



# GUIDANCE NOTICE

## Sailing clubs delivering recreational sail training and related commercial activities

### Application of the National Law

The *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law) applies to domestic commercial vessels (DCVs).

'Domestic commercial vessel' is defined as a vessel that is for use in connection with a commercial, governmental or research activity. Generally, if a vessel is a DCV, the vessel must be:

- operated under a National Law certificate of operation;
- the subject of a National Law certificate of survey and marked by a vessel identifier; and
- crewed by persons with a National Law certificate of competency.

Exemptions from these requirements may apply.

### Arrangements for prescribed community groups

The National Law provides that a vessel **will not be a DCV** if the vessel is owned by a community group.

Section 6 of the *Marine Safety (Domestic commercial vessels) National Law Regulation 2013* (National Law Regulation) provides that a prescribed community group is one that:

- is incorporated, an unincorporated association or a body established by legislation;
- does not operate for profit or gain to its members; and
- is, by the terms of its constituent document, prohibited from making any distribution, whether in money, property or otherwise, to its members.

### Use of prescribed community group vessels for hire and drive, charter or training of non-members

However, a vessel owned by a prescribed community group **will be a DCV** where it is used for particular activities or purposes prescribed by the regulations.

Vessels owned by a sailing club that is a prescribed community group, but which uses those vessels to provide charter, hire and drive or training to a person who is not a member of the sailing club, will most likely be DCVs subject to the National Law.

In relation to prescribed purposes the following apply:

- The use of the vessel as a hire and drive vessel for the purposes of hiring the vessel to:
  - (for a vessel owned by a school) – a person who is not a student at the school; or
  - (for a vessel owned by a community group) – a person who is not a member of the group;
- The use of a vessel for the purposes of chartering the vessel to:
  - (for a vessel owned by a school) – a person; or
  - (for a vessel owned by a community group) – a person who is not a member of the group.

In relation to prescribed activities the following activity is prescribed:

- An activity that includes a person, for consideration, training another person (the trainee):
  - (for a vessel owned by a school) – who is not a student at a school (whether or not at the school that owns the vessel or another school);
  - (for a vessel owned by a community group) – who is not a member of the community group; or
  - (for a trainee other than a school student) – to enable the trainee to obtain a licence that is needed to meet a legislative requirement.

The AMSA Guidance Notice: [Boat share and community group \(club\) arrangements and the National Law \(AMSA 585\)](#) includes a list of criteria provided by the National Regulator (as guidance) for determining whether a community group vessel is **not a DCV**. Those criteria are:

- The community group or club is a bona fide not-for-profit organisation;
- The boats are owned by the organisation (within the definition of 'owner' in the National Law);
- The boats are used only by members of the organisation;
- 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.

## National Law certification requirements

### Certificate of operation

Under the National Law, it is an offence for an owner or master to operate a DCV without a certificate of operation unless otherwise exempt.

To obtain a certificate of operation, the applicant must:

- make an application to the National Regulator by completing the approved form ([AMSA 504](#));
- satisfy the National Regulator that the applicant has demonstrated appropriate competence and capacity in relation to the safe operation of the vessel;
  - this may include providing the National Regulator with a copy of the safety management system (SMS) for the vessel/s.
- satisfy the National Regulator that the criteria prescribed by the regulations are met in relation to the issue of the certificate.
  - The regulations are set out in [Marine Order 504 \(Certificates of operation – National Law\) 2013 \(MO504\)](#), which require some classes of vessels to comply with the requirements in Part E (Operations) of the National Standard for Commercial Vessels (NSCV Part E).

As the National Regulator, AMSA has approved the Discover Sailing and Royal Yachting Association (RYA) training frameworks as equivalent means of compliance with the operational requirements of NSCV Part E under section 3.4. Sailing clubs should provide evidence of compliance with the relevant framework as part of their certificate of operation application.

- A certificate of operation may be subject to additional conditions imposed by the National Regulator.

**Note:** Sailing clubs need to continue to meet Australian Sailing requirements for Discover Sailing and RYA training centres and pass relevant audit processes to take advantage of this arrangement.

AMSA retains the right to conduct its own operational audit of an affiliated Discover Sailing club or RYA training centre or a centre's compliance with the Australian Sailing Operating Standards should it choose to do so.

### Certificate of operation exemption

Under [Marine Safety \(Certificate of operation\) Exemption 2016 \(Exemption 03\)](#), certain vessels are exempt from the requirement to be operated under a certificate of operation.

There is no need to apply for this exemption but it can be removed if vessels perform poorly during an inspection, or other compliance activity. The exemption applies to, among other things:

- Tender (within the definition of 'tender' in NSCV Part B);
- Class 2 or 3 <7.5m vessels that operate in sheltered (D or E) waters, and is not high risk;
- Class 2 vessels involved in sporting and recreational activities, affiliated with Australian Sailing and only engaged in inshore operations;
- Vessels that are <7.5m long and only engaged in inshore operations and used by a sailing school or training organisation to train members of the public for recreational boating qualifications;
- Class 2 or 3 vessel that is a personal watercraft;
- Human powered vessels; and
- <7.5m sailing vessels with no auxiliary engine or an auxiliary engine <3.5 Kw.

These vessels are subject to the general safety duties under Part 3 of the National Law, including the requirement for owners to implement and maintain a safety management system (SMS).

Compliance with some or all of NSCV Part E may also be required, and minimum crewing requirements continue to apply.

## Certificate of survey

Under the National Law, it is an offence for an owner or master to operate a DCV without a certificate of survey unless otherwise exempt.

To obtain a certificate of survey, the applicant must:

- make an application to the National Regulator by completing the approved form ([AMSA 521](#));
- satisfy the National Regulator that the vessel has been surveyed in accordance with the regulations;
  - [Marine Order 503 \(Certificate of survey – National Law\) 2013](#) (MO503) sets out the standards and survey process that apply to a vessel. Vessels must now be surveyed by the National Regulator, or accredited marine surveyor in accordance with their designated survey process;
- satisfy the National Regulator that the criteria prescribed in the regulations are met in relation to the issue of the certificate;
  - MO503 requires that:
    - an application shows that the vessel is suitable for its intended use and area of operation, and will comply with the standard that applies to the vessel; and
    - the National Regulator is satisfied that the vessel has been surveyed in accordance with the applicable standard for the vessel, and that it meets that standard.
  - a certificate of survey may be subject to additional conditions imposed by the National Regulator.

## Certificate of survey exemption

Under [Marine Safety \(Certificate of survey\) Exemption 2016 \(Exemption 02\)](#), certain vessels are exempt from the certificate of survey requirements ('non-survey' vessels). These include, among other things:

- Tenders (within the definition of 'tender' in NSCV Part B);
- Class 2, 3 or 4 vessels operating in sheltered (D or E) waters, that are <7.5m long:
  - If a class 2 vessel carries no passengers or up to 4 day passengers; and
  - is not high risk.
- Human powered vessels;
- Sailing vessels that are <7.5 m long with no auxiliary engine or an auxiliary engine of <3.5kW;
- Personal watercraft; and
- Recreational training vessels (used to train for a recreational boating qualification) <24m metres long in inshore waters.

**Note:** an observer, trainee, person being coached or a coach is not considered to be a passenger.

A written application to the National Regulator is required for the above vessels to be considered 'non-survey' ([AMSA 579](#)).

Vessels that are automatically non-survey (that is, no application to or approval by the National Regulator is required) include:

- Human powered vessels;
- Personal watercraft; and
- Sailing vessels that are < 7.5m long, don't have an auxiliary engine, or has an auxiliary engine less than or equal to 3.5kW propulsion power.

A non-survey vessel will generally need to comply with the National Standard for General Safety Requirements for Vessels (NSCV Part G).

## Certificate of competency

All DCVs must be crewed by persons holding the requisite certificate of competency as set out in [Marine Order 505 \(Certificates of competency – national law\) 2013](#) (MO505) unless otherwise exempt.

AMSA has approved the Discover Sailing and RYA training frameworks as equivalent means of compliance with the operational requirements of NSCV Part E. This means that if you are conducting commercial training under one of these frameworks you are required to comply with the crewing requirements as determined by that framework (for example, requisite instructor qualifications) and do not otherwise need a certificate of competency.

**Note:** [Marine Safety \(Sail\) Exemption 2014 \(Exemption 18\)](#) and [Marine Safety \(Sailing vessels with motor propulsion\) Exemption 2014 \(Exemption 33\)](#) contain special arrangements for crew on sailing vessels.

**Additionally, note:** [Marine Safety \(Low complexity duties\) Exemption 2016 \(Exemption 38\)](#) allows crew to perform low complexity functions and duties on DCVs where they meet specific criterion and comply with certain conditions.

## Vessel identifiers

The National Law requires that all vessels hold and display a vessel identifier unless otherwise exempt.

An application for a Vessel Identifier (UI) can be made:

- together with an application for a certificate of operation or certificate of survey; or
- in a standalone application in the approved form ([AMSA 568](#)).

Under *Marine order 502 (Vessel identifiers – national law) 2013* (MO502), the owner of a vessel for which a UI is issued must ensure that, within 21 days after the National Regulator issues the UI, it is displayed on the vessel:

- in a prominent place on both sides of the vessel; and
- in letters and numbers at least:
  - for a vessel less than 30m long – 10cm high; or
  - for a vessel at least 30m long - 15cm high; or
  - for a vessel with insufficient freeboard or topsides to comply with the above – 5cm high in a prominent place on both sides of the vessel;
- in a colour that contrasts with its background and is clearly readable in clear weather.

The National Regulator may approve another way of displaying the UI.

Special arrangements apply to vessel identifiers for tenders under *Marine Safety (Vessel identifiers) Exemption 2016 (Exemption 01)*.

Vessels that were issued with a UI by a State or Territory agency before 1 July 2013 may generally continue to use that identifier.

## General safety duties

The National Law imposes general safety duties on persons in relation to DCVs. It is not the policy of the National Regulator to make exemptions from these duties.

This includes an obligation on the owner of the vessel to implement and maintain an SMS that ensures, so far as reasonably practicable, the safety of the vessel and its operations.

These general safety duties also impose obligations on, among others, masters, crew and passengers as outlined below.

### Master's obligations

A master of a DCV must, so far as reasonably practicable ensure the safety of:

- the vessel;
- marine safety equipment relating to the vessels; and
- the operation of the vessel.

### Crew obligations

A member of the crew of a DCV, when carrying out duties as a member of the crew must:

- take reasonable care for his/her own safety and the safety of persons who may be affected by his/her acts or omissions;
- comply with any reasonable and lawful directions of the master of the vessel or supervisor;
- must not interfere or misuse anything on the vessel having regard to the safety of the vessel; and
- must not unreasonably place the safety of another person at risk when carrying out their crew duties.

## Duties of passengers

A passenger on board a DCV must:

- take reasonable care for his/her safety and comply with any reasonable and lawful direction of the master or crew, if the passenger has been advised that non-compliance may amount to an offence;
- must not interfere or misuse anything on the vessel having regard to the safety of the vessel; and
- must not unreasonably risk the safety of another person.

A documented SMS provides evidence showing that you have undertaken a risk assessment and other safety tasks such as crew briefings, inductions, training on safety procedures and emergency drills.

AMSA Liaison Officers can provide assistance and workshops to sailing clubs to explain the general safety duties and how to go about developing an SMS for the club's vessels.

## Grandfathering arrangements

Generally, for certificate of survey requirements under MO503, a vessel is an existing vessel if a survey certificate was in effect for it any time in the two years prior to 30 June 2013; or a person was entitled to operate it commercially any time in the two years prior to 30 June 2013.

These existing vessels will continue to be surveyed against the construction, subdivision and stability standards applying to the vessel when it was last surveyed prior to 1 July 2013, and the equipment standards applying to the vessel on 30 June 2013.

For certificate of operation requirements under MO504, a vessel is an existing vessel if a person conducted commercial operations with the vessel within the two years prior ending on 30 June 2013. This means that an existing vessel must generally comply with the requirements that applied to the vessel on 30 June 2013.

However, the National Regulator may view an existing vessel as a new vessel if it considers that you have altered or modified the vessel; or its operation or area of operation have changed so that there is an increased level of risk.

The National Regulator may also determine a vessel is a new vessel upon application by the owner of an existing vessel. In either case if the vessel is taken to be a new vessel it will need to meet all the current National Law requirements.

**Note:** Most existing vessels will still be required to obtain National Law certificates, unless otherwise exempt.



## FREQUENTLY ASKED QUESTIONS

### If I run a sailing club delivering training under the Discover Sailing /RYA training frameworks to non-members, do I need to comply with the National Law?

If your club provides training to non-members under one of the above frameworks:

1. Consider whether your vessel is covered by an exemption under Exemption 02 and/or Exemption 03. Generally, vessels owned by Australian Sailing affiliated sailing clubs being used for sporting or recreational activities will be exempt from the certificate of operation and certificate of survey requirements.
2. If you need a certificate of operation or a certificate of survey, follow the application requirements set out above.

**Note:** as AMSA considers that the Discover Sailing and RYA training frameworks are equivalent means of compliance with NSCV Part E, vessels being used as part of this purpose can be crewed in accordance with that framework. This means vessels being used to deliver training under these frameworks are required to be crewed by a person with the requisite instructor qualification.

All commercial vessels will still need to obtain and display a vessel identifier.

### I run a sailing club that uses vessels to conduct recreational training outside of the Discover Sailing/or RYA frameworks (for example, training, charter, hire and drive). What do I need to apply for?

Sailing clubs providing training outside of the scope of the Discover Sailing/RYA frameworks to members of the public, or providing vessels for charter or hire and drive to non-members, will need to meet the National Law certification requirements, unless otherwise exempt.

This means that:

1. A National Law certificate of operation may be required.
 

**Note:** if Exemption 03 applies to your vessel/s, no application is required for those vessels.
2. A National Law certificate of survey may be required.
 

**Note:** if Exemption 02 applies to your vessel/s, a written application may be required.
3. Crew may be required to hold a certificate of competency.

**Note:** Marine Safety (Sail) Exemption 2014 (Exemption 18) and Marine Safety (Sailing vessels with motor propulsion) Exemption 2014 (Exemption 33) contain special arrangements for crew on sailing vessels.

**Additionally, note:** Marine Safety (Low complexity duties) Exemption 2016 (Exemption 38) allows crew to perform low complexity functions and duties on DCVs where they meet specific criterion and comply with certain conditions.

4. A vessel identifier for each vessel must be obtained and displayed. Under MO502, an application may be made to the National Regulator for approval to diverge from specified display requirements. Vessels that were marked by a State/Territory vessel identifier prior to 1 July 2013 may continue to use that identifier.

### My sailing club uses its vessels to transport, for a fee, non-members to moored vessels. Is this permitted?

Vessels owned by a sailing club that is a prescribed community group, but which uses those vessels to provide charter, hire and drive or training to a person who is not a member of the sailing club, will most likely be DCVs subject to the National Law.

A vessel used to transport non-members to their vessels for a fee will be most likely be a tender (see definition in NSCV Part B). Tenders will generally be exempt from the requirement to hold a certificate of survey and certificate of operation under Exemption 02 and Exemption 03, subject to certain conditions. Tenders must be listed in the certificate of operation for the parent vessel, or in an SMS.

Under Exemption 01, tenders may, for the purposes of the vessel identifier requirements, use:

- the words 'Tender to' followed by the name or unique identifier of its parent vessel (i.e. Tender to 12345), or
- the name of the owner of the vessel followed by the word 'tender' (i.e. John Doe tender), or
- the unique identifier of its parent vessel followed by 'T' (i.e. 12345T).

### I need to apply for a certificate and/or approval under one of the exemptions mentioned in this Guidance Note. Where do I apply?

Prior to 1 July 2017, you should apply through your local Marine Safety Agency. From 1 July 2017, all applications should be directed to AMSA.

**If I am providing recreational powerboat licence training, what do I need to do?**

A <7.5m recreational training vessel operating in inshore waters is exempt from the requirement to be operated under a certificate of operation and a certificate of survey. Where the vessel is greater than 7.5m in length, but less than 24m, it will require a certificate of operation, and an application to be non-survey is required.

Existing vessels that are subject to grandfathering arrangements can continue to operate under the arrangements set out in MO503, Exemption 02 and MO504.

**Related references and forms**

Relevant forms can be found at:

[www.amsa.gov.au/forms-and-publications/domestic/forms/](http://www.amsa.gov.au/forms-and-publications/domestic/forms/)

Relevant Marine Orders and Exemptions can be found at

[www.amsa.gov.au/domestic/standards/national-law/](http://www.amsa.gov.au/domestic/standards/national-law/)

**Contact for more information**

For more information relating to the requirements of the National law, please contact your local AMSA Liaison Officer:

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