



GUIDANCE NOTICE

Boat-share and Community Group (Club) arrangements and the National Law

The purpose of this Notice is to provide guidance on the kinds of boat-share arrangements that the National Regulator considers will result in the vessel being a domestic commercial vessel (DCV).

If I determine that my boat-share arrangement is captured under the National Law, what does that mean?

If a vessel is a DCV, then, unless an exemption applies:

- the operation of a DCV must be authorised by a National Law certificate of operation;
- a DCV must be the subject of a National Law certificate of survey, and identifiable by a unique identifier;
- a DCV must be manned by crew holding a National Law certificate of competency;
- general safety duties apply to all persons on board a DCV. There are special duties on the owner of a DCV to implement and maintain a safety management system (SMS) that ensures, so far as reasonably practicable, the safety of the vessel and its operations, and on a master to maintain and comply with the SMS.

It does not matter that a vessel is only being used commercially for some of the time.

What is a boat-share arrangement?

For the purposes of this Notice, a 'boat-share arrangement' is any arrangement in which different people have a right to use a particular vessel at the same or different times.

Typical 'models' of boat-share arrangement include:

- the 'shared equity' model, in which each participant is legal owner - as a tenant in common with the other participants - of a vessel, in proportion to the share of ownership purchased.
- the 'boat club' model, in which club members do not have legal or equitable ownership in any particular vessel, but pay money to have access to and use of a vessel legally owned by someone else who makes a profit or enjoys some other commercial gain.

Additionally, many bona fide not-for-profit community groups own boats and make them available to members on a cost-recovery basis.

Some kinds of boat-share arrangements are considered by the National Regulator to result in the vessel being a domestic commercial vessel (DCV) subject to the National Law.

Typical examples of arrangements that the National Regulator considers will not result in a vessel being a DCV are:

- a group of friends who buy a boat together so that they can go fishing, sailing or water skiing;
- a person buys a specified share in a boat from a builder who has set up a joint ownership scheme in respect of that boat, and all the joint owners use the boat only for their private recreation, either together or at different times;
- a group of people who own a boat and contract a management company to maintain the boat, and the boat is used by the owners only for their private recreation.

Put simply, if a vessel is owned by a group of people and used only for their recreational purposes, and other people do not enter commercial arrangements to be on or use the vessel, the National Regulator will not consider the vessel to be a DCV captured by the National Law.

If a boat-share vessel is not a DCV, what laws apply?

If a vessel is not a DCV, it and its operation will very likely be subject to the recreational boating laws of the state or territory in which the boat is operating. You should check with your local maritime authority to find out the rules that apply to recreational boating activities.

Who is the 'owner' of a boat-share vessel?

In working out whether a boat-share arrangement may result in a vessel being a DCV, the National Regulator will first need to identify all of the persons with legal title or equitable title to the vessel. Those persons may be individuals or corporate persons. Ownership may be as joint owners or tenants in common in specified shares.

The National Regulator will analyse closely any arrangements in which a vessel is used by persons **other than** the group of owners. Examples are uses of the vessel by persons who:

- do not have a direct interest in the boat evidenced by a legal title or a formal arrangement such as a Joint Ownership Agreement;
- are not one of a specified list of part-owners of the boat;
- do not have the authority to exclude people who are not part owners from using the boat;
- are not responsible for the maintenance, berthing and upkeep of the boat either themselves or by contracting out these responsibilities to another party and in the latter case to change or terminate the contract of any third party suppliers at any time (subject to the conditions of any contractual obligations);
- are not party to an agreement that gives them the right to exit the boat share arrangement at any time and receive an appropriate return.

The next step is to analyse what those owners, and other persons, do with the vessel, to see if the vessel is being used in connection with a commercial activity.

If the vessel is being used in connection with a commercial activity, either by the owners or other persons, or as a consequence of the arrangement between the owners and those other persons, the National Regulator will consider the vessel to be a DCV.

What are signs that a boat-share vessel may be a DCV?

Some of the signs that could indicate to the National Regulator that a vessel may be a DCV include, but are not limited to, the following:

- the boat is hired out to a third party by its owners or a management company;
- members of the public other than the owners can use the boat, for money, without the express permission of the owners;
- a management company has been contracted by the owners of the boat and the contract specifies that the management company or other people intend the boat to be used for commercial purposes such as hire and drive;
- the arrangement has a “golden share” or other arrangement that means a management company is making decisions about the maintenance, berthing or upkeep of the vessel that cannot be influenced by the other owners;

- a company or promoter can remove ownership rights from one or more scheme participants;
- participants in one boat share scheme acquire rights in other boat schemes;
- members do not own the boats but pay money to use them;
- the boat is part of a time share agreement but not owned by the people who share the time on the boat.

Community Group (Club) Boats

Vessels owned and operated by community groups or clubs may be excluded from the National Law. If this is the case, they would remain under the rules applicable in their state or territory of operation.

How do I know if a “club” vessel is a DCV or not?

When determining whether a vessel is a community group or club boat that is not a DCV, the National Regulator provides the below criteria as guidance. The National Regulator considers that if:

- the club is a bona fide not-for-profit organisation, **and**
- the boats are owned by the organisation (within the definition of ‘owner’ in the National Law), **and**
- the boats are used only by members of the organisation, **and**
- the members are bona fide members with rights and obligations set out in the constitution of the organisation, **and**
- the fees charged of members are calculated to achieve recovery of costs incurred by the club, at arm’s length rates,

the boats will **not** be DCVs.

The **exception** is vessels engaged in volunteer marine rescue activities which are captured by the National Law.

It is not practicable for AMSA to form a view about specific vessels and organisations, without a detailed analysis of the financial and vessel ownership and operating arrangements of the organisation and its members.

Organisations such as clubs and community groups should obtain independent legal advice about the potential application of the National Law to the specific circumstances of the organisation and its vessels, before making decisions based on assumptions about the application or dis-application of the National Law.

What are the signs that my community group or club vessel is actually a DCV?

Some of the signs that indicate to the National Regulator that a community group or club vessel may be a DCV include, but are not limited to, the following:

- members of the public (other than club members) use the boats and pay a fee to do so;
- the boat is being advertised for use by non-club members for a fee;
- the boat is being used to operate a business open to members of the public, such as fishing or leisure charter or sight seeing

Contact for more information

For more information relating to the requirements of the National law, please contact the local office of your state or territory marine safety agency.

You can also contact AMSA at:

Online: www.amsa.gov.au

Email: national.system@amsa.gov.au

Phone: (02) 6279 5000