



Australian Government
Australian Maritime Safety Authority

AMSA EX02

Marine Safety (Certificates of survey) Exemption 2018 (No. 2)

I, Gary Prosser, Acting 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*.

30 November 2018

Gary Prosser
Acting Chief Executive Officer

- 1 Name of instrument**
This instrument is *Marine Safety (Certificates of survey) Exemption 2018 (No. 2)*.
- 2 Duration**
This instrument commences 1 January 2019 and ceases to have effect at the end of 30 June 2020.
- 3 Repeal**
Marine Safety (Certificates of survey) Exemption 2018 made on 7 June 2018 is repealed.
- 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 if:
 - (a) the vessel meets the conditions mentioned for it in Schedule 1; and

-
- (b) an application for approval, accompanied by the prescribed fee, is made to the National Regulator for any vessel other than the following:
 - (i) a human powered vessel mentioned in item 2.3 of Schedule 1;
 - (ii) a sailing vessel mentioned in item 2.4 of Schedule 1;
 - (iii) a personal watercraft — whether or not the PWC has an aerial freestyle device attached;
 - (iv) a vessel mentioned in Division 5; and
 - (c) for a vessel that is required by paragraph (b) to apply for approval — the vessel is approved by the National Regulator; and
 - (d) the owner notifies the National Regulator of any change relevant to the approval of the vessel, including:
 - (i) transfer of ownership; and
 - (ii) change of name and address of the owner; and
 - (iii) any alterations to the vessel or changes to the vessel's operation that may invalidate the vessel's approval or ability to operate under this exemption.

Examples

1 The vessel is altered in such a way that it needs to be reassessed for compliance with the applicable standard.

2 The owner wishes to add a new service category to the vessel's operations.

Note for paragraph (b) For the prescribed fee — see the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*.

Note Vessels for which no application for National Regulator approval is required (those set out in subparagraphs (b)(i) to (iv)) are entitled to the exemption provided that they comply with the conditions that apply to them under Schedule 1 and they fulfil any other requirements of this section.

- (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)(c) subject to further conditions.
- (4) The National Regulator may vary any condition mentioned in subsection (3) or revoke any approval.
- (5) The exemption no longer applies to the vessel if the conditions in Schedule 1 or any further conditions imposed by the National Regulator under subsection (3) are not being met.

Note 1 An example of a circumstance where the exemption will no longer apply is if the vessel fails to comply with the standards that the vessel has to meet as a condition of the exemption.

Note 2 Section 144 of the national law provides that an owner of a vessel commits an offence if the owner breaches, or causes or permits another person to breach, a condition of the exemption.

6 Exemption for heritage vessels

- (1) A heritage vessel is exempt from sections 5, 7 and 8, subsection 9(1) and paragraphs 9(2)(a), 11(1)(a) and 11(1)(f) 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.

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 2018*;
- (b) *Marine Safety (Certificates of survey) Exemption 2017 (No. 2)*;
- (c) *Marine Safety (Certificates of survey) Exemption 2017*;
- (d) *Marine Safety (Certificates of survey) Exemption 2016*;
- (e) *Marine Safety (Certificates of survey) Exemption 2015*;
- (f) *Marine Safety (Certificates of survey) Exemption 2013*;
- (g) *Marine Safety (Heritage vessels) Exemption 2013*.

Note The effect of this section is that an owner of a vessel that has an approval issued under any of the above repealed instruments that is still in force does not need to obtain further approval from the National Regulator under subsection 5(1).

Schedule 1 Vessels and conditions

(section 5)

Division 1 Tenders

Item	Kind of vessel	Conditions
1.1	Tender	<p>The vessel must:</p> <ul style="list-style-type: none"> (a) if the vessel has a parent 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 Class 2, 3 and 4 vessels

Item	Kind of vessel	Conditions
2.1	<p>Class 2, 3 or 4 vessel:</p> <ul style="list-style-type: none">(a) that is <12 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 including petroleum or gas products (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:<ul style="list-style-type: none">(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 that the surveyor is satisfied that the net reel, crane, lifting device or deck load is unlikely to:<ul style="list-style-type: none">(A) generate a heeling moment that may endanger or capsize the vessel; or(B) create a loading condition that exceeds the maximum loading for the vessel; and(g) that is not operated primarily for towage; and(h) that does not have an inboard engine which operates on fuel that has a flashpoint of less than 60°C; and(i) that is not:<ul style="list-style-type: none">(i) a support vessel in the offshore oil or gas industry; or(ii) a Class 4 vessel operated overnight; or(iii) a landing barge that is of a design or for a use that the National Regulator has	<p>The vessel must meet the design, construction and equipment standards mentioned in:</p> <ul style="list-style-type: none">(a) NSCV Part G that apply to the vessel; or(b) a standard determined by the National Regulator.

Item	Kind of vessel	Conditions
	<p>determined is likely to adversely affect its stability; or</p> <p>(iv) a high speed thrill ride vessel.</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	
	<i>Note for paragraph (a)</i> Examples of human powered devices are oars, paddles or pedal systems.	
	<i>Note</i> A dragon boat is a human powered vessel.	
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	
2.5	A personal watercraft	
2.6	A vessel that is:	
	(a) involved in sporting or recreational activities; and	
	(b) affiliated with a body determined by the National Regulator as having systems in place to manage risk; and	
	(c) engaged only in inshore operations	

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 2018 (No. 2)</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 an application 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 2018*.

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 2018 (No. 2)</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 an application 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

Item	Kind of vessel	Conditions
		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	<p>1. The vessel must meet the design, construction and equipment (other than equipment mentioned in conditions 2 and 3) standards that applied to the vessel on 30 June 2013.</p> <p><i>Note</i> Owners of some existing vessels were, on 30 June 2013, required to submit periodic safety equipment declarations for the vessel. From 1 July 2018, these declarations should be included as part of the vessel's safety management system and documented in accordance with the requirements in Schedule 1 of <i>Marine Order 504 (Certificates of operation and operation requirements — national law) 2018</i>.</p> <p>2. The vessel must, if it is of a kind that were it a new vessel would be required to have a certificate of survey that is in force — meet the standards for safety equipment and the EPIRB requirements, that apply to the vessel in accordance with the NSCV Parts C and F, on and after 1 January 2018.</p> <p>3. The vessel must, if it is of a kind that were it a new vessel would not be required to have a certificate of survey that is in force — meet the safety equipment standards of NSCV Part G on and after 30 June 2016.</p> <p>4. If <i>Marine Order 507 (Load line certificates — national law) 2018</i> applies to the vessel — the vessel has a load line certificate.</p> <p>5. 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:</p> <p>(a) the National Regulator considers there will not be an increased level</p>

Item	Kind of vessel	Conditions
		<p>of risk because of the proposed alteration or modification and has approved the alteration or modification in writing; and</p> <p>(b) the vessel complies with any requirements determined by the National Regulator for the vessel.</p> <p>6. The vessel's operations or service category may change only if:</p> <p>(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</p> <p>(b) the vessel complies with any requirements determined by the National Regulator for the vessel.</p> <p>7. 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>

Note for conditions 2 and 3 The NSCV provides that, from 1 January 2021, certain kinds of vessels must carry a class 2 EPIRB fitted in a category 1 bracket. The EPIRB also needs to be registered with AMSA.

Note for condition 2 Annex I of NSCV Part C7A applies to existing vessels that are Class 1, 2 or 3. NSCV Part F2 applies to vessels that are Class 4. NSCV Part F1 applies to vessels that are fast craft.

Note for condition 3 Examples of the kinds of vessels required to meet NSCV Part G include vessels that are mentioned in items 1.1, 2.1, 3.1 and 4.1 of this Schedule and also vessels exempt under *Marine Safety (Class C restricted operations) Exemption 2018 (No. 2)*.

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	1. The vessel must meet the design, construction and equipment standards mentioned in NSCV Part G that apply to the vessel.

Item	Kind of vessel	Conditions
	(b) to which an aerial freestyle device is attached; and	2. The aerial freestyle device hose must be fastened to the bow of the PWC without any strain on the hose coupling.
	(c) that is used in aerial freestyle device operations	3. The aerial freestyle device must not be modified to enable a person to take full flight control from an instructor. 4. The PWC must carry an air horn.

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*.

being constructed means:

- (a) a vessel's keel has been laid; or
- (b) construction identifiable with the vessel has 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.

category 1 bracket means a bracket for a class 2 EPIRB that is designed to automatically deploy the EPIRB when submerged at depth.

class 2 EPIRB means an EPIRB that has a manual and water activation switch.

dangerous goods has the same meaning as in NSCV Part C4.

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

design approval, has the same meaning as in Marine Order 503.

dragon boat has the same meaning as in NSCV Part G.

EPIRB means emergency position indicating radio beacon.

existing vessel means a vessel that:

- (a) for a vessel that was constructed before 1 July 2013 — was entitled under an Australian State, Territory or Commonwealth law to operate in connection with a commercial, governmental or research activity for the 2 year period ending on 30 June 2013, or other period ending on 30 June 2013 determined by the National Regulator, and it was not a foreign vessel at any time in that 2 year period or other period determined by the National Regulator; and
- (b) for a vessel that was being constructed on 30 June 2013 — it would have been entitled to operate in connection with a commercial, governmental or research activity if it had been completed on 30 June 2013, and, if completed after 30 June 2013, it has been used in connection with a commercial, governmental or research activity in the 2 year period after its completion; and
- (c) for a vessel that had not commenced construction before 1 July 2013 — was being constructed on 30 June 2016 and has design approval that was lodged before 1 July 2013, and subsequently approved, for use in connection with a commercial, governmental or research activity and, if completed after 30 June 2016, it has been used in connection with a commercial, governmental or research activity in the 2 year period after its completion; and
- (d) is not a vessel which has not operated as a domestic commercial vessel for a period of at least 2 years, or other period determined by the National Regulator.

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.

high speed thrill ride vessel has the same meaning as in Marine Order 503.

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.

inshore operations has the same meaning as in NSCV Part B.

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

landing barge has the same meaning as in Marine Order 503.

Marine Order 503 means *Marine Order 503 (Certificates of survey — national law) 2018*.

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.

passenger has the same meaning as in NSCV Part B.

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.

tender has the same meaning as in NSCV Part B.

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
 - (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 **Foreign vessel** and **owner** is defined in the national law — see section 6.

Owner includes the person with overall general control and management of the vessel.