**EXPLANATORY STATEMENT**

**SELECT LEGISLATIVE INSTRUMENT NO. 205, 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 (School Vessels) 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. Section 9 of Schedule 1 of 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 prescribing matters required or permitted by this Law to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this law.

The *Marine Safety (Domestic Commercial Vessel) National Law Amendment (School Vessels) Regulation 2014* (the Regulation) amends the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* (the Principal Regulations).

Section 7 of Schedule 1 of the Act establishes the definition of a domestic commercial vessel. Subsection 7(3)(d)(i) of Schedule 1 of the Act provides that a school owned vessel is not a domestic commercial vessel for the application of the Act. Subsection 7(4) of Schedule 1 of the Act provides that school owned vessels may be captured by the Principal Regulations when used for purposes or activities that cause the vessel to operate in competition with domestic commercial vessels. Paragraph 7(5)(b) of Schedule 1 of the Act states the regulations may provide that a specified thing, or a thing included in a specified class, is not a domestic commercial vessel.

Vessels owned by an agency of the government of a State or Territory and used by a school for curricular or extra-curricular activities for students of a primary or secondary school are currently exempt from the operation of the Act under the *Marine Safety (School vessels) Exemption 2013* (AMSA EX2013/19). Item 1 of the Regulation provides that these vessels are not domestic commercial vessels for the same purposes and activities as AMSA EX2013/19, therefore allowing the exemption to be repealed.

As required by the terms under Intergovernmental Agreement on Commercial Vessel Safety Reform, in November 2013 the then Standing Council on Transport and Infrastructure (SCOTI) unanimously agreed to amend the vessel capture provisions of the Principal Regulations to exempt school vessels from the Act, subject to public consultation. SCOTI’s agreement to insert the exemption into the form of the Regulation is a technical amendment and does not alter the scope or application of the regulatory scheme.

Vessels which are not domestic commercial vessels will continue to be subject to State and Territory laws and regulations dealing with marine safety. Workplace health and safety laws of the States and Territories will continue to apply to all vessels.

Item 2 of the Regulation corrects a drafting error under Subsection 16(4)(b)(i) of the Principal Regulations which should refer to Subsection 16(1) as the ‘trigger date’ for the certificate of operation instead of Subsection 14(1).

In developing the Regulation AMSA consulted extensively with industry, regulators from State and Territory maritime agencies and representative bodies. A draft of the Regulation was placed on the AMSA external website for public comment and one comment was received and clarified with the stakeholder following the consultation period. There was no need to amend the Regulation as a result of the submission 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 (School Vessels) 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 Regulation would amend the Marine Safety (Domestic Commercial Vessel) National Law Regulations 2013 (Principal Regulations) to provide that vessels owned by a State or Territory Government and used for providing curricular or extra-curricular school activities for students at primary and secondary schools are not considered domestic commercial vessels for the purposes of Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the Act).

To meet the publicly expressed intention that such vessels are not treated as domestic commercial vessels under the Act, the Australian Maritime Safety Authority (AMSA) issued the Marine Safety (School vessels) Exemption 2013 (AMSA EX2013/19) in June 2013.

School vessels are currently exempt from the Act under AMSA EX2013/19, made under Subsection 143(1), Power of Exemption, of the Act.

As required by terms under Intergovernmental Agreement on Commercial Vessel Safety Reform, in November 2013, the then Standing Council on Transport and Infrastructure (SCOTI) unanimously agreed to amend the vessel capture provisions of the Principal Regulations to exempt school vessels from the Act, subject to public consultation. SCOTI’s agreement to insert the exemption into the form of the Regulation is a technical amendment in nature and does not alter the scope or application of the regulatory scheme.

The vessels to be excluded from the operations of the Act are those owned by an agency of the government of a State or Territory and used by a primary or secondary school for the purposes of curricular and extra-curricular activities.

Vessels which are not domestic commercial vessels, such as school vessels, will continue to be subject to State and Territory laws and regulations dealing with marine safety. Workplace health and safety laws of the States and Territories will continue to apply to all vessels.

The Regulation mirrors AMSA EX2013/19 and, maintains the current regulatory requirements as they apply to school vessels.

**Human rights implications**

School vessels are currently exempt from the operation of the National Law under AMSA EX2013/19. The amendment to mirror AMSA EX2013/19 in the Regulation will not in practice have any effect on human rights as this change codifies the existing regulatory requirements that apply under AMSA EX2013/19.

**Conclusion**

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

**Warren Truss**

**Minister for Infrastructure and Regional Development**

**ATTACHMENT**

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

**Legislative Authority**

Paragraph 7(5)(b) of Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the Act) provides that the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* (Principal Regulation) may provide that a specified thing, or a thing included in a specified class, is not a domestic commercial vessel. Sub-section 159(1) of the Act provides that the Governor‑General may make regulations.

**Purpose**

The *Marine Safety (Domestic Commercial Vessel) National Law Amendment (School Vessels) Regulation 2014* (the Regulation) amends the Principal Regulations to mirror the regulatory requirements currently provided for in the *Marine Safety (School vessels) Exemption 2013*. This exemption was made for Section 143 of the Act.

The Regulation provides that vessels owned by an agency of the government of a State or Territory and used by a school for curricular and extra-curricular activities for students of a primary or secondary school are not domestic commercial vessels for the purposes of the Act.

The Regulation corrects a drafting error in Subsection 16(4)(b)(i) of the Principal Regulations by replacing the incorrect reference of Subsection 14(1) with Subsection 16(1) as the ‘trigger date’ for the certificate of operation.

**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. A draft of the Regulation was placed on the AMSA external website for public comment and one comment was received and clarified with the stakeholder following the consultation period. There was no need to amend the Regulation as a result of the submission raised.

**Regulatory Impact Analysis**

The Office of Best Practice Regulation was consulted and advised that placing the exemption for school vessels into the Principal Regulation has a minor regulatory impact on business, individuals and community organisations and does not require a Regulation Impact Statement (ID 2014/17298).

**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 does not incorporate any documents by reference.

**Details of the Amendment Regulation**

Section 1 – Name of Regulation

Section 1 sets out that the title of the Regulation is the *Marine Safety (Domestic Commercial Vessel) National Law Amendment (School Vessels) Regulation 2014*.

Section 2 - Commencement

Section 2 provides that the Regulation commences on 2 January 2015.

Section 3 - Authority

Section 3 states the authority under which the Regulation is made, specifically Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012.*

Section 4 - Schedules

Section 4 provides for the amendments mentioned in the Schedule.

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

**Item 1**

The Regulation inserts a new paragraph under regulation 10 of the Principal Regulations to specify that vessels owned by an agency of the government of a State or Territory and used by a school for curricular or extra-curricular activities for students of a primary or secondary school are not domestic commercial vessels for the purposes of the Act. The Regulation is inserted at Subsection 10(ba) of
Schedule 1 of the Principal Regulations. This means that the Act will not apply to these vessels.

**Item 2**

The Regulation corrects a drafting error under Subsection 16(4)(b)(i) of the Principal Regulations which should refer to Subsection 16(1) as the ‘trigger date’ for the certificate of operation instead of Subsection 14(1).