



Australian Government
Australian Maritime Safety Authority

AMSA EX2

Marine Safety (Certificates of survey) Exemption 2017

I, Michael Kinley, Chief Executive Officer of the Australian Maritime Safety Authority (the National Marine Safety Regulator under section 9 of the *Marine Safety (Domestic Commercial Vessel) National Law*), make this instrument under subsection 143(1) of the *Marine Safety (Domestic Commercial Vessel) National Law*.

9 May 2017

Michael Kinley
Chief Executive Officer

1 Name of instrument

This instrument is *Marine Safety (Certificates of survey) Exemption 2017*.

2 Duration

This instrument commences on 1 July 2017 and ceases to have effect at the end of 31 May 2020.

3 Repeal

The following instruments are repealed:

- (a) *Marine Safety (Certificates of survey) Exemption 2016*;
- (b) *Marine Safety (Heritage vessels) Exemption 2013*;
- (c) *Marine Safety (Aerial freestyle devices) Exemption 2016*;
- (d) *Marine Safety (Dragon boats) Exemption 2015*.

4 Definitions — the dictionary

A definition in the dictionary applies to each use of the word or expression in this instrument.

Note The dictionary is located at the end of the instrument.

5 Exemption from requirement to have certificate of survey

- (1) Each vessel mentioned in Schedule 1 is exempt from the requirement to have a certificate of survey for sections 43 and 44 of the national law, subject to:
 - (a) any conditions mentioned for the vessel in Schedule 1; and

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- (b) approval in writing from the National Regulator if the vessel:
 - (i) is not a vessel to which Division 5 of Schedule 1 applies; and
 - (ii) is not any of the following:
 - (A) a human powered vessel mentioned in item 2.3 of Schedule 1;
 - (B) a sailing vessel mentioned in item 2.4 of Schedule 1;
 - (C) a personal watercraft — whether or not the PWC has an aerial freestyle device attached.

Note 1 An application for approval can be part of the application for a certificate of operation or a separate application. For the form of application and how it will be processed, contact the National Regulator.

Note 2 A fee may be charged — see s 9 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

- (2) For paragraph (1)(a), if more than 1 Division of Schedule 1 applies to the vessel, the owner of the vessel may choose which Division is to apply.
- (3) The National Regulator may make an approval mentioned in paragraph (1)(b) subject to conditions that take account of the local conditions of the water in which the vessel is to operate.

6 Exemption for heritage vessels

- (1) A heritage vessel is exempt from section 8, section 11 or paragraph 14(1)(a) of Marine Order 503 if:
 - (a) the owner of the vessel gives the National Regulator a vessel management plan for the vessel; and
 - (b) the National Regulator approves in writing the provisions to which the exemption is to apply.

Note A heritage vessel must have a certificate of survey unless it is exempt under section 5 (eg it is an existing vessel mentioned in Division 5 of Schedule 1).

- (2) The exemption mentioned in subsection (1) is subject to the following conditions:
 - (a) the heritage vessel must be maintained and operated in accordance with the vessel management plan;
 - (b) the owner of the vessel must receive approval from the National Regulator for any change to the matters in the vessel management plan.
- (3) The National Regulator may make an approval subject to conditions that take account of the local conditions of the waters in which the vessel is to operate.

7 Transitional matters

An approval issued under any of the following instruments continues to be in force as if the instrument had not been repealed:

- (a) *Marine Safety (Certificates of survey) Exemption 2016*;
- (b) *Marine Safety (Certificates of survey) Exemption 2015*;
- (c) *Marine Safety (Certificates of survey) Exemption 2013*;
- (d) *Marine Safety (Heritage vessels) Exemption 2013*.

Schedule 1 Vessels and conditions

(section 5)

Division 1 Vessels generally

Item	Kind of vessel	Conditions
1.1	Vessel that is being moved for the purpose of obtaining a certificate of survey or certificate of operation, including returning the vessel after the survey or other process has been completed	The vessel must be moved and returned by the most direct and practical route.
1.2	Tender	The vessel must: (a) if the parent vessel is a vessel in survey — be inspected with the parent vessel whenever the parent vessel is surveyed; and (b) meet design, construction and equipment standards mentioned for tenders in NSCV Part G.

Division 2 Non-survey vessels

Item	Kind of vessel	Conditions
2.1	Class 2, 3 or 4 vessel: (a) that is <7.5 m long; and (b) that operates only in sheltered (D or E) waters; and (c) if a Class 2 vessel — that carries no passengers or up to 4 day passengers; and (d) if a Class 3 vessel — that carries no passengers; and (e) that does not carry dangerous goods, other than petroleum or gas products intended for use on the vessel or fireworks carried on the vessel only for use on the vessel for a fireworks display; and (f) if a net reel, crane, lifting device or deck load is installed on the vessel: (i) on which the use of the net reel, crane, lifting device or deck load is not likely to adversely affect the stability or watertight integrity of the vessel; and (ii) for which a marine surveyor accredited in stability approval has made a written recommendation to the National Regulator stating	The vessel must meet the design, construction and equipment standards mentioned in: (a) NSCV Part G that apply to the vessel; or (b) a standard determined by the National Regulator.

Item	Kind of vessel	Conditions
	<p>that the surveyor is satisfied that the net reel, crane, lifting device or deck load is unlikely to:</p> <p>(A) generate a heeling moment that may endanger or capsize the vessel; or</p> <p>(B) create a loading condition that exceeds the maximum loading for the vessel; and</p> <p>(g) that is not operated primarily for towage; and</p> <p>(h) that does not have an inboard petrol engine, other than a personal watercraft; and</p> <p>(i) that is not:</p> <p>(i) a support vessel in the offshore oil or gas industry; or</p> <p>(ii) an overnight hire and drive vessel; or</p> <p>(iii) an unpowered barge; or</p> <p>(iv) a landing barge that is of a design or for a use that the National Regulator has determined is likely to adversely affect its stability</p>	
	<p><i>Note for subparagraph (f)(ii)</i> The heeling moment may be calculated using the lesser of:</p> <p>(a) the force the device or load is able to generate; and</p> <p>(b) the breaking strain of any weak links or safety reliefs.</p>	
2.2	A vessel that is:	
	(a) <24 m long; and	
	(b) used by a sailing school or training organisation to train members of the public for recreational boating qualifications; and	
	(c) engaged only in inshore operations	
2.3	A human powered vessel, other than a Class 1 vessel, that:	
	(a) is only propelled by human powered devices; or	
	(b) is a canoe or kayak that has human powered devices as its primary source of propulsion and has fitted:	
	(i) an electric propulsion motor of ≤ 24 volts; or	
	(ii) a motor of ≤ 3.5 kW propulsion power	
	<p><i>Note for paragraph (a)</i> Examples of human powered devices are oars, paddles or pedal systems.</p> <p><i>Note</i> A dragon boat is a human powered vessel.</p>	
2.4	A sailing vessel, other than a Class 1 vessel, that:	
	(a) is <7.5 m long; and	
	(b) has no auxiliary engine, or an auxiliary engine of ≤ 3.5 kW propulsion power	

Item	Kind of vessel	Conditions
2.5	A personal watercraft	

Note An application for a certificate of operation for a vessel mentioned in Division 2 must include a declaration that the vessel complies with the condition — see *Marine Order 504 (Certificates of operation — national law) 2013*.

Division 3 VMR vessels

Item	Kind of vessel	Conditions
3.1	Class 2D or 2E vessel that: (a) is <12 m long; and (b) does not carry passengers; and (c) is not exempted under <i>Marine Safety (Class C restricted operations) Exemption 2017</i> from the requirement to have a certificate of survey; and (d) is a VMR vessel	1. The vessel must meet the design, construction and equipment standards mentioned in NSCV Part G that apply to the vessel. 2. The owner of the vessel must: (a) for approval under paragraph 5(1)(b) — give the National Regulator a declaration stating that the vessel meets the design, construction and equipment standards mentioned in NSCV Part G that apply to the vessel; and (b) between 11 and 12 months after the last declaration: (i) complete a further declaration stating that the vessel meets the design, construction and equipment standards mentioned in NSCV Part G that apply to the vessel; and (ii) keep it with the vessel's safety management system.

Note Other exemptions may apply to some VMR vessels — see *Marine Safety (Emergency services vessels) Exemption 2016*.

Division 4 Fire service vessels

Item	Kind of vessel	Conditions
4.1	Class 2D or 2E vessel that: (a) is <12 m long; and (b) does not carry passengers; and (c) is not exempted under <i>Marine Safety (Class C restricted operations) Exemption 2017</i> from the requirement to have a certificate of survey; and (d) is a fire service vessel	1. The vessel must meet the design, construction and equipment standards mentioned in NSCV Part G that apply to the vessel. 2. The owner of the vessel must: (a) for approval under paragraph 5(1)(b) — give the National Regulator a declaration stating that the vessel meets the design, construction and equipment standards mentioned in NSCV Part G that apply to the vessel; and

Item	Kind of vessel	Conditions
		(b) between 11 and 12 months after the last declaration: <ul style="list-style-type: none"> (i) complete a further declaration stating that the vessel meets the design, construction and equipment standards mentioned in NSCV Part G that apply to the vessel; and (ii) keep it with the vessel's safety management system.

Division 5 Existing vessels

Item	Kind of vessel	Conditions
5.1	Existing vessel for which, on 30 June 2013, a survey certificate was not required	<ol style="list-style-type: none"> 1. The vessel must meet the design, construction and equipment standards that applied to the vessel on 30 June 2013. 2. The vessel must also, if it is of a kind that, if it were a new vessel, would not be required to have a certificate of survey — meet the equipment standards of NSCV Part G on and after 30 June 2016. 3. The vessel may be altered or modified to the extent that it must be reassessed against the construction, subdivision or stability standard that applies to it only if: <ul style="list-style-type: none"> (a) the National Regulator considers there will not be an increased level of risk because of the proposed alteration or modification and has approved the alteration or modification in writing; and (b) the vessel complies with any requirements determined by the National Regulator for the vessel. 4. The vessel's operations or service category may change only if: <ul style="list-style-type: none"> (a) the National Regulator considers there will not be an increased level of risk because of the change in the vessel's operations or service category and has approved the change in writing; and (b) the vessel complies with any requirements determined by the National Regulator for the vessel.

Item	Kind of vessel	Conditions
		<p>5. The vessel may operate in an area other than the area in which the vessel was permitted to operate before 1 July 2013 only if:</p> <p>(a) the National Regulator has approved the change in writing; and</p> <p>(b) the vessel complies with any requirements determined by the National Regulator for the vessel system.</p>

Division 6 PWCs with aerial freestyle device attached

Item	Kind of vessel	Conditions
6.1	Personal watercraft: (a) that is in service category Class 2C, 2D or 2E; and (b) to which an aerial freestyle device is attached; and (c) that is used in aerial freestyle device operations	<p>1. The vessel must meet the design, construction and equipment standards mentioned in NSCV Part G that apply to the vessel.</p> <p>2. The aerial freestyle device hose must be fastened to the bow of the PWC without any strain on the hose coupling.</p> <p>3. The aerial freestyle device must not be modified to enable a person to take full flight control from an instructor.</p> <p>4. The PWC must carry an air horn.</p>

Division 7 Other vessels

Item	Kind of vessel	Conditions
7.1	Waterski or wakeboard towing vessel with an inboard engine	The vessel must meet the design, construction, equipment and survey requirements that applied to the vessel, or to vessels of the same kind as the vessel, on 30 June 2013.
7.2	Permanently moored vessel	
7.3	Ferry-in-chains	
7.4	Submersible or wing-in-ground effect craft	
7.5	Novel vessel for which the NSCV does not provide an appropriate technical solution	
7.6	A vessel used by a volunteer search, rescue, or search and rescue, organisation for which a certificate of operation was issued before the day this exemption was made	

Dictionary

(section 4)

aerial freestyle device means a device that:

- (a) is connected to a PWC that directs the water output of the PWC under pressure through nozzles to lift a person on the device above the surface of the water or to allow a person on the device to dive underwater; and
- (b) is fitted with footholds or straps to secure the person to the device.

aerial freestyle device operation means an operation in which:

- (a) a PWC is controlled by an instructor and creates thrust to propel an aerial freestyle device through and out of the water; and
- (b) the person on the aerial freestyle device can control flight direction, including the direction of the PWC.

A New Tax System Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

dangerous goods has the meaning given by the *Navigation Act 2012*.

day passenger, for a vessel, means a passenger who is not provided with sleeping accommodation.

dragon boat has the meaning given by NSCV Part G.

existing vessel means a vessel that:

- (a) a person was entitled to use in connection with a commercial, governmental or research activity at any time in the 2 years ending on 30 June 2013 or in another period ending on 30 June 2013 determined by the National Regulator — other than a vessel that has not been used in connection with a commercial, governmental or research activity for any 2 year period after 30 June 2013 or another period determined by the National Regulator; or
- (b) if a vessel that was being constructed on 30 June 2013:
 - (i) a person would have been entitled to use in connection with a commercial, governmental or research activity on 30 June 2013 if it had been completed on 30 June 2013; and
 - (ii) if the vessel is used in connection with a commercial, governmental or research activity after 30 June 2013 — is not a vessel that has not been used in connection with a commercial, governmental or research activity for any 2 year period after the vessel is completed or another period determined by the National Regulator; and
 - (iii) on 30 June 2013:
 - (A) its keel had been laid; or
 - (B) construction identifiable with the vessel had begun and at least the lesser of 50 tonnes, or 10% of the estimated mass of all structural material, of the vessel had been assembled; or
- (c) if a vessel for which an application for design approval was lodged before 1 July 2013:
 - (i) a person would have been entitled to use in connection with a commercial, governmental or research activity on 30 June 2013 if it had been completed before 30 June 2013; and

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- (ii) if the vessel is used in connection with a commercial, governmental or research activity after 30 June 2013 — is not a vessel that has not been used in connection with a commercial, governmental or research activity for any 2 year period after the vessel is completed or another period determined by the National Regulator; and
 - (iii) before 1 July 2016:
 - (A) its keel had been laid; or
 - (B) construction identifiable with the vessel had begun and at least the lesser of 50 tonnes, or 10% of the estimated mass of all structural material, of the vessel had been assembled; and
 - (iv) is not a vessel mentioned in paragraph (b).

fire service organisation means an organisation established by State, Territory or Commonwealth legislation to provide the following services:

- (a) prevention, mitigation and suppression of fires;
- (b) protection of people from dangers to their safety and health from fire;
- (c) protection of property from destruction or damage by fire.

fire service vessel means a vessel used by a fire service organisation:

- (a) to transport volunteers and employees of the organisation and equipment to help with fire fighting activities; or
- (b) for on-water fire fighting activities; or
- (c) to help government agencies and non-government organisations with transport, search and fire fighting activities in relation to fires or emergency events; or
- (d) to train volunteers and employees of the organisation; or
- (e) for fire awareness programs.

heritage vessel means a vessel that is:

- (a) owned and operated by a not-for-profit organisation; and
- (b) listed on the Australian Register of Historic Vessels.

increased level of risk, for a vessel's operations, means an increase in the level of risk in the operation of the vessel, or to a person on the vessel, including an increase because of any of the following circumstances:

- (a) an upgrade in the service category of the vessel;
- (b) a change in the propulsion power of the vessel;
- (c) a change in the vessel's displacement;
- (d) the commencement of overnight operations;
- (e) an increase in the passenger numbers for the vessel;
- (f) a modification of the vessel that may affect safety;
- (g) a change to the vessel that requires a review of the vessel's stability.

instructor means a person who controls a PWC used for an aerial freestyle device operation.

landing barge has the meaning given by *Marine Order 504 (Certificates of operation — national law) 2013*.

marine surveyor accredited in stability approval means a person who is accredited under section 24 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* in the category of initial survey — stability approval mentioned in paragraph 21(b) of the Regulation.

national law means the Marine Safety (Domestic Commercial Vessel) National Law set out in Schedule 1 to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

new vessel means a vessel that is not an existing vessel.

NSCV — see section 6 of the national law, meaning of *National Standard for Commercial Vessels*.

NSCV Part B means *Part B — General requirements* of the NSCV.

NSCV Part G means *Part G — Non-survey vessels* of the NSCV.

personal watercraft (or *PWC*) has the meaning given to *personal watercraft* in NSCV Part G.

recreational boating qualification means a qualification that permits the holder to operate or be the member of the crew of a recreational vessel.

Examples

- a State or Territory recreational boat licence.
- a Royal Yachting Association qualification.

vessel management plan, for a heritage vessel, means a management plan, certified by an accredited marine surveyor with heritage vessel experience, knowledge and skills, that includes the following matters:

- (a) the history of the vessel and its significance;
- (b) the standards to which the vessel was built (if any);
- (c) the proposed use and operating profile of the vessel;
- (d) a detailed evaluation, based on a report by an accredited marine surveyor, of the vessel's current condition and fitness for purpose for its proposed use and proposed operating profile as set out in the safety management system;
- (e) the repair and maintenance schedule for the vessel;
- (f) how any non-compliance of the vessel with the National Standard for Commercial Vessels is to be managed;
- (g) survey and inspection arrangements that will apply to the vessel.

VMR organisation, for a VMR vessel, means an organisation:

- (a) established for the primary purpose of providing marine search, rescue and public safety services; and
- (b) that may be given responsibilities by a State, Territory or Commonwealth government in an emergency or disaster.

Note The responsibilities mentioned in paragraph (b) may be set out in a State, Territory or Commonwealth emergency management or search and rescue plan or subplan.

VMR vessel means a vessel that:

- (a) is owned by a VMR organisation; and
- (b) either:
 - (i) is used for the purpose prescribed by paragraph 7(a) of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*;or

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- (ii) is mentioned in section 9 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*; and
 - (c) may be used only in connection with:
 - (i) a commercial activity for which the supply is GST-free under section 38-250 of the A New Tax System Act; or
 - (ii) search and rescue activities for which no compensation is payable.

Note for subparagraph (c)(i) Section 38-250 of the A New Tax System Act allows for nominal compensation to be charged for a supply.

Note for subparagraph (c)(ii) The vessel may be used, for example, for training, maintenance, fundraising work and any other activity related to the search or search and rescue activities of the vessel, provided no fee is charged.

For paragraph (c)(i), a VMR organisation that is not an endorsed charity under the A New Tax System Act is to be taken to be an endorsed charity for section 38-250 of that Act.

Note **Owner** is defined in the national law — see section 6. **Owner** includes the person with overall general control and management of the vessel.
