

EXPLANATORY STATEMENT

Issued by the Authority of the Deputy Prime Minister and Minister for Infrastructure and Transport

Marine Safety (Domestic Commercial Vessel) National Law Act 2012

*Marine Safety (Domestic Commercial Vessel) National Law Amendment
(Cost Recovery) Regulations 2018*

The *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the Act) established the Australian Maritime Safety Authority (AMSA) as the National Marine Safety Regulator for domestic commercial vessels (Schedule 1, section 9 refers).

The Act provides for a single national framework for ensuring the safe operation, design, construction and equipping of domestic commercial vessels.

Subsection 159(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 150(1) of the Act provides that AMSA may charge such fees as are prescribed by the relevant Regulations for activities carried out by AMSA under the Act. Paragraph 163(1)(c) of the Act clarifies that such fees may only be set out in Regulations and may not be set out in other legislative instruments, such as Marine Orders.

Since 1 July 2013, the states and the Northern Territory delivered safety services under the Act to domestic commercial vessels on behalf of AMSA.

From 1 July 2018, AMSA will take over all service delivery and cost recovery under the Act. This transition has been agreed by all governments through the Council of Australian Governments' Transport and Infrastructure Council.

Accordingly, the purpose of the *Marine Safety (Domestic Commercial Vessel) National Law Amendment (Cost Recovery) Regulations 2018* (the Regulations) is to prescribe fees to recover the cost of additional services AMSA will deliver under the Act from 1 July 2018. AMSA will be solely responsible for delivering these services.

Fees for managing accreditation of marine surveyors

AMSA is already empowered to charge fees for the issue and renewal of accreditation for marine surveyors. The Regulations will create additional fees for variation of accreditation and replacing lost or stolen accreditation cards.

Fees for issuing unique identifiers for vessels

The Regulations will create a fee for issuing unique identifiers for domestic commercial vessels.

Fees for managing certificates of survey and operation for vessels

The Regulations will create fees for applications for new certificates, to vary certificates, to suspend or revoke certificates, to renew certificates, and to replace certificates.

Fees for managing certificates of competency for vessels

The Regulations will create fees for applications for new certificates, to renew certificates, to replace lost or stolen certificates, and to conduct an assessment of a seafarer's experience and competence in connection with the issue of a certificate.

Fees for managing exemptions

AMSA is already empowered to charge an hourly fee for assessing applications for exemptions. The Regulations will create specific additional fees for applications to be exempt from requirements for:

- certificates of survey, known as Exemption 2;
- periodic survey, equipment certification and compass adjustment, known as Exemption 6;
- temporary operations, known as Exemption 7; and
- certain restricted operation, known as Exemption 40.

All fees are commensurate with the expected cost to AMSA to provide each service.

Details of the Regulation are set out in the [Attachment](#).

Proposed fees were first released for public consultation in late 2016. No comments on the fees were received. In 2018, updated fees reflecting more refined understanding of AMSA's business processes as well as inflation were released for public consultation during April 2018 in the form of an exposure draft of the Regulations. Few stakeholders commented on the fees. Parts of industry raised concern with two proposed fees for the issue of new and renewed certificates of survey for vessels. AMSA has reviewed and streamlined relevant processes without compromising safety, and both fees have been lowered in the final Regulation.

In accordance with the Australian Government Charging Framework and in consultation with the Department of Finance, AMSA will publish a Cost Recovery Implementation Statement before charges commence.

The Office of Best Practice Regulation (OBPR) assessed proposed cost recovery arrangements to commence from 1 July 2018 as machinery (OBPR reference 20129). Fees will impose no new burden on industry because they will replace the fees charged by the states and the Northern Territory since 1 July 2013.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations would commence the day after the instrument is registered. Fees set out in the Regulations apply in relation to applications and requests made on or after 1 July 2018.

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 (Cost Recovery) Regulations 2018

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised and declared in the international instruments listed in Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Australian Maritime Safety Authority (AMSA) is the National Marine Safety Regulator, for domestic commercial vessels under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the Act).

The *Marine Safety (Domestic Commercial Vessel) National Law Amendment (Cost Recovery) Regulations 2018* (the Regulations) amend the *Marine Safety (Domestic Commercial Vessel) National Law Regulations 2013* (the Principal Regulation) to prescribe fees for certain activities to be conducted by AMSA from 1 July 2018, when AMSA takes over all service delivery under the Act from the states and Northern Territory. Subsection 150(1) of the Act provides that AMSA may charge such fees as are prescribed by the regulations for activities carried out by AMSA under the Act.

Specifically, the Regulations implement a fee for service to recover the costs to AMSA associated with the following activities:

- managing the accreditation of marine surveyors;
- managing certificates of survey and operation for vessels;
- managing certificates of competency for seafarers;
- assessing applications for approvals for exemptions from certificates; and
- granting unique vessel identifiers.

Human rights implications

This Disallowable Legislative Instrument engages the right to the enjoyment of just and favourable conditions of work, in particular, safe and healthy working conditions, under article 7(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Regulations also engage the right to work under article 6 of ICESCR.

Article 7: the right to the enjoyment of just and favourable conditions of work

Article 7(b) provides that State Parties recognise the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular, safe and healthy working conditions.

The Regulations engage and promote this right because they contribute to safe working conditions on and around domestic commercial vessels. By stipulating fees which fund AMSA to deliver safety services and certification to Australia's domestic commercial vessels industry, the Regulations promote the right to safe working conditions.

Ensuring that marine surveyors are able to work to a high standard is central to AMSA's role, as are the certification process to ensure domestic commercial vessels are seaworthy and operated safely, and certification to ensure seafarers working on domestic commercial vessels are sufficiently competent.

The fees prescribed in the sections 50A, 50B and 50C and subsection 50(2A) of the Regulations directly fund, and are commensurate with, the cost of processing these applications.

In this way they directly promote the article 7 human right to the enjoyment of just and favourable conditions of work, in particular, safe and healthy working conditions.

Article 6: the right to work

Article 6 provides that State Parties recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. Article 6 also provides that the steps taken by a State Party to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Sections 50A, 50B and 50C and subsection 50(2A) of the Regulations engage this right because they require marine surveyors, domestic commercial vessel operators, and seafarers working on domestic vessels to pay fees to apply for and manage safety certification, which are required for them to work without committing an offence.

On this basis, these fees potentially limit the right to work by requiring payment before marine surveyors, domestic commercial vessel operators and seafarers on domestic commercial vessels can legally work.

However, the limitations are permissible as they:

a) *pursue a legitimate objective*

Vessel surveys (detailed inspections) carried out by suitably qualified marine surveyors are a key regulatory and safety tool for AMSA. Comprehensive oversight of a surveyor accreditation scheme is essential to ensure marine surveyors have the appropriate capabilities, experience and qualifications to assess whether vessels are designed, constructed and maintained in accordance with the Act and associated regulatory instruments and standards.

Ensuring vessels, their operators, and the seafarers working aboard these vessels comply with Australian standards and laws is another key role of AMSA. Managing certificates of operation and survey for vessels, granting unique vessel identifiers, and managing certificates of competency for seafarers directly contributes to this role.

b) *have a rational connection to this objective*

These fees directly fund AMSA's delivery of specific safety services to individuals.

c) *are reasonable, necessary, and proportionate*

The fee amounts to be paid to AMSA are commensurate with AMSA's expected service delivery costs, and have been set following multiple rounds of public consultation. Overall cost recovery through fees is expected to be lower than those currently charged by the states and the Northern Territory and should not in practice prevent for marine surveyors or domestic commercial vessel operators from accessing work.

Conclusion

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

This instrument also promotes human rights as it supports the right to the enjoyment of just and favourable conditions of work, in particular, the right to safe and healthy working conditions.

The Hon Michael McCormack MP

Deputy Prime Minister and Minister for Infrastructure and Transport

Details of the proposed *Marine Safety (Domestic Commercial Vessel) National Law Amendment (Cost Recovery) Regulations 2018 (the Regulations)*

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Marine Safety (Domestic Commercial Vessel) National Law Amendment (Cost Recovery) Regulations 2018*.

Section 2 - Commencement

This section provides for the Regulations to commence the day after the instrument is registered.

However, for clarity, fees set out in the Regulation apply only in relation to applications and requests made on or after 1 July 2018.

Section 3 - Authority

This section provides that the Regulations are to be made under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

Section 4 - Schedule(s)

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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

Item 1

This item repeals the heading at section 50 of the Principal Regulation and substitutes the new heading ‘Fees relating to accreditation of marine surveyors’.

Item 2

This item creates an additional subsection to prescribe additional fees relating to accreditation of marine surveyors, specifically:

- a \$48 fee for replacing lost or stolen accreditation cards; and
- a \$271 fee for assessing an application to vary accreditation.

These fees will be subject to indexation.

Item 3

This item expands existing provisions in the Principal Regulation to clarify that AMSA is not required to deal with an application to vary a marine surveyor's accreditation unless or until the application is accompanied by the prescribed fee.

Item 4

This item creates a new section (50A) in the Principal Regulation to prescribe a fee of \$159 for assessing an application for a unique identifier for a domestic commercial vessel. This fee will be subject to indexation. The section also prescribes that AMSA is not required to deal with an application unless or until the application is accompanied by the prescribed fee.

This item also creates a new section (50B) in the Principal Regulation to prescribe fees relating to certificates, relating to the management of:

- certificates of survey and operation for domestic commercial vessels; and
- certificates of competency for seafarers.

Fees for vessel certificates are prescribed for applications for new certificates, to vary certificates, to suspend or revoke certificates, to renew certificates, and to replace certificates.

Fees for seafarer certificates as described in Marine Orders are prescribed for applications for new certificates, to renew certificates, to replace lost or stolen certificates, and to conduct an assessment of a seafarer's experience and competence in connection with the issue of a certificate.

All fees are subject to indexation. This section prescribes that AMSA is not required to deal with any application unless or until the application is accompanied by the prescribed fee.

This item also creates a new section (50C) in the Principal Regulation to prescribe fees relating to approvals granted under exemptions granted on AMSA's initiative under paragraph 143(4)(b). Fees are prescribed where domestic commercial vessel operators apply for approval to operate under particular exemptions from standard requirements for domestic commercial vessels. These exemptions relate to:

- certificates of survey, known as Exemption 2;
- periodic survey, equipment certification and compass adjustment, known as Exemption 6;
- temporary operations, known as Exemption 7; and
- certain restricted operation, known as Exemption 40.

Fees apply to the specific exemptions as replaced and updated by AMSA from time to time.

All fees are subject to indexation. This section also prescribes AMSA is not required to deal with any application unless or until the application is accompanied by the prescribed fee.

Item 5

This item amends and expands subsection 52(1) of the Principal Regulation to clarify that annual indexation would apply to additional fees set out in the Regulations and continue to apply to all currently prescribed fees in the Principal Regulations.

Item 6

This item amends Part 5 of the Principal Regulation to reflect further amendments made by the Regulations.

This item creates a new heading, 'Application and transitional provisions' for Part 5. The current content of Part 5 of the Principal Regulation relating to amendments made in 2016 becomes Division 1 of Part 5 of the Principal Regulation.

This item also creates Division 2 of Part 5 in the Principal Regulation. This Division clarifies that amendments made by the Proposed Regulations only apply in relation to applications and requests made to AMSA on or after 1 July 2018, and that indexation in relation to the fees created by the proposed amendments applies from 1 July 2019.