties of persons, certification requirements, a system in which to conduct compliance and enforcement and provides for the consistent application of nationally agreed standards.

Sub-section 159(1) of the Act provides that the Governor-General may make regulations. Section 160 provides that the regulation may prescribe matters relating to accreditation and approval, including, but not limited to the accreditation of persons to perform roles prescribed by regulations.

The proposed *Marine Safety (Domestic Commercial Vessel) National Law Amendment (Surveyor Accreditation) Regulation 2014* (the Regulation) would amend the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* (the Principal Regulations).

The Regulation provides for a national accreditation scheme for the validation and registration of marine surveyors. It is an offence to operate a vessel without a certificate of survey. Marine surveyors create survey reports which provide an assessment as to whether a vessel meets the various technical standards and is fit to operate in Australian waters. A survey report is then reviewed by the National Regulator to decide whether to issue a vessel with a survey certificate.

The national accreditation scheme is a mechanism through which the AMSA, as the National Regulator, ensures that marine surveyors are competent to conduct and provide reports of surveys of domestic commercial vessels. These reports form part of the basis for the issuing of certificates of survey specified in Division 2 of Part 4 of the Act.

The Regulation provides for a diverse range of surveyor accreditation categories to encourage as many suitably qualified people as possible to seek accreditation within their field of competence. The Regulation also provides for the on-going development of a guidance manual by AMSA. This guidance provides surveyors with clarity and confidence as to AMSA expectations of accredited surveyors.

The Regulation also provides for:

- a simplified cost-neutral approach, by allowing existing government and private marine surveyors to renew their accreditation and continue to work;
- a straightforward route for new government surveyors into the accreditation scheme based on existing state and territory delegates' recruitment and employment practices;
- a straightforward route for new private surveyors to achieve accredited status;
- robust and transparent governance mechanisms including audit, centrally coordinated to ensure the quality of the work accredited surveyors produce in order to ensure the integrity of the scheme.

In developing the Regulation AMSA consulted extensively with industry, regulators from various state and territory maritime agencies and representative bodies, including the Australian Institute of Marine Surveyors, the International Institute of Marine Surveying, the Royal Institute of Naval Architects, and the Boating Industry Alliance Australia. A draft of the instrument was placed on the AMSA external website for public comment and all comments were considered and amendments made to address issues raised.

Details of the Regulation are set out in the Attachment. The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 2 January 2015.

## **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 Amendment (Surveyor Accreditation) Regulation 2014**

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 proposed Regulation would provide for a national accreditation scheme for the validation and registration of marine surveyors. It is an offence to operate a vessel without a certificate of survey. Marine surveyors provide survey reports which assess whether a vessel meets the various technical standards and is fit to operate in Australian waters. A survey report is then reviewed by the Australian Maritime Safety Authority (AMSA) as the National Marine Safety Regulator (the National Regulator) to decide whether to issue a vessel with a survey certificate.

The proposed Regulation would provide for a diverse range of surveyor accreditation categories to encourage as many suitably qualified people as possible to seek accreditation within their field of competence. The proposed Regulation would also provide for the development of a guidance manual by AMSA. This guidance would provide surveyors with clarity and confidence as to AMSA's expectations of accredited surveyors.

#### **Human rights implications**

The Bill engages the following rights:

- The right to protection from arbitrary or unlawful interferences with privacy in Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR); and
- The right to a fair hearing in Article 14 of the ICCPR.

#### Right to protection from arbitrary or unlawful interferences with privacy

Section 22 of Schedule 1 of the proposed Regulation details the information required in an application for accreditation, including professional qualifications and evidence of the applicant's ability to survey vessels. Section 23 of Schedule 1 provides that the National Regulator may require the applicant to provide further information, conduct a survey or attend an interview. Section 29 of Schedule 1 provides for the publication of registered surveyors' names.

Because they authorise the collection, storage, use and publication of personal information (being a person's name, for example), Sections 22, 23 and 29 engage the right to protection from arbitrary or unlawful interferences with privacy. However, the Regulation also contains appropriate safeguards which ensure that the right is permissibly limited. The personal information requested under the proposed

Regulations is solely for the purpose of determining who the applicant is and assessing an applicant's ability to perform the tasks of an accredited surveyor. The information provided is essential for the National Regulator to be able to accredit competent surveyors. Information will not be disclosed to any third party, outside of the independent technical expert sitting on the accreditation panel. Furthermore, an applicant will be given the opportunity to oppose the selected independent technical expert. Should the independent technical expert be opposed, an alternative person will be sought.

Any further information provided under Section 23 is only in relation to the application. Furthermore, only the National Regulator may witness the applicant conducting a survey or conduct an interview in relation to an application process.

Section 29 of Schedule 1 provides that the National Regulator will keep a public register of accredited marine surveyors. The Register will include the names of registered surveyors' and survey categories only. The purpose of the Register is to assist industry members in identifying accredited marine surveyors. The Register will not include any personal information of the accredited surveyor which is not directly relevant to that person's work as a surveyor. The accredited surveyor will be made aware of the information that will be publicly provided on the National Regulator website.

Storage of information will be to the standards outlined in the Australian Government Policy and Risk management guidelines for the storage and processing of Australian Government information in outsourced or offshore ICT arrangements provided by the Attorney General's Department. All information collected for the purpose of assessing whether an applicant is to be accredited to perform the role of a surveyor will be confidential and stored appropriately. Personal information is subject to the *Privacy Act 1998* (the Privacy Act) and bound by the Australian Privacy Principles in the Privacy Act which regulate how entities may collect, use, disclose and store personal information, and how individuals may access and correct personal information held about them.

The overall aim of the proposed Regulation is to provide a standardised mechanism for the professional accreditation of marine surveyors, and to ensure that those who perform this important public function, which contributes to the safety outcomes of the National Regulator, are the appropriate persons to do so. The National Regulator will heavily rely on the professional advice of accredited surveyors as to whether a vessel meets the applicable safety, design, construction and equipment standards when determining whether or not to issue a vessel with the certification required to operate. This aim is a legitimate one for the purposes of the ICCPR, and it is compatible with the aims and goals of the ICCPR. The provisions relating to the disclosure of personal information are therefore reasonable, necessary and proportionate to achieving the aim of the proposed Regulation. Therefore, the Regulation does not authorise any arbitrary interferences with personal privacy, and complies with the requirements of Article 17 of the ICCPR.

#### Right to a fair hearing

As the accreditation process set out in the Regulation determines an individual's right to be employed as an accredited surveyor, it may engage the right under article 14(1) of the ICCPR, to a fair hearing in the determination of one's legal rights and obligations.

All first time applicants will be required to undertake a panel assessment. This process will assess the stated qualifications and competence against the requested categories of accreditation. The panel process will be a fair and open process which will consist of at least one National Regulator Standards Team representative, a delegate representative, and appropriate independent technical person(s) who have been appointed to the panel by the National Regulator. The panel will make a formal recommendation to the National Regulator regarding the applicant's suitability for accreditation. To ensure a fair and open process, all interviews conducted by the accreditation panel as part of the assessment process will be recorded for use by the National Regulator and any appeals processes. As part of the formal interview process, the panel member(s) may require the applicant to undertake a witnessed survey of a vessel.

Sections 47 to 49 of Schedule 1 of the proposed Regulations set out which decisions relating to the surveyor accreditation are reviewable and the internal review process. The reviewable decisions include a decision to refuse accreditation of a person to perform the role of a marine surveyor, and a decision to refuse to renew, vary, suspend or revoke an accreditation.

Where an applicant or accredited marine surveyor applies for a review of decision, the National Regulator will review that decision by a person not originally involved and senior to that of the original decision maker. Should the applicant or accredited marine surveyor be unsatisfied with that final outcome, the decision is a reviewable one under the Administrative Appeals Tribunal, an independent appeals body.

Therefore, the accreditation process set out in the proposed Regulation includes appropriate protections to ensure that applicants for accreditation have the opportunity to respond to information or issues which may be relevant to their application, and to allow applicants to seek review of significant decisions affecting them. These protections are consistent with the requirements of Article 14(1) of the ICCPR.

### **Conclusion**

This Legislative Instrument is compatible with human rights as, to the extent that it limits human rights, those limitations are reasonable, necessary and proportionate, and pursue a legitimate objective.

**Warren Truss**

**Minister for Infrastructure and Regional Development**

**Details of the proposed *Marine Safety (Domestic Commercial Vessel) National Law Amendment (Surveyor Accreditation) Regulation 2014***

**Legislative Authority**

Sub-section 159(1) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the Act) provides that the Governor-General may make regulations. Section 160 provides that the regulation may prescribe matters relating to accreditation and approval, including, but not limited to the accreditation of persons to perform roles prescribed by regulations.

The Act also includes other provisions that provide specific authorities for matters to be prescribed in regulations. These authorities are specified in the particular regulation amendment in this explanatory statement.

**Purpose**

The Regulation amends the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* (the Principal Regulations) to provide for a national accreditation scheme for marine surveyors. This scheme provides the basis for ensuring that survey reports about domestic commercial vessels are adequate to issue certificates of survey for domestic commercial vessels under Division 2 of Part 4 of the Act.

**Public consultation**

In developing the Regulation, the Australian Maritime Safety Authority (AMSA) consulted extensively with industry, regulators from various state and territory maritime agencies and representative bodies, including the Australian Institute of Marine Surveyors, the International Institute of Marine Surveying, the Royal Institute of Naval Architects, and the Boating Industry Alliance Australia. The development of the measures was informed by a reference group of industry, state and Northern Territory maritime agencies and professional bodies.

**Regulatory Impact Analysis**

The Office of Best Practice Regulation was consulted and advised that no further regulatory impact analysis was required (ID 2013/14864).

**Disallowance of Regulation**

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

**Documents incorporated by reference**

The Regulation incorporates the *National Law—Marine Surveyors Accreditation Guidance Manual 2014*, prepared by the National Regulator, as in force from time to time. As is required by Section 20 of the Regulation, the AMSA is required to publish this document on the AMSA website.

## **Details of the Amendment Regulation**

### Section 1 – Name of Regulation

*Marine Safety (Domestic Commercial Vessel) National Law Amendment (Surveyor Accreditation) Regulation 2014*

### Section 2 – Commencement

This section would provide for the Regulation to commence on 2 January 2015.

### Section 3 – Authority

Section 3 would state the authority under which the regulation is made, specifically the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

### Section 4 - Schedules

Section 4 provides for the amendments mentioned in the Schedule to be made as set in the Schedule.

### Schedule 1 – Amendments to the Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013

#### **Items 1 and 2 – Part 2 Heading and new Part 3**

These items would rename Part 2 of the Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013 and include a Part 3 which provides for a scheme for the accreditation of marine surveyors for the purposes of the Act.

#### **Division 3.1 – Preliminary**

This division would include a new Section 19 that provides for definitions used throughout the Regulation. As a transparency measure, new Section 20 would require the Australian Maritime Safety Authority (AMSA) as the National Regulator to publish any incorporated material on the AMSA website: <http://www.amsa.gov.au>.

New Section 21 would list the categories of surveying that may be accredited under the Act. The categories were determined through various reference group meetings, industry liaising and in-house analysis. A diverse range of categories would be provided for to encourage as many suitably qualified people as possible to seek accreditation within their particular field of competence.

#### **Division 3.2 – Accreditation**

This division would provide for the means through which a person may apply to the National Regulator for accreditation as a marine surveyor, and how the National Regulator must assess the application and if satisfied, accredit the person.

Section 22 would detail the information required in an application for accreditation, including professional qualifications and evidence of the applicant's ability to survey vessels. Section 22 would also provide for the development of a guidance manual by

AMSA to assist private surveyors in determining AMSA's expectations of accredited surveyors, and encourage private surveyors to consider seeking accreditation.

Section 23 would allow for the National Regulator to request further information, including the requirement to conduct a witnessed survey or attend an interview. If an applicant fails or refuses to provide further information, the National Regulator may decline to consider the application until the information is provided.

Section 24 would require the National Regulator to accredit an applicant if the criteria set out in Sections 22 and 25 have been met. Similarly, if the National Regulator believes it is necessary to do so, an accreditation may be granted with limitations or conditions. This section would provide flexibility within the scheme. In addition to allowing for operation within fields of partial competence (under the appropriate circumstances), it would allow for work-experience and on- job-training. Specifically, this section would be targeted at encouraging students, trainees and apprentices to apply for accreditation.

Section 25 would specify the criteria for the issue of accreditation. These criteria include whether the applicant has appropriate capabilities, appropriate experience and appropriate qualifications. The criteria detail what these capabilities, experience and qualifications are to assist applicants to address these issues in any application.

Section 26 would provide that an accreditation comes into force on the day specified in the accreditation document or, if no day is specified, on the day on which that document is issued and remains in force for a period of 5 years. As a result of public consultation, a 5 year cycle was considered appropriate, taking into account the administrative burden of renewal on the applicant and processing demands for the National Regulator. A time frame of 90 days within receipt of a complete application would be specified for the National Regulator to notify an applicant of the outcome. Similarly, consultation with stakeholders identified a time frame of 90 days (3 months) as being an appropriate amount of time to process an application, organise a panel interview, conduct a panel interview, make a decision and notify the applicant. An audit scheme would be put in place to monitor ongoing compliance with the requirements (see Section 45 below).

Section 27 would detail the evidence of accreditation. Specifically, evidence would be provided through the issue of an accreditation document and identification card. Both items will include the following:

- the person's name and photograph;
- unique identification number;
- category(s) of surveying in which the person is accredited to perform;
- expiration of the accreditation.

The accreditation document (certificate) would also detail any limitations or conditions which may have been placed upon the accreditation. These details would align with the information held on the National Regulator database. Renewal and variation of accreditation would be reflected in these documents as necessary.

Section 28 would detail the requirements for the renewal of accreditation. The process of renewal would reflect the comments from consultation that renewal would involve a simplified form which would require the accredited person to demonstrate they are still qualified to continue in the scheme. Continual professional



development, acceptable audits and proof of on-going work would all be considered positive indicators of competency. This time frame aligns with the 90 day administrative period for applications.

To ensure qualifications and experience are still up-to date and relevant, Section 28 provides that a period of no more than twelve months could lapse after expiration of an accreditation before a new application must be submitted. An application for renewal must be lodged 3 months prior to expiration to allow enough time for administrative processes.

Section 29 would provide that a register of accredited marine surveyors must be kept by AMSA and made publicly available on the AMSA website: <http://www.amsa.gov.au>. This was agreed following public consultation, in the reference group and supported through industry feedback. This would facilitate ease for industry when seeking a surveyor under the National System.

### **Division 3.3 – Conditions of accreditation**

For paragraphs 161(1)(b), (2)(b), (3)(b) and (4)(b) of the Act, the following conditions are prescribed.

Section 31 would provide that an accredited marine surveyor must not perform a function for which they are not accredited.

Section 32 would specify the standards to which an accredited marine surveyor must conduct a survey. The standards consist of the *National Standard for Commercial Vessels* (NSCV), the *National Standard for the Administration of Marine Safety* (NSAMS), the *Uniform Shipping Laws* and various Marine Orders.

Section 33 would place an obligation on an accredited marine surveyor to report to the National Regulator when explicit non-conformities on a vessel are identified and the safety of a vessel and its passengers could be jeopardised as a result. This reporting obligation would facilitate transparency and allow the National Regulator the opportunity to take a view on the circumstances and to initiate action to safeguard the vessel, its crew and passengers if it is necessary to do so. Section 33 would require that an accredited marine surveyor report matters of this nature so that data can be collated and instructions-to-surveyors published to create consistency of approach across the industry. The National Regulator intends to build a database of complex or novel matters which are not covered by the Standards and the obligation to report no-conformances would support that function.

Section 34 would require an accredited marine surveyor to notify the National Regulator about matters which could affect the surveyor's integrity or ability as a professional and/or alter their identity as reflected on their ID card and/or affect the National Regulator's ability to contact them.

Section 35 would require an accredited marine surveyor to provide information to the National Regulator which relates to the surveyor's accreditation. This would be required where the information has been requested in writing and would need to be provided within a reasonable timeframe of at least 5 days. Stakeholders were of the view that a minimum of 5 days would be an appropriate timeframe with which the National Regulator could expect the required information to be provided.

Section 36 would provide that when a surveyor makes a report to the National Regulator regarding a survey, that report must be in the specified form and be accompanied by all supporting documentation which has been referred to.

Section 37 would deal with conflicts of interest and is the result of extensive consultation and reflects the compromise reached between the varying positions of the States and Territory. Specifically, Queensland (QLD) has a system in place with good risk controls that allows for vessel designers to approve their own designs. This approach was advocated by QLD as being a low-risk activity that should be reflected in the national accreditation scheme. It was agreed that a conflict of interest would not necessarily exist for a marine surveyor who is accredited by the National Regulator in Initial Survey (plan approval) if it was their own design. However, it was also agreed that this marine surveyor should not conduct surveys during the build of the vessel or afterwards. All surveys done from the building stage would need to be completed by a different surveyor to ensure an independent consideration of the build.

Section 38 would provide that private marine surveyors must have professional indemnity insurance of at least \$1,000,000.00 in order to qualify for accreditation under the scheme. While this amount was identified as being low during consultation, given the varied nature of survey operations, this amount represents the best balance between all the surveying categories and recognises that a 'one size fits all' approach for professional indemnity insurance is not realistic.

While \$1,000,000.00 is the minimum stipulated in Section 38, it would be clearly articulated in the *National Law—Marine Surveyors Accreditation Guidance Manual 2014* that it 'remains the responsibility of the accredited person to determine the level of insurance appropriate to the nature of their operations. It would be expected that a marine surveyor will take out the level of cover which fully covers any incidentals that may arise during the course of survey operations.'

Section 39 would provide for identification of accredited marine surveyors that a surveyor must carry the identification with them, and produce upon request, their identification card to an owner or operator, when conducting a survey.

The design for the card would be different to the other cards produced and carried by AMSA employees and delegates. This would ensure that the card cannot be mistaken for a marine safety inspector (MSI) card. It is imperative that these roles are not mistakenly taken to be one and the same. The powers of an MSI are not afforded to an accredited marine surveyor and an accredited surveyor must not represent themselves as a MSI (see Section 93 of the Act).

Section 40 would provide that an accredited marine surveyor must keep records relating to their operations as a surveyor for a period of 7 years. Public consultation identified this as an appropriate amount of time. Records must be kept for the purpose of audits, which ultimately allow for quality checks of operations relating to survey.

Section 41 would provide for an accredited marine surveyor to surrender their accreditation by notifying the National Regulator, completing all outstanding work or nominate another suitably qualified surveyor to complete that work, fulfil any conditions for the accreditation and return the identification card. These requirements

would ensure minimal detriment to industry as it is considered imperative that an operator not be left ‘stranded’ if a surveyor decides to exit the scheme without adequate notice to operators that rely on these services.

### **Division 3.4 – Variation, suspension and revocation of accreditation**

Section 42 would provide for the National Regulator, either on its own initiative or upon application by an accredited marine surveyor, to vary an accreditation. This section would facilitate the intent of the scheme, which is to encourage the upskilling of accredited marine surveyors. If a surveyor completes further training and gains further skills which increase the scope of their accreditation, they will be encouraged to contact the National Regulator to have their accreditation varied. Similarly, if for any reason it becomes apparent to the National Regulator that an accredited marine surveyor is no longer competent in an aspect of their accreditation; a variation would be made to accommodate this.

Section 43 would provide for the National Regulator to suspend an accreditation. It is important for the integrity of the scheme that all accredited marine surveyors adhere to the conditions of their accreditation and the requirements in the Regulations. If a surveyor contravenes a condition of their accreditation, the National Regulator may suspend the accreditation. A decision to suspend an accreditation is a reviewable decision (see Section 47).

Similarly, an accredited marine surveyor may apply to the National Regulator in writing to have their accreditation voluntarily suspended for an agreed period of time. For example, this could be done in an instance where an accredited marine surveyor is taking a holiday for an extended period of time.

The National Regulator may, at any time, revoke the suspension of an accreditation.

Section 44 would provide for the National Regulator to revoke the accreditation of an accredited marine surveyor. If an accredited marine surveyor contravenes a condition of their accreditation, the National Regulator may revoke the accreditation. The integrity of surveys of domestic commercial vessels is a key component of the Australian maritime safety system and an accreditation may be revoked in the interest of safety. Any such decision made by the National Regulator would be a reviewable decision under Section 47 of these Regulations.

### **Division 3.5 – Audits and requests for information**

Section 45 would detail an audit scheme for monitoring accredited marine surveyors. In order to ensure the integrity of the scheme is being maintained the National Regulator may, at any time conduct an audit, or request that another person conduct an audit of an accredited marine surveyors records. Audits are designed to test and verify the functioning of the scheme and to determine if it is meeting its stated goals.

Section 46 would provide that the National Regulator may request information pertaining to the surveyor’s accreditation.

### **Division 3.6 – Review of decisions**

Sections 47, 48 and 49 would provide for internal review and review by the Administrative Appeals Tribunal of the decisions specified in Section 47. Section 142 of the Act is the authority for providing that these decisions are reviewable decisions.