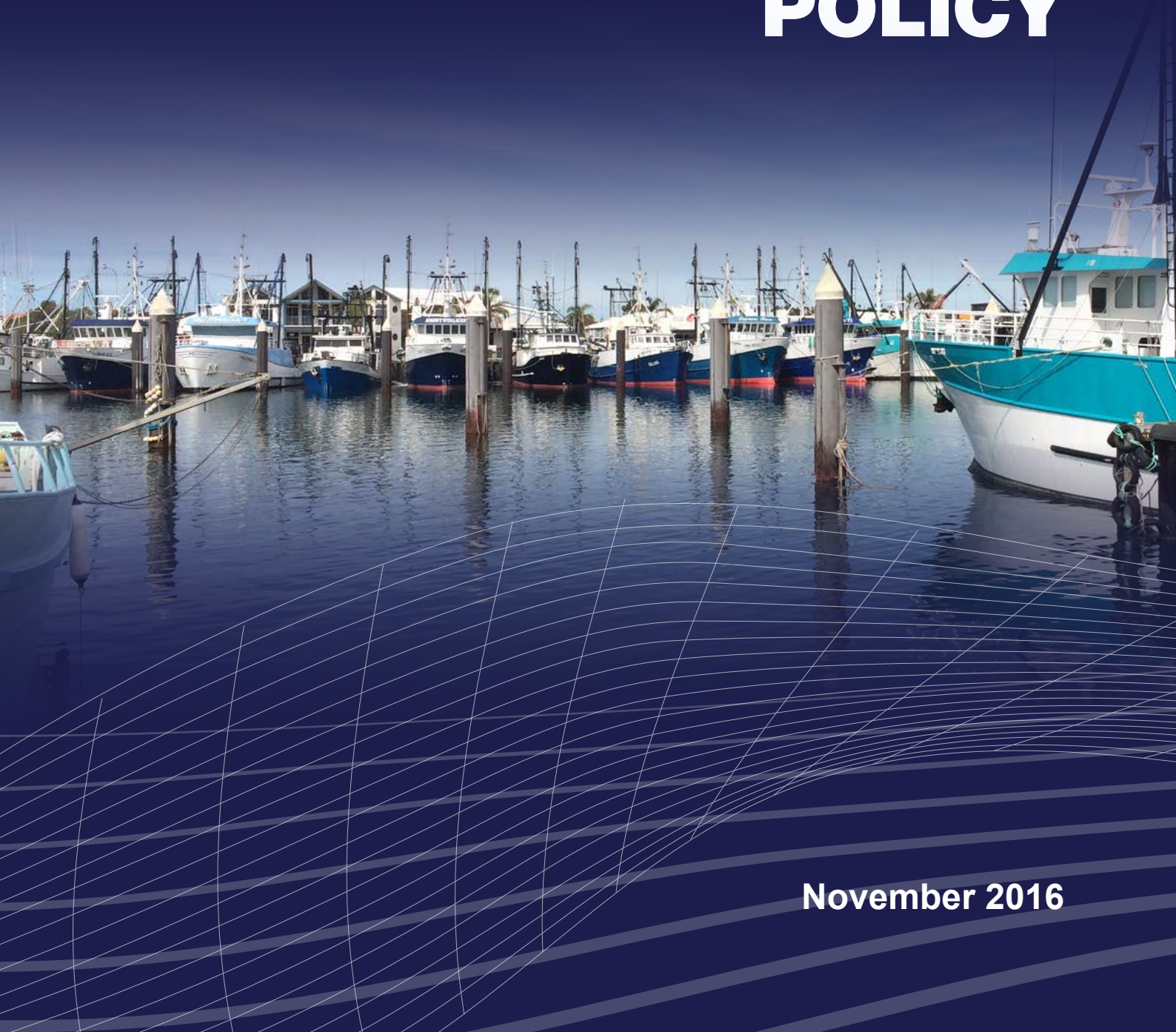




Australian Government

Australian Maritime Safety Authority

Exemptions from the Domestic Commercial Vessel National Law **POLICY**



November 2016

Introduction

The National Law allows the National Regulator, in certain cases, to grant exemption from the National Law or parts of the National Law¹. The National Law includes the National Law, the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* (National Law Regulation), and Marine Orders made under the National Law. The National Standard for Commercial Vessels (NSCV) and other technical standards do not legally form part of the National Law. Rather, the National Law requires compliance with the NSCV and other applicable standards.

This Policy applies to persons applying for an exemption.

Exemption types

There are two types of exemption under the National Law [ss143(4)]:

1. **Specific exemptions:** these exemptions may be granted on application in accordance with the regulations by a person. These regulations are contained in *Marine Order 501 (National Law – administration) 2013* (Marine Order 501); and
2. **General exemptions:** these exemptions may be issued on the initiative of the National Regulator. General exemptions typically have general application to vessels, persons and operations that meet the relevant criteria and conditions in the general exemption. National Law general exemptions can be viewed at: www.amsa.gov.au/domestic/national-law/

Scope

The National Regulator may exempt:

- a specified vessel or class of vessels; or
- a specified person or class of persons,

from the application of the National Law, or specified provisions of the National Law².

The exemption may be limited to:

- one or more specified periods;
- one or more specified operations.

Who may apply for a specific exemption

Any person can apply for an exemption. A person may be an individual, a body corporate, a government agency, a partnership³ or an unincorporated association⁴.

¹The *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law) – section 143

² Sub sections 143(1) and 143(2)

³ Section 147

⁴ Section 148

How to apply for a specific exemption

What applicants need to do

After reading this Policy, applicants should complete the “Specific Exemption Application” (AMSA547) available on the AMSA website. Instructions on lodging the application are on the form.

Upon receipt of a specific exemption application, the National Regulator will estimate the fee payable for the time it may take to assess the application, and the applicant must then pay that fee before the application is assessed. Once the fee is paid your application will be complete.

A schedule of AMSA’s fees can be found at www.amsa.gov.au/domestic/fee-for-service.

Failure to provide relevant information or pay the applicable fee will delay the processing of the application.

Although there is no prescribed time period for considering the application, the National Regulator will consider and make a decision about the application as soon as practicable.

Duration of an exemption

The exemption will last the length of time specified by the National Regulator, unless the National Regulator revokes the exemption earlier.

An applicant may, in their application, request that the exemption last for a specific period. However, this is up to the National Regulator to decide.

As a general rule, the National Regulator will not grant perpetual exemptions unless exceptional circumstances exist. However, exemptions for vessel construction requirements may be perpetual, provided the vessel’s service category does not change or the vessel is not modified.

If a perpetual exemption is sought, clear and compelling reasons should be provided as to why it is required.

Granting/amending or refusing an exemption

What does the National Regulator take into account when deciding whether to grant an exemption?

A basic principle of the National System is the consistent application of, and compliance with, one single set of safety standards – the NSCV - around Australia (subject to certain grandfathering arrangements). Therefore, the National Regulator expects vessel owners and operators to comply with the National Law and the standards applicable to their vessels. It is preferable for vessel owners and operators to develop means of achieving compliance with the NSCV rather than seeking exemptions from it.

However, the National Regulator recognises the diverse nature of the DCV fleet and operations around Australia and the need for flexibility to ensure a safe and viable DCV industry. The exemption power in the National Law provides for that flexibility.

Mere inconvenience or the costs of compliance alone will not be enough to justify an exemption. Importantly, before granting an exemption, **the National Regulator must be satisfied that the exemption, together with any conditions it is subject to, will not jeopardise the safety of a vessel or a person on board a vessel⁵.**

In addition to this, the National Regulator will consider the following when deciding whether or not to grant an exemption:

1. Does the application for exemption relate to a DCV?
2. Does an existing general exemption achieve the same result?
3. Is the application for the exemption supported by sufficient justification and evidence?
4. Does the application demonstrate that the relevant standard imposes an excessive burden compared to the safety risk or the safety benefit?
5. Is new technology or safety equipment not accounted for in the existing standard/s?
6. Does the relevant standard operate in a way, or result in consequences, that were unforeseen or unintended by AMSA?
7. Is there an alternative means of providing an acceptable level of safety and does the application demonstrate this?
8. Is an application for an equivalent means of compliance under Marine Order 501 more appropriate in the circumstances?

These factors are not exhaustive and the National Regulator will decide the application on a case by case basis and according to good administrative decision making principles.

The National Regulator will monitor trends in applications for exemptions and, where necessary, look to amending relevant standards to promote a safe and viable DCV industry.

Granting of a conditional exemption

The National Regulator may impose any conditions it considers appropriate on an exemption⁶.

The following are examples of the types of conditions that may be applied:

- limitations on the operational area or kind of operations that the vessel may be used in or for;
- specific crewing requirements;
- reporting/notification requirements where a certain event occurs, i.e. the vessel is modified, sold or destroyed; and
- compliance with an alternative standard to that required by the National Law.

While an applicant may request in their application that certain conditions be imposed, this is at the discretion of the National Regulator. The National Regulator must not impose conditions on an exemption where it would result in the exemption jeopardising the safety of a vessel or a person on board a vessel⁷.

⁵ Sub section 143(6) National Law

⁶ Sub section 143(5) National Law

⁷ Sub section 143(6) National Law

A decision to impose conditions on an exemption is a reviewable decision under section 139 of the National Law (see “Application for review of a decision” below).

Refusing to grant an exemption

The National Regulator must refuse to grant an exemption where it is not satisfied that the exemption, together with the conditions to which it is subject, will not jeopardise the safety of a vessel or a person on board a vessel.

The purpose of the National Regulator’s power to grant specific exemptions is **not** to allow applicants to avoid compliance with the National Law simply because it is inconvenient, expensive or time-consuming.

Such applications will, without clear and compelling reasons and additional information, be refused.

A decision to refuse to grant an exemption is a reviewable decision⁸ (see “Application for a review of a decision” below).

What happens once a decision has been made?

AMSA will notify the applicant in writing whether the application has been approved (including whether any conditions apply to the approved exemption) or refused within the timeframes provided for in Marine Order 501 (see “What the National Regulator will do” above).

Where the National Regulator has granted an exemption with conditions, or refused an exemption, the National Regulator will provide the applicant with written reasons for doing so.

Obligations

A person to whom an exemption is granted must comply with the conditions of the exemption and ensure any person under their management or control complies with the conditions of the exemption.

It is an offence if the owner or master of a DCV breaches or causes or permits another person to breach a condition which applies to the vessel⁹.

A person commits an offence if the person has been granted an exemption with conditions and the person breaches the condition¹⁰.

⁸ Section 139 National Law

⁹ Sections 144 and 145 National Law

¹⁰ Section 146 National Law

Application for review of decision

The National Law sets out decisions made by the National Regulator that are reviewable decisions¹¹.

Internal review

A decision by the National Regulator to refuse an application for an exemption, or to impose conditions on an exemption, is subject to internal review¹². When either of these decisions are made, the National Regulator will inform the applicant of its decision in writing. The National Regulator will state the reason for the decision and will provide information on the applicant's review rights.

Applicants have 30 days from the date of receipt of the notice to apply to the National Regulator for internal review of this decision. The application for internal review should be completed using the approved form, together with any supporting documentation, and emailed to: DVInternalreview@amsa.gov.au, or alternatively addressed in writing to:

The Secretariat
Domestic Vessels
Australian Maritime Safety Authority
GPO Box 2181
Canberra ACT 2601

This form is at: amsa.gov.au/forms-and-publications/domestic/forms/

The person conducting the internal review of a decision may:

1. affirm the reviewable decision; or
2. make any other decision the person considers appropriate¹³.

The National Regulator will notify the applicant, in writing, of the outcome of the internal review. Any questions about internal review can be directed to DV Secretariat, email DVInternalreview@amsa.gov.au.

External review

Under section 141 of the National Law, an application may be made to the Administrative Appeals Tribunal for a decision under section 140(5).

¹¹ Section 139 National Law

¹² Section 139 National Law

¹³ Sub section 140(5) National Law

Annexure A – Applicant Checklist

Ad-Hoc Exemption Application Checklist

- Ad-Hoc Exemption Application form (AMSA547) is used
- Provide evidence:
 - that the granting of the exemption will not jeopardise the safety of a vessel or a person on board a vessel; and
 - referred to in this Policy.
- Supporting documentation (and the SMS for the vessel where it is relevant to the exemption) is provided
- Applicable fee (if any) determined by National Regulator is paid.

