

STATEMENT ADDRESSING THE BETTER REGULATION PRINCIPLES IN RELATION TO THE PROPOSED

MARINE SAFETY (COMMERCIAL VESSELS) REGULATION 2010

1 *The need for government action should be established*

Regulation of commercial vessels is required to ensure the safety of vessels, their crew and passengers as well as the safety of recreational craft, their passengers, maritime infrastructure and the environment. Approximately 10,000 commercial vessels operate in NSW and 15,000 crew are certified to work on commercial vessels. Commercial vessels also provide a significant contribution to the public transport task. Sydney Ferries carries over 14 million passengers on 178,000 services each year. The consequences of an accident involving a ferry carrying 300 passengers or a bunker barge carry petroleum would have a significant impact on both the government and the community.

The provision of safe and reliable commercial vessels is therefore a key concern. The community rightly expects that vessels meet national safety standards for design, construction, equipment and operation. It also expects that vessels meet minimum safe crewing requirements and that crew are medically fit and competent to perform their duties.

The *Commercial Vessel Act 1979* and six associated regulations form the legislative framework for commercial vessels. This legislation was developed more than 30 years ago and is complex. In the past changes to regulatory requirements for commercial vessels have been applied through a series of gazetted exemptions rather than regulatory amendment. There are currently 29 gazetted exemptions applying to different vessel types under the *Commercial Vessels Act 1979*. Industry has long complained that the regulatory framework is too complex.

The new Regulation is easier to understand as it consolidates all requirements for commercial vessels into one regulation providing improved transparency of regulatory requirements. It adopts all completed parts of the National Standard for Commercial Vessels (NSCV) and removes obsolete provisions. It recognises that the majority of vessels are low risk vessels operating in sheltered waters and that a survey certificate is not required for these vessels. The new Regulation simplifies and standardises requirements for these vessels. It reduces complexity for vessel owners, operators and builders on the requirements applying to the design, construction, equipment, operation and crewing of commercial vessels in NSW.

2 *The objective of government action should be clear*

The objective of the proposed Regulation is to reduce fatalities and serious injuries and environmental damage from incidents involving commercial vessels.

3 *The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options*

The following regulatory options have been considered:

1. Do Nothing-continue the existing regulatory framework
2. Industry Self-Regulation

Do Nothing

Under this option the existing complex regulatory framework would be retained.

New standards developed as part of the National Standard for Commercial Vessels would not automatically be adopted in NSW. These standards include:

- NSCV Part C Section 1 *Arrangement, Accommodation and Personal Safety*
- NSCV Part C Section 2 *Watertight and Weathertight Integrity*
- NSCV Part C Section 6B *Buoyancy and Stability after Flooding*
- NSCV Part E *Operational Practices Amendment 2*
- NSCV Part F *Leisure Craft*

Existing perpetual certificates of competency would continue to be recognised with holders not required to undertake first aid training or demonstrate medical fitness. Cumbersome processes for the recognition of interstate and Commonwealth crew qualifications would be retained. Safety management systems would not be required for vessels other than those covered by the *Passenger Transport Act 1990*. Complex processes for determining vessel crewing would continue to apply. A nationally agreed risk based approach to vessel survey would not be applied.

The do nothing option is rejected as it fails to adopt nationally agreed safety standards, does not reduce the compliance burden on industry and is unlikely to lead to a reduction in fatalities, serious injuries and environmental damage.

Industry Self-Regulation

Self regulation can be effective where there is a cohesive industry association that is representative of the industry and there is a commitment to making self regulation work. This is unlikely to be a successful approach in the commercial vessel industry. The commercial vessel industry is fragmented. There are many small operators with varying interests and financial resources. The risk of non compliance would be high. While current standards for vessel design, construction and equipment exist there would be no regulatory mechanism for enforcing these standards. Unseaworthy vessels that failed to meet the standards could be used, putting lives at risk. Similarly, requirements for specialised skills to operate a commercial vessel or minimum crew requirements would also be unable to be enforced.

It would be reasonable to assume that self regulation of the commercial vessel industry would lead to more fatalities, serious injuries and environmental damage

placing a greater economic, social and environmental burden on the NSW government and community. Consequently self regulation is rejected as an option.

4 Government action should be effective and proportional

The proposed Regulation adopts national technical standards for vessel design, construction, equipment, operation and crewing that have each been the subject of Regulatory Impact Statements approved by the Office of Best Practice Regulation. Costs and benefits have been identified as part of that process as has the impact on different vessel types, business, individuals and the economy. The impact on competition has also been considered. Each RIS has demonstrated that the new standards are an effective means of improving safety outcomes in the commercial vessel industry and that the cost of the standards are realistic and reasonable given the safety benefits.

5 Consultation with business and the community should inform regulatory development

Extensive consultation with industry stakeholders has occurred throughout the development of the proposed Regulation. The consultation process has included the:

- Maritime Ministerial Advisory Council;
- Commercial Vessel Association;
- Commercial Vessel Advisory Group;
- NSW Builder's Group;
- NSW Importers Group;
- Fishing Industry Advisory Group; and
- Yachting Australia.

The identified changes to regulatory requirements are supported by industry.

6 The simplification, repeal, reform or consolidation of existing regulation should be considered

The Regulation will repeal the following legislation:

- *Commercial Vessel Act 1979*
- *Commercial Vessels (Certificates of Competency and Safety Manning) Regulation 1986*
- *Commercial Vessels (Emergency Procedures and Safety of Navigation) Regulation 1986*
- *Commercial Vessels (Equipment) Regulation 1986*
- *Commercial Vessels (Hire and Drive) Regulation 1986*
- *Commercial Vessels (Load Line) Regulation 1986*
- *Commercial Vessels (Permits) Regulation 1986*
- Section 13SA of the *Maritime Services Act 1935*

- Clauses 8, 8A, 12, 13, 14, 16-17B, 19 and 19a and the sixth and eighth schedule to the *Management of Waters and Waterside Lands Regulation –NSW*.

The regulation will also replace a complex series of gazetted exemptions.

It will simplify requirements and improve the transparency of commercial vessel regulation by consolidating requirements for commercial vessels in one regulation.

7 *Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness*

The *Marine Safety (Commercial Vessels) Regulation 2010* will be reviewed as part of the staged repeal process under the *Subordinate Legislation Act 1989*.

The *Marine Safety Act 1998* is required to be reviewed within a time frame related to the commencement of the *Marine Safety Amendment Act 2008*. The review is required to be completed within one year of 1 July 2013.