

**Australian Maritime Safety Authority**

**Marine Safety (Emergency service vessels) Exemption  
2016 (Exemption 24)**

**Consultation Feedback Report**

**June 2016**

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## Executive summary

A draft new *Marine Safety (Emergency service vessels and crew) Exemption 2016* (Exemption 24) was developed to implement more robust arrangements for volunteer marine rescue (VMR or 'Scheme R' vessels) and fire service vessels. Importantly, the new Exemption 24 was intended to implement the 'Scheme R' arrangements for VMR vessels, as developed in consultation with the VMR sector.

The arrangements for other emergency services vessels remained largely unchanged in the draft new Exemption 24, although the format of the exemption and the application requirements changed slightly.

The draft new Exemption 24 was released for public comment on 20 January 2016, with consultation closing on 20 February 2016. Consultation was predominantly undertaken online, however face to face consultations were undertaken with VMR and other emergency services organisations. A detailed Explanatory Note was provided with the draft Exemption 24, to assist in the consultation process. The Explanatory Note included information regarding complementary changes to the survey exemptions contained in *Marine Safety (Certificates of Survey) Exemption 2016* (Exemption 02).

All issues raised by stakeholders, at both the face to face consultation sessions and through the written submissions, are identified in this report, together with a response to each issue. It is emphasized that the comments contained in this report have been made by stakeholders, and do not necessarily reflect the views of the National Regulator.

The responses contained in this report reflect the views of the National Regulator and provide an overview of the way forward on each issue and the changes that have been made to the new Exemption 24 as a result of the consultation.

The new Exemption 24 will commence on 1 July 2016.

# 1. Volunteer marine rescue vessels

## 1.1 Why change the requirements?

Significant variations around the country in VMR organisations made finding a national approach to the regulation of VMR vessels challenging. The arrangements implemented at the outset of the National System were only intended to be temporary, until a more robust and nationally consistent approach could be agreed.

Extensive consultation since the commencement of the National System was undertaken with VMR organisations in order to develop a new, national approach to the regulation of VMR vessels. This nationally agreed approach was referred to as 'Scheme R' and was proposed to be implemented through a draft new Exemption 24.

## 1.2 Overview of the proposed approach

Important note: The following provides an overview of the original proposal which was subject to public consultation. Changes have been made to the proposal as a result of feedback during consultation. These changes are outlined in sections 1.4 – 1.9 of this chapter.

### Definition of a VMR vessel

The *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* provides that a vessel which is:

- used by a volunteer search, rescue or search and rescue organisation for the purposes of conducting searches or searches and rescues; or
- a volunteer search, rescue or search and rescue vessel that undertakes searches or searches and rescues,

is a domestic commercial vessel. The only exception to this is surf lifesaving vessels (and vessels used by surf lifesaving organisations) operating only in sheltered waters or within 2nm of the low water mark.

All 'volunteer search and rescue vessels' are eligible for the arrangements for VMR vessels contained in the draft new Exemption 24, provided:

- the VMR organisation which operates the vessel is an incorporated association or an organisation established by legislation; and
- the vessel is used for any of the following activities:
  - searches;
  - rescues;
  - charitable and fundraising work;
  - scattering of ashes;

- community assistance;
  - providing assistance to other search and rescue organisations or government agencies;
  - general maintenance activity for the vessel, including regular maintenance to ensure the vessel is in operational order; or
  - for community engagement activities, including water safety awareness programs; and
- the vessel is not used for a commercial activity.

#### Proposed survey requirements for VMR vessels

VMR vessels which are less than 12m in length, that operate only in sheltered (D and E) waters and which do not carry passengers, will be able to elect to be 'non-survey' vessels. These vessels must comply with the National Standard for General Safety Requirements for Vessels (GSR Standard), and declarations as to the vessels compliance must be completed when the vessel enters into service and yearly after that. The annual declarations must be kept in the safety management system (SMS) that applies to the vessel.

Note that 'passengers' do not include volunteer personnel on board the vessel or rescued persons.

These new 'non-survey' arrangements for VMR vessels will be contained in a new Exemption 02 (Certificates of Survey Exemption), and were not in the draft new Exemption 24. This approach removes any overlap between the exemptions.

The grandfathering arrangements for standards and survey requirements will continue for VMR vessels that are already in operation.

All other VMR vessels must hold a Certificate of Survey and meet the standards identified in *Marine Order 503 (Certificates of Survey)*. However, instead of the periodic survey requirements identified in Marine Order 503, the VMR vessels will be able to elect to:

- undergo an initial survey and a five yearly renewal survey; and
- complete an annual declaration that the vessel complies with the applicable standard (the declaration must be kept in the relevant SMS); and
- once the vessel is 15 years or older (unless another age is determined by the National Regulator), undergo a periodic survey at year two of the survey cycle (in addition to the five yearly renewal survey).

#### Crewing requirements for VMR vessels

Under the draft new Exemption 24, the crewing requirements contained in Part E (Safe operations) and Part D (Crew competencies) of the National Standard for Commercial Vessels (NSCV) do not apply to VMR vessels, provided the following requirements are met.

VMR vessel masters and crew, other than crew of personal watercraft (PWC), must:

- be at least 16 years old; and
- meet medical and eyesight requirements determined by the VMR organisation; and
- meet the training requirements identified in schedule 2 of the draft new Exemption 24, as well as any additional training requirements specified by the VMR organisation; and
- operate only within the scope of duties identified in schedule 1 of the draft new Exemption 24.

In schedules 1 and 2 of the draft new Exemption 24, three levels of VMR crew are identified:

- entry level crew;
- masters to 3nm; and
- masters to 30nm (or operating within the operational envelop for operational area category C. This provides the flexibility for the master to go beyond 30nm where permitted by the vessel's certification and provided the VMR organisation confirms that the sea and weather conditions remain within the 'C' envelop).

In addition, under the draft new Exemption 24, VMR organisation trainers and assessors are required to meet the requirements of the relevant training regulator (such as those of the Australian Skills Quality Authority) and must have completed the relevant unit of competency.

Under the proposal, VMR organisations have until 31 March 2018 to meet the new requirements for crew, and the requirements will apply to both new and existing VMR crew. Until that date, the current crewing arrangements will continue (these are outlined in Chapter 3).

### **1.3 Comments: definition of 'VMR organisation' and 'VMR vessel'**

A number of comments related to the definition of VMR organisations and VMR vessels. Stakeholders were concerned that the list of permitted activities was too limited (for example, that training should be added), and that those activities permitted were often carried out on a fee-for-service basis, which may conflict with the prohibition on commercial activities. Charitable and fundraising activities and scattering of ashes could, for example, be classified as commercial activities.

Other stakeholders were concerned that VMR vessels carrying out these activities would compete with and disadvantage commercial operators.

Stakeholders also raised concerns with the lack of clarity in the definition of VMR vessel, with some stakeholders requesting that VMR vessels be operated by organisations which are recognised, approved or endorsed by the a state or territory government or authority. However, one stakeholder raised concerns about Exemption 24 accommodating the larger VMR organisations only, and not allowing for entry by smaller VMR operators. The stakeholder also submitted that there needed to be a mechanism for appealing a decision by the National Regulator that a vessel is not a volunteer marine rescue vessel.

## Response

The definition of 'VMR organisation' and 'VMR vessel' have been amended and are now:

VMR organisation means an organisation:

- (a) established for the primary purposes 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 of an organisation mentioned in paragraph (a) 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 (Goods and Services Tax) Act 1999*; or
  - (ii) search, rescue or 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 Marine Safety (Domestic Commercial Vessel) National Law — see section 6. Owner includes the person with overall general control and management of the vessel.*

The intention of these definitions is to ensure that all 'volunteer search and rescue vessels' subject to the National Law Act are eligible for the arrangements in Exemption 24 (Scheme R), provided:

- the VMR organisation which operates the vessel is established for the primary purpose of providing marine search, rescue and public safety services, and is given responsibilities by a State, Territory or Commonwealth government in an emergency or disaster; and
- the vessel is used for activities for which no compensation is charged, or for which nominal compensation only is charged.

VMR vessels can still be used for commercial activities which contravene the above definition of VMR vessel in Exemption 24. Where this occurs, the vessel must have met those survey requirements of Marine Order 503 or Exemption 02 which apply to domestic commercial vessels generally. In addition, the crew on the vessel at the time at which the vessel is undertaking commercial activities (or any activities outside the terms of the exemption) must meet the crewing requirements of *Marine Order 504 (Certificates of operation)*. It is emphasized that the design, construction, equipment and initial survey requirements are the same for VMR vessels, as for the general fleet, with some allowances made for vessels 7.5-12m in length operating in D and E waters. (It is intended that these same allowances will apply to the general commercial fleet in 2017).

Any person who is affected by a reviewable decision of the National Regulator can apply for internal review of that decision. There are also mechanisms for external review of decisions, including through the Administrative Appeals Tribunal.

#### **1.4 Comments: the initial and renewal survey requirements**

A number of stakeholders were concerned that the draft new Exemption 24 did not require a VMR vessel to undergo an initial or renewal survey as outlined in the Explanatory Note. The stakeholders strongly supported initial and five yearly surveys.

One stakeholder proposed that annual surveys be required for vessels 10 years and older operating more than 3nm from shore, and 3 yearly surveys be required for vessels operating up to 3nm from shore.

Another stakeholder argued that it was unrealistic to believe that VMR organisations would have the capability to accurately declare that their vessel complies with the applicable standard. The complexities contained within the applicable standards are far greater than completing a maintenance schedule of safety equipment.

In addition, stakeholders queried whether the reference to 'year' referred to the periodical, calendar or financial year.

Stakeholders also noted that some jurisdictional delegates of the National Regulator issue annual Certificates of Survey. Yet, the exemption from the periodic survey requirements

assumes that five yearly certificates are issued.

#### Response

Exemption 24 has been amended to make it clear that VMR vessels must undergo at least initial and five yearly surveys, regardless of the term of their Certificate of Survey.

Exemption 24 has also been amended to clarify that the 'year' refers to the 'periodic year' (which commences on the date the Certificate of Survey was issued or on which most recent survey was completed).

### **1.5 Comments: crew competency and training requirements**

#### **a) Age of crew**

Some stakeholders were concerned that 16 years of age was too young for VMR crew. One stakeholder noted that their insurance would not allow them to engage crew under 18 years of age.

#### Response

The National Regulator considers that a minimum age of 16 years old is appropriate. This aligns with Part D of the NSCV and *Marine Order 505 (Certificates of competency)*. However, VMR organisations should consider the appropriate minimum age for crew of their specific operations. Individual VMR organisations should (and do) set minimum age requirements.

#### **b) Medical and eyesight requirements**

Stakeholders raised concerns with the requirement for VMR organisations to set minimum eyesight and medical standards.

One stakeholder also noted that many VMR members are retirees who may have deteriorating physical fitness. These operators are performing rescues at night and in arduous conditions which compound the effects of medication on fatigue. The stakeholder proposed that the exemption highlight the need for an increased level of scrutiny on issues relating to age and medical history.

#### Response

The National Regulator considers this requirement to be appropriate. Exemption 24 requires VMR organisations to consider and determine minimum eyesight and medical standards for their crew. The National Regulator can issue guidance where it appears that there is a safety gap – for example, if a VMR organisation determined that no minimum eyesight and medical standards would be set.

Guidance materials will highlight the need for VMR organisations to closely consider and monitor medical issues relating to age.

### **c) Auditing**

Some VMR organisations raised concerns about being audited without a ‘trigger event’ (for example, a safety issue), given that they are already subject to audit from other bodies (such as the Australian Skills Quality Authority (ASQA)).

Other stakeholders strongly supported the future implementation of a robust auditing system by the National Regulator, to ensure consistency between VMR organisations and to ensure that appropriate experience, qualifications, training materials and record keeping practices were being implemented.

#### Response

The auditing provision of Exemption 24 is designed to provide a signal to VMR organisations who deliver their own training, and which are not Registered Training Organisations (RTOs), that they could be subject to an audit to confirm that they are delivering the training in line with the MAR training package requirements. AMSA does not intend to duplicate the role of ASQA.

However, the National Regulator’s audit powers are broad, and an audit of any VMR organisation could be undertaken, particularly where the National Regulator is concerned about the safety outcomes of the organisation.

### **d) Lesson plans**

One stakeholder asked whether they, as a VMR organisation, could develop their own lesson plans, and whether these plans would need to be approved by the National Regulator.

The stakeholder also asked how their current trainers could gain the qualifications needed to be considered as a ‘validated trainer who has completed the unit of competency’. Another stakeholder raised concerns with the need for trainers to have completed the unit of competency.

#### Response

A VMR organisation which directly delivers the training required for a unit of competency may develop their own lesson plans. These plans must comply with the requirements of the relevant MAR Maritime Training package, including the Competency Standards and Assessment Guidelines which form part of each unit of competency.

Lesson plans will not be approved by the National Regulator. However, a VMR organisation may be audited by the National Regulator to ensure that the training requirements of Exemption 24

are being met. Such an audit could include reviewing lesson plans to confirm they comply with the relevant MAR Maritime Training Package requirements.

The requirements for VMR validated trainers have been amended so that the trainer must have:

- completed the relevant unit of competency; or
- completed a unit of competency that the VMR organisation considers to be at least equivalent to the unit of competency; or
- knowledge and experience that the VMR organisation considers appropriate for the delivery of the training,

in order to deliver training for that unit of competency. The trainer may have completed the relevant unit of competency at a registered training organisation, or at another organisation (for example, another VMR organisation).

Note that clause 5(4)(b) has been amended to refer only to VMR organisations which are not RTOs. VMR organisations which are RTOs are already covered under clause 5(4)(a).

#### **e) Duties of entry level crew**

VMR organisations raised concerns with the title 'entry level crew', as these crew are not considered to be 'entry level'. Trainees are 'entry level crew'.

Stakeholders asked whether all crew on board had to meet this minimum qualification.

Concerns were also raised with the wording of the duties of entry level crew, and one stakeholder asked whether or not the definition of propulsion power contained in NSCV Part D applied to Exemption 24.

#### Response

The title 'entry level crew' has been changed to 'VMR crew or deckhand'.

This 'minimum qualification' is the qualification required for the formal crew on board the vessel – that is, the crew required to meet the adequate crewing level determined by the VMR organisation. Other VMR volunteers can also be on board the vessel, for example trainees.

Schedule 1, clause 1(a) has been amended, and is now:

- (a) assists, under the direct supervision of the person in charge of the vessel or its engines, a master or engineer with any task that may be required on board; or

Schedule 1, clause 1 has also been amended to remove the term 'unlimited outboard'.

The definition of propulsion power contained in NSCV Part D applies to Exemption 24 – this has now been made clear in the Exemption.

#### **f) Duties of Master to 3nm**

VMR organisations, particularly in Queensland, were concerned about the limitations on the Master to 3nm, given the shelter provided by the reef in some areas. Other stakeholders also raised concerns about limiting VMR skippers to 3nm.

VMR organisations also requested that MARB002 be removed from the list of training requirements for VMR crew – as it is not relevant to VMR operations.

#### Response

Clause 2(b) of Schedule 1 has been amended, and is now:

- (b) up to 3nm from point of departure or a port, harbour or sheltered waters, or in any other waters specified in the vessel's certificate of operation.

This change allows the National Regulator to provide a VMR organisation with a more flexible arrangement where appropriate.

The MARB002 requirements have been removed, and Schedule 1, clause 2(c)(i) now refers to inboard engines <500kW.

It is also noted that in Schedule 1, clause 2(c)(ii), 'unlimited outboard' has been replaced with 'unlimited power'.

#### **g) Duties of Master beyond 3nm**

VMR organisations, particularly in Queensland, were concerned about the limitation (of 30nm) on the Master beyond 3nm, given the shelter provided by the reef in some areas. Other organisations noted that communications equipment can support operating further offshore.

VMR organisations requested that MARB002 be removed from the list of training requirements for VMR crew – as it is not relevant to VMR operations.

VMR stakeholders also submitted that a risk assessment should be undertaken for VMR masters to operate beyond the 30nm limit, and that both the master of the vessel and the VMR commander on the day should agree that the vessel can operate beyond the 30nm limit before any such operations are undertaken.

However, another stakeholder submitted that the C operational area (which allows for beaufort scale 7 – near gale conditions, and a wave height of up to 4.5m) can be challenging conditions for an experienced Master <24m. As the training requirements for VMR Masters beyond 3nm reflect the Coxswain units of competency and not the Master <24m requirements, this creates a serious safety concern.

## Response

The allowance of up to 30nm from point of departure, port, harbour or sheltered waters has been replaced with the following:

- up to 30nm from point of departure, port, harbour or sheltered waters, or
- in Queensland, up to 50nm from point of departure, port, harbour or sheltered waters, or
- in the Great Barrier Reef Region or the Torres Strait zone.

Schedule 1, clause 3(b) has been amended, and is now:

(b) operating beyond the operational area mentioned in paragraph (a) only if the VMR organisation:

- (i) conducts a risk assessment of the following:
  - A. the range and capability of the vessel;
  - B. the abilities of the crew; and
  - C. potential fatigue of the crew; and
- (ii) considers that the risk assessment confirms that the vessel is safe to operate beyond the operational area mentioned in paragraph (a); and
- (iii) considers that the vessel is operating in sea and weather conditions that:
  - A. comply with the requirement mentioned in the table to section 3.4 of NSCV Part B for operational area category C for the design parameter weather and sea characteristics; and
  - B. are within the limits mentioned for operational area category C for the Beaufort scale, assumed gusting wind pressure and design significant wave height design parameters in the table to section 3.4 of NSCV Part B.

### **h) Competency requirements for master and crew**

Some VMR organisations submitted that MARC021 should be replaced by the Long Range Operator Certificate of Proficiency (LROCP) in all three crew / master levels. However, another stakeholder raised concerns with this blanket requirement, noting that VMR organisations and VMR vessels can operate in VHF areas only, and in that case do not carry MF or HF radios. The stakeholder submitted that more flexibility should be provided regarding the appropriate radio certification.

Stakeholders submitted that MARC005 should be added as a requirement for Master to 3nm.

Stakeholders also raised concerns with a potential gap in competency requirements for vessels 12m and longer, noting that the minimum training requirements did not cover these vessels. For example, one stakeholder submitted that the training requirements were inadequate for a 24m vessel, which handles very differently to a 12m vessel. For a 24m vessel, MARK002, MARH004,

MARB003 and MARC007 should apply. The stakeholder noted that this raised a potential safety gap.

Other stakeholders highlighted the need for VMR crew to be trained to operate in hazardous conditions. Some stakeholders believed that VMR crew should hold commercial qualifications, as well as have specified VMR training. Alternatively, the stakeholder believed that minimum sea time should set, for example 30 hours for a Master beyond 3nm.

Another stakeholder submitted that commercial vessel training was not appropriate for VMR, and that training needed to be specific to the vessel type, specialised for VMR operations, and coordinated on a national level.

It was also submitted that the training requirements proposed were excessive and inappropriate for VMR crew who may not undertake many rescues each year, are on average 55-60 years of age, and who are generally reluctant to undertake onerous amounts of training. The stakeholder also believed that the proposed training requirements were above that needed to achieve the desired outcome of providing a support service to the recreational boating public and local maritime authorities. The stakeholder recommended that MAI001, MARK001 and MARF004 should be the only required maritime package training units, with the remainder optional and/or managed through tailored training by VMR organisations.

Finally, one stakeholder raised concerns with the current level of training provided to VMR crew. The stakeholder submitted that VMR members have experience with recreational vessels and not commercial vessels. As VMR vessels are powerful, they must be classed as commercial and recreational competencies are not sufficient. The stakeholder believed that internal training by VMR organisations was not sufficient, and that a VMR-specific commercial qualification was required, delivered by independent registered training organisations.

VMR organisations also submitted that the wording of the VMR-specific training requirements, particularly for entry level crew and Masters to 3nm, was inappropriate.

### Response

MARC021 has been replaced by a requirement to either:

- hold a Long Range Operator Certificate of Proficiency (LROCP);
- have completed a unit of competency or other training considered by the VMR organisation for the vessel to be equivalent to the training required for the Long Range Operator Certificate of Proficiency; or
- have completed a unit of competency or other training considered by the VMR organisation for the vessel to be appropriate for the operation of the vessel in its area of operation,

in all three crew / master levels.

MARC005 has been added as a requirement for Master to 3nm. As noted above, MARB002 has

been removed from the requirements for Masters up to 3nm and for Masters beyond 3nm.

The gap in competency requirements for vessels 12m and longer is acknowledged and has been considered. After further consultation with VMR organisations, the option of including a further unit of competency for masters of these larger vessels has not been adopted. Instead, VMR organisations are expected to apply either further units of competency or alternative training requirements for crew of larger vessels. The words 'or training' have been inserted after 'additional units of competency' in (1)(e) of Schedule 2, clauses 1, 2 and 3, to address this issue.

It is also noted that MAH001 has been replaced with MARH001 in Schedule 2, clause 3(1)(b)(viii) – this was a typographical error in the draft exemption.

In regards to the VMR-specific training requirements, Schedule 2, clause 1(d) (which relates to VMR crew or deckhand) has been amended and is now:

- (d) have completed an induction provided by the VMR organisation for the vessel on the vessel's operations;

For Master to 3nm, the requirement for these Masters to undertake training relating to coordinating search and rescue operations has been removed.

There are no minimum sea time requirements. The appropriate amount of sea time must be determined by the VMR organisation.

#### **i) Skills and sea time logs**

Stakeholders asked whether there would be any specific requirements as to the format of the skills and sea time logs, and whether the logs could be kept by the VMR organisation on behalf of the crew. They also noted that skills logs are only maintained for the duration of the training, not indefinitely.

Questions were also raised regarding minimum sea time requirements.

#### **Response**

There will be no specific requirements as to the format of the skills and sea time logs. The only requirement is for VMR organisations to ensure that the records are kept.

The skills and sea time logs may be kept by either the individual or by the VMR organisation. Exemption 24 has been amended to allow for either approach.

Exemption 24 has also been amended so that the skills log needs to be maintained only for the duration of the training.

There are no minimum sea time requirements. The appropriate amount of sea time must be

determined by the VMR organisation.

**j) VMR qualifications / licences**

One stakeholder submitted that VMR crew should be issued qualifications or licences. They noted that this may require the volunteers to undergo an oral assessment.

Response

VMR organisations, and RTOs, can issue qualifications to their members which recognise the training and competencies the recipient has achieved. However, the only qualifications issued by the National Regulator are NSCV Part D certificates. The qualifications/training undertaken by a VMR crew member will be recognised towards a Part D certificate only if it is delivered by an ATO, or recognised through a RPL process by an ATO.

**k) Comments: competency requirements for SES vessels**

Concerns were raised by stakeholders over the appropriateness of the competency requirements for State Emergency Services (SES) vessels.

Response

Schedule 2 applies only to VMR organisations. SES vessels are VMR vessels only where:

- the organisation was established with the primary purposes of providing marine search, rescue and public safety services; and
- the vessel undertakes searches and rescues or is used for the purpose of conducting searches or searches and rescues.

Where this is the case, the VMR competency requirements of Schedule 1 and 2 apply. However, Exemption 24 has been amended to allow VMR vessels in inland waters to be operated by a person who meets local recreational vessel licensing requirements. The minimum training and competency requirements identified in Schedules 1 and 2 will not apply to these inland operations, however, the age, medical and VMR training requirements still apply. Note that this is a minimum requirement, and VMR organisations may impose higher training and competency requirements on crew operating in inland waters in line with their risk assessments.

Other SES vessels fall within those provisions of Exemption 24 which apply to emergency services authorities generally. These vessels can continue to meet the crewing arrangements that applied under the previous Exemption 24. Under this arrangement, the requirement for crew to hold Certificates of Competency does not apply, provided the emergency services authority certifies that the person is able to operate the vessel. The emergency services authority must be approved by the National Regulator in order to come within this arrangement.

## 1.6 Comments: existing VMR crew and recognition of prior learning

One stakeholder asked whether recognition of prior learning (RPL) would apply to long term members who have been competently carrying out the role of crew for many years.

In addition, many VMR stakeholders raised concerns with the proposal that existing VMR crew comply with the new competency requirements. They noted that:

- there are around 13,500 VMR crew around Australia. Undertaking an RPL process (mapping existing training and assessing competencies) for all of these volunteers would be extremely time consuming and would likely result in a large number of volunteers leaving the VMR organisations;
- an RPL process would provide no value in terms of safety outcomes, as VMR organisations already have processes in place for identifying when a member of crew does not have (or no longer has) the competencies required for the task, and a process of re-training is undertaken;
- in NSW, current crew competencies have been based on commercial qualification requirements (at minimum equivalent to the NSW GPH). These arrangements align with the proposed requirements for new crew;
- in other jurisdictions, a recreational licence and organisational training has been required. This has included at minimum a 12 week training course;
- there is a significant turnover of volunteers – at least 10% per year and in some case significantly higher. In other words, older crew will leave the system in a relatively short timeframe; and
- existing crew move up through the levels over time. Where this occurs, the crew member will be assessed to determine what units of competency are required in order to achieve the master to 3nm or master beyond 3nm status. In other words, most existing crew will move into the new framework over time.

Other stakeholders supported the proposed 2018 transition deadline for existing VMR crew, noting that this would deliver consistency in future risk assessments.

### Response

AMSA accepts the concerns raised regarding existing crew. Exemption 24 now provides that existing crew (certified by a VMR organisation up until the end of the transitional period) are not subject to the new competency and training requirements and may continue to operate within the terms of the certificate or qualification issued by the VMR organisation prior to 1 April 2018.

This approach aligns with the recognition of USL Code and pre-USL Code certificates of competency.

Under the revised Exemption 24, all Scheme R crew must:

- be at least 16 years old; and
- meet medical and eyesight requirements determined by the VMR organisation; and

- meet training requirements imposed by the VMR organisation.

In addition, crew of personal watercraft (PWC) and of vessels operating on inland waters must:

- hold any recreational boating operator licence required for equivalent recreational vessels in the jurisdiction.

Crew of all other Scheme R vessels must either:

- be certified as competent to operate the vessel by the VMR organisation prior to 1 July 2018, in accordance with their current procedures; or
- meet the requirements of Schedules 1 and 2 of Exemption 24.

**This means that Scheme R crew certified by a VMR organisation as competent to operate Scheme R vessels prior to 1 July 2018 can continue to operate Scheme R vessels in accordance with their existing certification, indefinitely.** This grandfathering arrangement will be reviewed by AMSA periodically (National Law regulations, including Marine Orders and exemptions, are generally reviewed on a 5 yearly basis, or earlier if an incident occurs which triggers a review).

The new levels of VMR crew, and the associated training requirements, contained in Schedules 1 and 2 of the revised Exemption 24, apply only to Scheme R crew who are certified by the VMR organisation after 30 June 2018. This includes new volunteers (those who enter the system after 30 June 2018) and existing VMR crew who move into a higher qualification level after 30 June 2018. 'RPL' (Recognised Prior Learning) processes can be used to allow existing VMR crew to obtain a higher qualification level.

In addition, the Scheme R crew competency requirements apply only to those crew members who form part of the 'adequate crew' of the vessel determined by the VMR organisation. Other volunteers may be on board the vessel.

Note that VMR organisations may elect to comply with the new crew competency arrangements (ie Schedules 1 and 2 of Exemption 24) prior to 1 July 2018. However, all qualifications or certificates issued by VMR organisations until 30 June 2018 – including those issued under current training arrangements – are recognised under Exemption 24.

These Scheme R crewing arrangements are contained in clause 5 (and Schedules 1 and 2) of the new Exemption 24. The 'grandfathering' provision, which recognises all current qualifications, and those issued by VMR organisations up until 30 June 2018, is clause 5(2)(b)(iv)(B).

## **1.7 Comments: regulating VMR**

One stakeholder was concerned with the approach to VMR, stating that:

"volunteer emergency services are not performing a commercial function, therefore should only need to meet the standard recreational safety and manning requirements. Requiring them to jump through financial and training hoops before allowing them to save a life, is bureaucratic bloody-mindedness."

### Response

VMR vessels can operate in the most treacherous conditions and can place volunteers at significant risk. The proposed requirements for VMR vessels and crew attempt to balance the need to maintain safety outcomes during rescues, with the need to facilitate VMR operations and encourage recreational and commercial seafarers to volunteer.

### **1.8 Comments: Part D sea service**

One stakeholder asked whether sea service / maintenance time obtained during VMR operations could be counted as NSCV Part D sea service.

### Response

This is an issue for NSCV Part D. However, it is noted that training undertaken at a VMR organisation is only transferable to a Part D certificate of competency if it is conducted by an Approved Training Organisation (ATO). If it is conducted by an RTO (who has not been approved under Marine Order 506), or by an organisation which is not an RTO or an ATO, an ATO must undertake an RPL process in order to recognise the prior learning. This means that VMR crew will generally not hold a Part D certificate of competency, and as such the sea time issue does not come into play.

### **1.9 Comments: scattering ashes**

One stakeholder noted that scattering ashes will normally be done by relatives and friends who may not be safety trained. The stakeholder proposed that it be made clear that relatives and friends on board in connection with scattering of ashes are not deemed to be passengers.

### Response

Persons on board without safety training are deemed to be passengers. The only exception to this arrangement are rescued persons. All 'special personnel' must be inducted and trained in accordance with the vessel's safety management system: see Part B of the NSCV for more information.

However, the carriage of passengers only impacts on the Certificate of Survey requirements for the vessel. A VMR vessel which carries passengers must have a Certificate of Survey (unless a grandfathering arrangement applies to a pre-National System vessel). The periodic survey allowances and crewing arrangements of Exemption 24 still apply to the vessel.

## 2. Fire service vessels

### 2.1 Overview of the proposed approach

Important note: The following provides an overview of the proposal which was subject to public consultation. Changes have been made to the proposal as a result of feedback during consultation. These changes are outlined in this chapter.

#### Definition of fire service vessel

Under the draft new Exemption 24, a fire service vessel is one used by a fire service organisation:

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

A fire service organisation is an organisation established by legislation to provide the following services:

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

#### Survey requirements for fire service vessels

Fire service vessels which are less than 12m in length, that operate only in sheltered (D and E) waters and which do not carry passengers, will be able to elect to be 'non-survey' vessels. These vessels must comply with the GSR Standard, and declarations as to the vessels compliance must be completed when the vessel enters into service and yearly after that. The annual declarations must be kept in the SMS that applies to the vessel.

These new 'non-survey' arrangements will be contained in a new Exemption 02, and were not in the draft new Exemption 24. This approach removes any overlap between the exemptions.

The grandfathering arrangements for standards and survey requirements would continue for fire service vessels that are already in operation.

All other fire service vessels must hold a Certificate of Survey and meet the standards identified in Marine Order 503. However, instead of the periodic survey requirements identified in Marine Order 503, fire service vessels will be able to elect to:

- undergo an initial survey and a five yearly renewal survey; and
- complete an annual declaration that the vessel complies with the applicable standard (the declaration must be kept in the relevant SMS); and
- once the vessel is 15 years or older (unless another age is determined by the National Regulator), undergo a periodic survey at year two of the survey cycle (in addition to the five yearly renewal survey).

#### Crewing requirements for fire service vessels

Under the draft new Exemption 24, the crewing requirements contained in Part E (Safe operations) and Part D (Crew competencies) of the NSCV) will not apply to fire service vessels, provided:

- the master meets any recreational boating operator licensing requirements which apply in the jurisdiction; and
- the fire service authority develops and implements training programs for the master and crew, relevant to their duties.

Under the proposal, fire service organisations can continue to access the crewing arrangements provided by the current Exemption 24 (and described in the following chapter) until 31 March 2018. After that date, the crewing arrangements described above must be met.

### **2.2 Comments: definition of fire service vessel**

One stakeholder asked that the definition of fire service organisation be amended to include an organisation established to provide aviation rescue fire fighting.

The stakeholder also asked that the definition of fire service vessel be expanded to include vessels used for inshore search and rescue operations for aircraft that crash over water.

#### Response

The National Regulator notes that aviation rescue vessels, including fire fighting vessels, are captured by clause 6 of Exemption 24, which applies to emergency services vessels generally. The National Regulator considers that this arrangement is more appropriate for the varying types of operations carried out by aviation rescue vessels.

### **2.3 Comments: survey requirements**

One stakeholder submitted that fire service vessels are complex vessels operated by career firemen, in a workplace with high exposure to risk that relies on high level of reliability of the vessel, similar to harbor tugs. As such, it was submitted that it was not appropriate for these vessel to be able to self-declare compliance to applicable standards.

## Response

Fire service vessels in survey will be required to undergo five yearly surveys. Once the vessel is 15 years old or older, a survey at year 2 of the survey cycle must also be completed. Individual organisations must undertake their own risk assessments, and determine whether more frequent surveys by accredited surveyors would be appropriate for their vessels. The declarations can only be completed by fire service organisations if they have the competency and capacity to complete the declaration. Otherwise, they would need to engage a competent person to complete the declaration.

### **2.4 Comments: parity in crewing requirements**

Stakeholders noted that some VMR vessels operate in sheltered waters, or in C waters, alongside fire service vessels. Where this is the case, there will, under the draft new Exemption 24, be significantly different crewing requirements for two vessels operating with volunteer crew in the same area and undertaking similar operations.

Another stakeholder submitted that in-house training program was not appropriate for fire service vessels. If they are operated by volunteers, they should meet the same level of competency as the volunteer VMR vessel operators. In addition, the stakeholder submitted that career fire brigade members should meet commercial qualification requirements.

## Response

The concerns about the training and competency requirements for fire service vessels is acknowledged. However, the National Regulator believes that minimum crew qualifications and competency requirements for fire service organisations is an issue which should be managed by the organisation. Fire service vessels can be used very infrequently, and generally only on inland waters, which needs to be accounted for in the risk assessment conducted by the organisation. Some organisations, for example, may determine (or have determined) that commercial qualifications are appropriate for their fire service vessels – this will depend on the vessel and the way it is used.

In addition, in order to address the concern regarding the parity in requirements between VMR and fire service vessels, Exemption 24 has been amended to allow VMR vessels in inland waters to be operated by a person who meets local recreational vessel licensing requirements. The minimum training and competency requirements identified in Schedules 1 and 2 will not apply to these inland operations, however, the age, medical and VMR training requirements still apply. Note that this is a minimum requirement, and VMR organisations may impose higher training and competency requirements on crew operating in inland waters in line with their risk assessments.

## **2.5 Comments: operating vessels in C waters**

One stakeholder submitted that they needed to move their vessels from one location to another from time to time, and when this is the case the vessel is in C waters. Exemption 02 does not allow a non-survey vessel to go beyond sheltered waters. The stakeholder sought an allowance for this, with conditions such as daylight passage, weather restrictions and appropriate training and experience.

### Response

Vessels which operate in C waters must have a Certificate of Survey and must meet the requirements of Marine Order 503, unless temporary operating permits are obtained under Exemption 07.

### 3. Other emergency service vessels

#### 3.1 Overview of the proposed approach

An emergency service vessel is one used in connection with emergency services by a government or community organisation established to provide emergency response or emergency management services.

Under the draft new Exemption 24, emergency service vessels can continue to meet the crewing arrangements that applied under the previous Exemption 24. Under this arrangement, the requirement for crew to hold Certificates of Competency does not apply, provided the emergency services authority certifies that the person is able to operate the vessel.

The emergency services authority must obtain approval from the National Regulator to access this arrangement. However, the approval is for the emergency services authority to identify appropriate crew – the National Regulator does not approve or certify individual crew members. This means that the approval does not need to be amended or updated each time a new crew member joins the organisation.

All approvals issued under the previous versions of Exemption 24 will be recognised until they expire, or until 31 March 2018, whichever occurs first.

#### 3.2 Comments: definition of ‘emergency services vessel’

Stakeholders proposed that a definition of emergency services vessels be included for clarity. The definition would include VMR vessels, fire service vessels and other vessels used for emergency services, as these are the vessels that are covered by the exemption.

##### Response

The term ‘emergency services vessels’ is intended to quickly convey the scope of the exemption. This term is not used in the body of the exemption, and as such including a definition of the term is not possible. Guidance materials will provide clarity on the scope of the exemption.

#### 3.3 Comments: definition of ‘emergency service authority’

Stakeholders submitted that the definition of ‘emergency service authority’ could be refined to provide greater clarity.

##### Response

The definition of ‘emergency service authority’ has been amended, and is now:

Emergency service authority means an organisation:

- (a) established to provide emergency response, emergency management services or disaster relief; and
- (b) given responsibilities by a State, Territory or Commonwealth government in an emergency or disaster.

*Note: An emergency service authority's responsibilities may be set out in a State, Territory or Commonwealth emergency management or search and rescue plan or subplan.*

'Recognised as an emergency services organisation by a State, Territory or Commonwealth government' includes being recognised as playing a role or having responsibilities in the event of an emergency in a State, Territory or Commonwealth emergency management or search and rescue plan, or a sub plan thereof.

### **3.4 Comment: certificates of survey**

Stakeholders noted that the reference to 'certificates of survey' in the title of clause 6 was inaccurate, as the clause covered crewing requirements only.

#### Response

The heading of clause 6 has been amended to remove the reference to 'certificates of survey', as these are not covered within the provision. Emergency service vessels may utilise the arrangements in Exemption 02 which apply to commercial vessels generally. These reflect the allowances included in the previous Exemption 24.

### **3.5 Comments: 'able' or 'competent'**

One stakeholder submitted that the word "able" in 6(a) be replaced by "competent".

#### Response

"Able" has been replaced by "competent" in clause 6(a).

### **3.6 Comments: additional local requirements**

One stakeholder proposed that an additional requirement be inserted into clause 6, which requires the emergency services organisation to continue to meet any rules and policies governing local arrangements by the relevant State or Territory authority.

#### Response

Other legislation, outside the National Law, applies to emergency services and their vessels. This includes legislation imposed by the states and territories.

### **3.7 Comments: application to Police**

One stakeholder asked whether an 'emergency service authority' included the Police and Water Police. If so, the stakeholder noted that the water police would, under the proposal, have different qualifications in different operational circumstances - NSCV Part D and E requirements during normal patrol operations, and Exemption 24 requirements during an emergency situation.

#### Response

Police and Water Police vessels are within the emergency service authority provisions of Exemption 24. Clause 6 of the proposed new Exemption 24 applies to all operations of Police / Water Police vessels, not just those being used in an emergency situation.

### **3.8 Comments: transporting crew**

Stakeholders noted that the vessels can be used for the transportation of crew to other locations. The crew being transported may not be qualified as vessel crew. Does the exemption allow for this?

#### Response

The crewing requirements apply to the formal crew on board the vessel – that is, the crew required to meet the adequate crewing level determined by the fire services organisation. Other volunteers and employees can be on board the vessel – provided they have been inducted and trained in accordance with the vessel's safety management system, they are considered to be special personnel and are not passengers.

### **3.9 Comments: operating in C waters**

One stakeholder noted that the non-survey arrangements apply only to vessels in Class D or E waters. However, their vessels are required to enter flooded waters which do not come under Class D or E. There also may be times when a vessel is required to go out into ocean waters, and then re-enter another bay, port or inlet.

#### Response

The crewing arrangements provided by Exemption 24 apply to all vessels, not only those in sheltered waters. However, vessels which operate in C waters must have a Certificate of Survey and must meet the requirements of Marine Order 503, unless temporary operating permits are obtained under Exemption 07.

### **3.10 Comments: carrying rescued persons**

One stakeholder noted the requirement to maintain a safety management system which complies with Part E of the NSCV. During an emergency response, the vessels may be required to carry persons requiring evacuation. The stakeholder asked whether this would cause extra requirements as part of the vessel's safety management system.

#### Response

Under Part B of the NSCV, persons on board a vessel because of the master's obligation to carry shipwrecked or distressed persons or because of circumstances the master or owner could not prevent are not 'passengers'. However, the vessel's safety management must address circumstances in which rescued persons may be carried, where there is a likelihood of this occurring, and must identify strategies for managing the risks of carrying rescued persons.

### **3.11 Comments: design and construction requirements for rescue boats**

One stakeholder submitted some concerns with the fuel line requirements for rescue boats.

#### Response

The design and constructions standards for new rescue boats are the same as those which apply to the general fleet. The NSCV applies to vessels in survey, and non-survey vessels must comply with the National Standard for General Safety Requirements.

Applications for exemptions or equivalent solutions to the standards can be made to the National Regulator.

It is also noted that the standard to which a rescue vessel, which was in operation prior to 1 July 2013, was built, will be recognised.

## 4. Other comments

Some general comments were received on the exemption which did not relate to a specific type of emergency service vessel. These are discussed below.

### 4.1 Comments: application to fishing vessels

One stakeholder sought confirmation that Exemption 24 would not apply to a commercial fishing vessel being used for that search and rescue purposes.

#### Response

Exemption 24 does not apply to commercial fishing vessels. However, commercial fishing vessels undertaking search and rescue activities are already accommodated by the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* and have an obligation to render assistance when a vessel is in distress. Some aspects of the National Law do not apply when a search or rescue is involved; for example, a rescued person is not a 'passenger' for the purposes of the National Law, so a fishing vessel could carry rescued persons without infringing the National Law.

### 4.2 Comments: consultation process

A number of stakeholders raised concerns regarding the process of consultation undertaken as part of the development of the draft Exemption, with many suggesting that workshops should have been held with emergency services organisations prior to the public release of the draft exemption.

Other stakeholders noted that the explanatory note lacked detail particularly in relation to training and assessment requirements.

#### Response

The National Regulator acknowledges the controversial nature of Exemption 24, and the significant debate the draft instrument has created nationally.

A substantial consultation process was undertaken with VMR organisations prior to the development of the draft instrument, and the draft Exemption 24 was intended to implement the agreed outcomes of that process. However, it is noted that the requirements were presented in a manner which did not meet the expectations of the VMR community – particularly in the lack of reference to 'Scheme R'. It is emphasized that Exemption 24 implements the arrangements called 'Scheme R', and the explanatory material should have noted this fact and will do so in the future.

The National Regulator has worked with VMR and other emergency services organisations to explain the provisions and the proposed arrangements, and to address outstanding concerns regarding the draft Exemption. However, the National Regulator is bound by rules of transparency and open government, and believes that releasing the draft exemption for broad

public consultation, rather than limited consultation with selected stakeholders, was the appropriate approach.

#### **4.3 Comments: obligation to respond to vessels in distress**

One stakeholder asked that the exemption note that masters and crew (including of emergency services vessels) may have an obligation to assist a vessel in distress, in which case some provisions of the law do not apply.

##### Response

Masters and crew on a vessel and have an obligation to render assistance when a vessel is in distress. To accommodate this obligation, some aspects of the National Law do not apply when a search or rescue is involved; for example, a rescued person is not a 'passenger' for the purposes of the National Law. The National Regulator will look at whether this can be noted in the exemption.

#### **4.4 Comments: emergency vessel identification**

One stakeholder asked whether the proposal for emergency vessels to have special unique identifier requirements was also being progressed.

##### Response

At this stage, it is proposed that the general unique identifier requirements will continue to apply to emergency services vessels. The issue will be reviewed over the coming years, when the broader unique identifier requirements of the commercial fleet are considered.

## Appendix A

### List of submissions received

Air Services Australia

Australian Volunteer Coastguard

Anthony Little

Brett McCallum

Col Strawbridge

Darryl Dorron

Darryl Wright, State Emergency Service, South Australia

Department of Planning, Transport and Infrastructure, South Australia

Department of Transport, Northern Territory

Department of Transport, Western Australia

Eileen Murray, Southern Peninsula Rescue Squad Inc.

Grant Hunt

Marine Rescue NSW

Marine Rescue Queensland

Maritime Safety Tasmania

National Volunteer Marine Search and Rescue Committee

NSW Police

NSW Rural Fire Service

Paul Farquharson

Peter Culverwell

Phil Nicholls

Stuart Romero

Suzi Hayward

Transport for NSW

Transport Safety Victoria

Victoria State Emergency Service

VMR Mornington Inc. Volunteer Marine Rescue

Volunteer Marine Rescue Association Queensland