

# INTERGOVERNMENTAL AGREEMENT ON COMMERCIAL VESSEL SAFETY REFORM

Council of  
Australian  
Governments

An agreement between

- the Commonwealth of Australia and
- the States and Territories, being:
  - The State of New South Wales
  - The State of Victoria
  - The State of Queensland
  - The State of Western Australia
  - The State of South Australia
  - The State of Tasmania
  - The Australian Capital Territory
  - The Northern Territory of Australia

An agreement between the Commonwealth and the States and Territories on the establishment of a national maritime safety jurisdiction and regulator for all commercial vessels in Australian waters.

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# Intergovernmental Agreement on Commercial Vessel Safety Reform

## RECITALS

1. Maritime safety regulation is identified as a competition reform priority in the [National Partnership Agreement to Deliver a Seamless National Economy](#) and this Intergovernmental Agreement (the Agreement) should be read in conjunction with that agreement and subsidiary schedules.
2. The Parties to this Agreement agreed in 2009 a national regulatory reform agenda to establish national systems for heavy vehicles, rail safety and commercial vessel safety that is aimed at improved safety and reduced costs and regulatory burden for Australian transport companies. Specifically, the Parties agreed on 2 July 2009 that the Australian Maritime Safety Authority will be the national safety regulator for commercial vessels in Australian waters. A Statement of Intent is attached at Schedule C to this Agreement.
3. This Agreement sets out the principles and processes to implement the Parties' decision to deliver a national safety system for commercial vessels that is effective, consistent and efficient; minimises legal and administrative costs; and does not result in an overall increase in regulatory burden.
4. This Agreement is not intended to govern arrangements pertaining to AMSA's current functions under the *Navigation Act 1912* or its successor Act.
5. In entering this Agreement, the Commonwealth and the States and Territories recognise that they have a mutual interest in a national system for commercial vessel safety regulation, and affirm their commitment to work cooperatively to achieve this outcome. The ongoing role of State and Territory maritime agencies in service delivery is integral to the national system.

## PART 1 — OPERATIVE PROVISIONS

### Parties

6. This Intergovernmental Agreement is between the Commonwealth of Australia and the States and Territories.

### Term

7. This Agreement will commence as soon as it is signed by all Parties, and will operate indefinitely unless the parties by unanimous agreement in writing revoke it.

### Enforceability

8. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the Parties' commitment to this Agreement.

## Delegations

9. The relevant Standing Council responsible for commercial vessel safety is authorised to agree the Schedules and changes to the Schedules attached to this Agreement.

## Interpretation

10. Unless otherwise specified, the following terms and definitions, subject to the Office of Parliamentary Counsel legislative drafting processes, are used throughout this Agreement:
  - a) AUSTRALIAN MARITIME GROUP (AMG) is the Maritime Standing Sub-Committee responsible for providing maritime policy and technical advice to the Senior Officials' Committee (or its successor).
  - b) AUSTRALIAN WATERS includes internal waters of the States and Territories.
  - c) COMMERCIAL VESSEL means:
    - (i) any ship, boat or any other type of craft capable of navigation that is used for a commercial purpose including a dinghy; lighter; barge; punt; raft; houseboat; air cushion vehicle or other ground effect craft; but does not include seaplanes, other aircraft or any vessel that belongs to, or is operated by, the Australian Defence Force; or
    - (ii) a structure designed to float in water that is used for a commercial purpose, other than:
      - a. pontoons or floating jetties that are used only for the purposes of walkways or storage; or
      - b. similar platforms situated adjacent to river banks or any other shore in circumstances in which they are not being towed or moored away from the shore.

For the purposes of this definition, commercial purpose means a use in connection with a commercial transaction of any kind including operations

  - a. as a business;
  - b. as a service (including a service provided by the Crown);
  - c. for profit; or
  - d. for research.
  - d) COMMONWEALTH LAWS means the Commonwealth legislation embodying the national law.
  - e) MARPOL means the International Convention for the Prevention of Marine Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), that has entered into force for Australia from time to time.
  - f) NATIONAL LAW means the set of Commonwealth legislation, both primary and subordinate, that sets out the relevant maritime safety laws.
  - g) NATIONAL REGULATOR has the meaning expressed in paragraph 30.

- h) NATIONAL SYSTEM means the national commercial vessel safety regulatory framework described in Parts 3 and 4 of this Agreement.
- i) PRIMARY LEGISLATION means an Act or Acts of the Commonwealth Parliament.
- j) SENIOR OFFICIALS' COMMITTEE means the Senior Officials' Committee of the Standing Council, currently known as the Transport and Infrastructure Senior Officials' Committee, or its successor, responsible for providing support on transport and road policy issues.
- k) SOLAS CONVENTION means the International Convention for the Safety of Life at Sea, 1974, and the Protocols of 1978, that have entered into force for Australia from time to time.
- l) STANDING COUNCIL means the relevant council established under the Council of Australian Governments to consider transport matters, currently the Standing Council on Transport and Infrastructure (SCOTI), or its successor, but constituted so that it consists of only one Minister for each Party to this Agreement when dealing with matters with which this Agreement or the national system are concerned.

## PART 2 — OBJECTIVES

### Objectives

- 11. Through this Agreement, the Parties commit to the objective of safe commercial vessel operation and its effective, consistent and efficient regulation.
- 12. This objective is to be achieved with minimum legal and administrative costs and no overall increase in regulatory burden over that applying prior to the commencement of the national system.

### Outcomes

- 13. The Agreement will contribute to the following outcomes for the commercial vessel industry:
  - a) improved safety and decreased risk to the public, commercial vessel owners, operators, crew and the environment;
  - b) reduced complexity and increased certainty for commercial vessel owners, operators, surveyors and suppliers regarding the requirements applying to design, construction, equipment, operation and qualifications/crew certification for commercial vessels across Australia; and
  - c) a more efficient national market and reduced costs for business and labour through eliminating barriers to the transfer of labour and commercial vessels between jurisdictions.

### Outputs

- 14. The objectives and outcomes of this Agreement will be achieved by the establishment of:
  - a) national law for all commercial vessels operating in Australian waters, including appropriate transitional provisions as required;
  - b) a National Regulator that develops, maintains, monitors and enforces national standards for commercial vessels;

- c) a national compliance and enforcement system, consistently applied, for all commercial vessels; and
- d) a national database of commercial vessels linking ownership, vessel details, inspection and survey history, incidents and operators to provide better data as a basis for improved risk management and compliance monitoring. Over time, it is expected that this will improve safety levels and enable more efficient use of resources.

## PART 3 — NATIONAL SYSTEM

### National Law

15. The Parties agree to work co-operatively to create the national system, including any changes to Commonwealth, State and Territory laws and administrative arrangements of the Parties that are necessary to facilitate the reform.
16. The Commonwealth will:
  - (a) Enact and maintain the Standing Council agreed national law; and
  - (b) Not submit a Bill or Bills to its legislature which would be inconsistent with, or alter the effect of, the legislation to implement the national system or this Agreement.
17. The Commonwealth will legislate to the limit of its Constitutional powers. The Commonwealth will refrain from reliance on powers in Section 122 of the Australian Constitution in legislating for the implementation of the national system in the Northern Territory.
18. States and the Northern Territory will legislate to apply the national law in their respective jurisdictions to the extent necessary to ensure that the national law applies to all commercial vessels in Australian waters.
19. The national law will be:
  - developed in accordance with the national maritime safety standards agreed by the Standing Council;
  - developed and maintained collaboratively by Australian maritime authorities or transport agencies under leadership of the National Regulator and with full visibility of new proposals by AMG; and
  - maintained in accordance with the provisions of the Council of Australian Governments (COAG) Best Practice Regulation – A Guide for Ministerial Councils and National Standard Setting Bodies, or its successor document.
20. With respect to matters to be covered by the national system, the Standing Council will:
  - (a) approve the primary legislation, and any changes to it;
  - (b) approve the scope of the National Law and any changes to it, including those which arise as a consequence of amendments to other legislation;
  - (c) approve the principles that will underpin the development and maintenance of the national system; and
  - (d) approve national maritime safety standards.

21. Where the Standing Council is required to decide on matters set out in paragraph 20:
  - (a) a recommendation will be proposed through the AMG and the Senior Officials' Committee, and will be carried upon unanimous agreement of Standing Council members representing parties to this Agreement.
  - (b) The vote may be taken:
    - (i) at a meeting of the Standing Council; or
    - (ii) by a written vote where the Standing Council Secretariat submits the recommendation to each of the members of the Standing Council and the members provide their vote to the Council Secretariat by the deadline set by the Council Secretariat in accordance with sub-clause (e)
  - (c) A member who does not attend a meeting of the Standing Council may submit a written vote in relation to a recommendation for the purposes of that meeting.
  - (d) At a meeting of the Standing Council, members who do not vote in person or by written vote will be counted as having voted to approve a recommendation. Where a vote is conducted without a meeting, a member who does not submit his or her vote by the deadline set by the Standing Council Secretariat in accordance with sub-clause (e), will be counted as having voted to approve the recommendation.
  - (e) Relevant matters referred to the Standing Council by the Standing Council Secretariat will be subject to members' consideration for a maximum of eight weeks before a vote is taken.
22. The National Regulator will be responsible for development of the subordinate legislation, including Marine Orders and Regulations, which forms part of the national law. This subordinate legislation will be consistent with the national safety standards and the principles approved by the Standing Council in paragraphs 20(c)-(d).
23. The National Regulator is to advise AMG members of proposals for new subordinate legislation, or amendments to existing subordinate legislation, will consult Party jurisdictions as it develops these regulatory initiatives, and circulate to jurisdictions final drafts of proposed subordinate legislation.
24. In the event of an objection by any jurisdiction to a piece of subordinate legislation once it has been drafted, the following steps will be taken:
  - a) the jurisdiction objecting to the legislation will endeavour to resolve the concern through discussions with the National Regulator.
  - b) should discussions not resolve an objection, the jurisdiction may refer the matter to AMG.
  - c) should two-thirds or more of AMG members vote in support of the objection, the objection will be referred to the Senior Officials' Committee, and if necessary, the Standing Council, for resolution.
  - d) should two-thirds or more of Standing Council members vote in support of the objection, the National Regulator, or as appropriate, the Commonwealth Minister, will take steps to withdraw, rescind or amend the legislative proposal or piece of subordinate legislation, or part thereof, subject to the objection, to the satisfaction of the objecting jurisdictions.

- e) where the objection relates to a piece of subordinate legislation already made, the making and consideration of an objection in accordance with this paragraph will not, of itself, cease the operation of the relevant piece of subordinate legislation.
25. AMG will agree the arrangements of the national approach to service delivery and to the high level risk management, compliance and enforcement frameworks to be applied by the National Regulator. Where there is no unanimous agreement among AMG, the Standing Council (or the Senior Officials' Committee) shall consider the proposed matter.
26. AMG may establish sub-committees in order to draw on state and territory expertise. In the first instance, this will be the Maritime Safety Committee and the Regulatory Technical Panel(s).
27. The Commonwealth will ensure that the AMSA Board membership includes at least one member with knowledge of or experience relevant to non-SOLAS-Convention commercial vessels operation and/or construction.
28. Parties agree that the 1997 Intergovernmental Agreement 'Establishing a National Marine Safety Regulatory Regime' is terminated upon commencement of the national system.
29. Parties agree that the National Marine Safety Committee (NMSC) will be voluntarily wound down upon commencement of the national system, or earlier if by agreement of the Standing Council. Parties also agree that the NMSC's work on commercial vessel standards will be finalised before this date. Future standards development work following the commencement of the national system will be carried out co-operatively between the National Regulator and States and Territories, with approval of standards to be carried out by the Standing Council in accordance with paragraphs 20 and 21. Prior to the introduction of the national system, the implementation of agreed national standards into state and territory law will be determined by States and Territories on a case by case basis and mutual recognition protocols will remain operative during this time.

## National Regulator

30. The National Regulator is the Australian Maritime Safety Authority operating pursuant to the *Australian Maritime Safety Authority Act 1990*, as amended, and subject to Commonwealth corporate governance and public accountability requirements under the *Commonwealth Authorities and Companies Act 1997*, including annual reporting to the Commonwealth Parliament.
31. The functions of the National Regulator with respect to this Agreement are detailed in Schedule B to this Agreement but in summary will be to:
- a) Develop and maintain national standards, and implement, monitor and enforce the national law in relation to matters including:
- i. commercial vessel safety (including design, construction, equipment and survey or other compliance requirements);
  - ii. safe commercial vessel operation (including safety management systems, registration, crew certification and crewing requirements);
  - iii. MARPOL survey and certification matters;
- b) Provide advice to the Standing Council on national commercial vessel safety and operational issues, as described in this Part;



- c) Provide factual information related to a request made under paragraph 32 on the administration, performance and operation of the national system;
  - d) Develop and implement operational policy for the national system in consultation with States and Territories;
  - e) Undertake consultations, as required in implementing this Part;
  - f) Administer financial arrangements, as appropriate, as described in Part 6; and
  - g) In consultation with the Parties, implement, administer and enforce a regulatory framework which recognises that tailored approaches will be necessary to take account of particular sectors' operating conditions consistent with a risk management approach.
32. The Parties agree that a State or Territory Minister may make a written request to the Commonwealth Minister:
- (a) for factual information from the National Regulator on any commercial vessel safety matter, including information about the administration, performance and operation of the national system; and
  - (b) for the National Regulator to investigate any commercial vessel safety matter within that Minister's State or Territory or adjacent waters of that State or Territory.

The Commonwealth Minister will consult with the National Regulator on any such request that is received.

33. With regards to a request described in paragraph 32:
- (a) the requesting State or Territory Minister will provide his or her reasons for making a request;
  - (b) the National Regulator is to act upon the request on receipt of the request from the Commonwealth Minister;
  - (c) the National Regulator is to provide a report to the requesting State or Territory Minister. This will be either a report following the requested activity, or a report explaining why the request was not actioned.
34. Where the National Regulator undertakes a function it may do so:
- a) by itself;
  - b) in cooperation with others; or
  - c) by arranging for another person to do so on its behalf as its delegate or contractor.

A "person" includes a private sector organisation, a Commonwealth, State or Territory administration or an officer or group of officers by title of an administration of the Commonwealth, a State or Territory.

35. States and Territories will provide all their relevant information relating to commercial vessel safety to the National Regulator to the extent permitted by law.
36. Following commencement of the national system, the National Regulator will have arrangements in place to allow appropriate jurisdictional regulatory authority access to safety data for lawful purposes.

37. Parties agree that maritime workers' compensation and occupational health and safety arrangements fall outside the national system. Parties note that consideration of matters related to these arrangements will take place in the context of separate processes.

## Service Delivery Arrangements

38. The National Regulator will be responsible for the operation and administration of safety regulation of commercial vessels in Australian waters. State and Territory jurisdictions will deliver a range of National Regulator's operational and enforcement functions within their respective jurisdictional territory. This will enable staffing and resourcing to remain at the discretion of each respective maritime agency.
39. The Standing Council has agreed which of the National Regulator functions will be carried out by the National Regulator and which will be carried out by State and Territory authorities. These functions are set out in Schedule B to this agreement and will be undertaken in relation to vessels as defined in clause 10 (c) of this agreement.
40. While State and Territory agencies will be the primary partner for the National Regulator within each jurisdiction, other third party providers may be accredited by the National Regulator to deliver services under the national system, for example, survey and on-water compliance services. .
41. The national regulator will develop transitional arrangements agreed with the States and Territories to cover situations where implementation of the national system will involve changes to the regulatory treatment of existing vessels and existing certificates of competency.

## Consultation

42. In accordance with the *Australian Maritime Safety Authority Act 1990*, in the performance of its functions and the exercise of its powers, the National Regulator must consult as required with government, commercial, industrial, consumer and other relevant bodies and organisations.
43. For the purposes of paragraph 27, the Commonwealth Minister shall consult with the Parties to this Agreement. In making the appointment, the Minister shall have regard to the views, if any, of the Parties.

## PART 4 — ROLES AND RESPONSIBILITIES

44. To realise the objectives, outcomes and outputs in this Agreement, each Party has specific roles and responsibilities, consistent with the provisions of this Agreement, as outlined below.

### Role of the Commonwealth

45. The Commonwealth is responsible for the safety regulation of commercial vessels in Australian waters, including:
  - a) Establishing and operating the National Regulator and setting and defining the governance and reporting frameworks within which it will operate;
  - b) Establishing and maintaining the Commonwealth laws, including undertaking appropriate consultation with States and Territories and stakeholders about the national law in accordance with agreements reached by the Standing Council;
  - c) Meeting its commitments set out in Part 6 (Financial Arrangements) of this Agreement;

- d) Participating in the development of maritime safety policy and the national system review processes through Standing Council mechanisms; and
- e) Contributing to Standing Council, the Senior Officials' Committee and AMG processes, as appropriate.

## Role of the States and Territories

46. State and Territory responsibilities with respect to commercial vessel safety regulation include:

- a) Discontinuing their commercial vessel safety regulation (including administrative and legislative engagement) to the extent that this is inconsistent with the Commonwealth laws;
- b) Passing application laws applying the Commonwealth laws as amended from time to time to ensure that the Commonwealth laws apply to all commercial vessels within their respective jurisdiction;
- c) Ensuring that any necessary consequential amendments (including repeal) are made to other legislation in the jurisdiction;
- d) Not submitting a Bill or Bills to their legislature for the purpose of departing from, altering the effect of, or repealing the legislation to implement the national system or this Agreement without the prior agreement of the Standing Council;
- e) Meeting their commitments set out in Part 6 (Financial Arrangements) of this Agreement;
- f) Performing service delivery functions agreed with the National Regulator;
- g) Participating in the National Regulator's consultation processes and other consultation processes related to the national system;
- h) Participating in the development of maritime safety policy and the national system review processes, through Standing Council mechanisms, as required; and
- i) Contributing to Standing Council, Senior Officials' Committee and AMG processes, as appropriate.

## PART 5 - REPORTING ARRANGEMENTS

- 47. The Commonwealth will coordinate a progress report to the Standing Council on a bi-annual basis until commencement of the national system in 2013. The States and Territories will each provide input to the Commonwealth. The bi-annual progress report will be guided by the milestones as set out in the [National Partnership Agreement to Deliver a Seamless National Economy](#) Implementation Plan Part 1.
- 48. Following commencement of the national system, the Standing Council will consider an annual report on activities of the national system for a period of five years. The report will be provided to the Standing Council by AMG, through the Senior Officials' Committee, and coordinated by the Commonwealth in consultation with States and Territories. Any actions proposed after considering these progress reports will be recommended to the Council of Australian Governments.

49. The National Regulator will submit, on an ongoing basis, an annual budget and corporate plan (including any associated risk management plan and identified performance benchmarks) to the Standing Council for approval.

## PART 6 - FINANCIAL RESPONSIBILITIES

50. Financial arrangements for implementation of the national system have been agreed by the Standing Council and arrangements are reflected in Schedule A to this agreement.

The financial arrangements for the national system are as follows:

### **Establishment of the National Regulator**

- a) The Commonwealth will meet the costs of establishing AMSA as the National Regulator.
- b) States and the Northern Territory will meet the costs of dismantling their regulatory framework for commercial vessel safety to the extent that it is inconsistent with the role of the National Regulator, as set out in this Agreement and will meet their own costs in working with the Commonwealth to establish the National Regulator.

### **Upon Commencement of the National System**

- c) From commencement of the national system, and until any alternate arrangements have been agreed by the Standing Council, Parties will fund the National Regulator for those functions of the National Regulator set out in paragraph 31.
- d) Individual levels of funding to the National Regulator will be determined according to the funding formula set out in Schedule A to this Agreement.
- e) Funding provided by Parties to the National Regulator under paragraph 50c will be quarantined by AMSA away from other AMSA funds, and dedicated to funding its role as the national commercial vessel safety regulator.
- f) The National Regulator will not provide reimbursement to State and Territories for services carried out on behalf of the National Regulator.
- g) States and Territories will continue or adjust current cost recovery or fee charging arrangements at a rate of their own discretion. The Commonwealth will not impose upon industry any new fees or charges for National System-related purposes unless otherwise agreed by the Standing Council. States and Territories will comply with Competitive Neutrality Policy and Principles outlined in the COAG Competition Principles Agreement in any instance when a fee for service is charged in competition with the private sector.
- h) States and Territories not fully recovering costs from industry will consider progressively moving towards full cost recovery in the long term. Any State or Territory-based subsidisation of operators will take into account implications for the national system.
- i) The above funding arrangements will be reviewed by the Standing Council in the first half of 2016, or a later date agreed by the Standing Council.

## PART 7 — GOVERNANCE ARRANGEMENTS

### Dispute resolution

51. A dispute is a matter covered by this Agreement where one party (or Parties) has a differing interpretation of the operation of a provision of this Agreement to that of another Party.
52. Parties in dispute about a provision of this Agreement will, in the first instance, attempt to resolve it between themselves.
53. If initial discussions between the Parties do not resolve the dispute, then the dispute resolution process outlined in paragraphs 54-57 will be followed.
54. Any disputing Party must give notice of the dispute to all other Parties under this Agreement.
55. The Parties to the dispute must negotiate on the matters in dispute. If these are resolved to the satisfaction of the Parties to the dispute, the terms of the resolution must be advised to all Parties.
56. If a dispute cannot be resolved between the disputing Parties, it may be escalated to the Standing Council for consideration.
57. If a dispute cannot be resolved by the Standing Council, it may be referred by the Standing Council to the Council of Australian Governments for consideration.

### Review of the Agreement

58. The Agreement will be reviewed within 5 years of commencement of the national system, with the manner and form of the review to be determined by the Standing Council within 4 years of commencement of the national system. The review will consider the need and format of an ongoing review cycle for the Agreement.
59. Key performance indicators, which will form the basis of the review, and linked to the objectives and outcomes of this Agreement, shall be determined by the Standing Council within 2 years of the commencement of this Agreement.

### Variation of the Agreement

60. The Agreement, including any schedules, may be amended at any time by agreement in writing by all the Parties.
61. The Commonwealth will maintain the Agreement and provide an updated Agreement to the States and Territories if it changes.
62. A Party to the Agreement may terminate their participation in the Agreement at any time with 12 months notice by notifying all the other Parties in writing.

The Parties have confirmed their commitment to this Agreement as follows:

**Signed for and on behalf of the Commonwealth of Australia by**

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**The Honourable Julia Gillard MP**

Prime Minister of the Commonwealth of Australia

19 August 2011

**Signed for and on behalf of the State of New South Wales by**

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**The Honourable Barry O'Farrell MP**

Premier of the State of New South Wales

19 August 2011

**Signed for and on behalf of the State of Queensland by**

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**The Honourable Anna Bligh MP**

Premier of the State of Queensland

19 August 2011

**Signed for and on behalf of the State of South Australia by**

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**The Honourable Mike Rann MP**

Premier of the State of South Australia

19 August 2011

**Signed for and on behalf of the Australian Capital Territory by**

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**Ms Katy Gallagher MLA**

Chief Minister of the Australian Capital Territory

19 August 2011

**Signed for and on behalf of the State of Victoria by**

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**The Honourable Ted Baillieu MLA**

Premier of the State of Victoria

19 August 2011

**Signed for and on behalf of the State of Western Australia by**

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**The Honourable Colin Barnett MLA**

Premier of the State of Western Australia

19 August 2011

**Signed for and on behalf of the State of Tasmania by**

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**The Honourable Lara Giddings MP**

Premier of the State of Tasmania

19 August 2011

**Signed for and on behalf of the Northern Territory by**

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**The Honourable Paul Henderson MLA**

Chief Minister of the Northern Territory of Australia

19 August 2011

## Schedule A

# Funding Arrangements

## INTERGOVERNMENTAL AGREEMENT ON COMMERCIAL VESSEL SAFETY REFORM

- A1. The first year of funding of AMSA's costs of the national system will be set at \$4m (in June 2011 Dollars).

To cushion the impact while new service delivery arrangements are established the Commonwealth will meet \$1 million of the national regulator's costs for the first year of operation of the national system (2013). As arrangements are bedded down jurisdictions will work to identify any efficiencies to be gained through the national system.

The funding contributions for AMSA's costs as the national regulator for year one (2013) will be:

- a. NMSC funding (as per current agreed formula)- \$2,000,000
- b. Commonwealth - \$1,000,000
- c. New South Wales -\$288,800
- d. Victoria -\$238,800
- e. Queensland -\$238,800
- f. Western Australia -\$113,800
- g. South Australia -\$77,700
- h. Tasmania \$30,500
- i. Northern Territory -\$11,100
- j. ACT - \$0

- A2. During 2013, the National Regulator will submit to the Senior Officials' Committee a proposed budget and associated work program for funding in 2014/2015. In subsequent years, the National Regulator will follow a similar process, but provide a proposal before the conclusion of each financial year. The Senior Officials' Committee will not review the funding formula, as set out below, as part of these considerations.

If the Senior Officials' Committee cannot agree with regards to the National Regulator's budget, as set out in this paragraph, the proposed budget will be referred to the Standing Council for consideration.

- A3. The funding formula for AMSA's costs as the National Regulator (beyond 2013), until any alternate arrangements have been unanimously agreed by Standing Council, will be (to one decimal place):

- a. Commonwealth – 10.0%
- b. New South Wales – 26.0%
- c. Victoria – 21.5%
- d. Queensland – 21.5%
- e. Western Australia –10.25%
- f. South Australia – 7.00%
- g. Tasmania – 2.75%
- h. Northern Territory – 1.0%
- i. ACT – 0%





# Service Delivery functions

## INTERGOVERNMENTAL AGREEMENT ON COMMERCIAL VESSEL SAFETY REFORM

### FUNCTIONS OF THE NATIONAL REGULATOR

B1. The functions of the National Regulator will be:

- ***Administering the national law and advising jurisdictions and the public on matters associated with the national law.***

Under this function, the National Regulator will be the authority for the application of the national system through the national law. This role will also include responsibility for the ongoing maintenance and development of legislation on technical and operational matters to ensure the national law remains up to date and delivers against agreed safety objectives. The National Regulator will also provide an advisory service for all legislative interpretation and application queries. Regular information will be provided to the Maritime Safety Committee on the development of the national law and any emerging issues. The National Regulator will also be responsible for the maintenance and development of subordinate legislation (including regulations and Marine Orders) to set out the technical and administrative detail of the national law and any future amendments to the law. All primary legislation will be submitted to the Standing Council for its approval, with subordinate legislation to be considered by the Australian Maritime Group (AMG).

- ***Developing and maintaining the national standards, and providing co-ordinated advice/interpretation for the States/NT on the standards.***

The National Regulator will assume the function currently undertaken by the National Marine Safety Committee (NMSC) on the maintenance, enhancement and coordinated implementation of the National Standard for Commercial Vessels (NSCV) and any other required standards. As the national standard developer, the National Regulator will convene reference groups to assist in the development of standards including representation from all jurisdictions and industry. All new and amended standards will be provided to the Standing Council for approval.

- ***Developing and maintaining national binding guidelines and codes of practice for compliance, breach investigation, enforcement and prosecution.***

The National Regulator will develop guidance material to assist in the consistent application of the national law and national standards. These will be developed for each of the discrete areas of the national law – these being vessel construction, vessel identification, vessel survey, vessel operation, crewing, crew qualifications and vessel safety equipment. The National Regulator will complement these specific guidelines with guidance material and codes of conduct in the execution of compliance activities, the investigation of potential breaches of the national law, the enforcement of the national law, and prosecution procedures. By developing national guidance material, the National Regulator will aim to facilitate consistency in the application of the national law under the national system.

The National Regulator will also develop guidelines for the transitional arrangements for each of the discrete areas of the national law, including registration.

- ***Accreditation and auditing of private and State and Territory service providers against guidelines.***

The power to accredit will be in the national law. Incorporated within the subordinate law will be provisions for the National Regulator to accredit State and Territory, and private service providers. The National Regulator will develop and maintain accreditation procedures for all areas of service delivery. Accredited service providers will be subject to periodic review to ascertain their compliance with accreditation requirements and guidelines provided by the National Regulator. This will be performed on a risk-based approach by the National Regulator in accordance with agreed auditing principles agreed pursuant to paragraph 20(b).

- ***Developing and maintaining information about the safety regulation of vessels, their operations and seafarers.***

In developing the national system, the National Regulator will continue to consult and inform jurisdictions and service providers, and provide clear advice about requirements. The National Regulator will aim for this to be clear, unambiguous and relevant to the broader industry that is within the scope of the national system. This will be information, delivered in a variety of media methods and involving jurisdiction partners, detailing requirements for vessels, operations, and crew. The National Regulator will be committed to keeping any published information up to date with regulatory amendments.

- ***Providing/co-ordinating maritime safety education.***

As part of the delivery of the national system, the National Regulator will facilitate the development of educational information. It is envisaged that educational material will be, where possible, tailored to the recipient(s), and delivered by the most effective means available. It is also envisaged that State and Territory authorities will facilitate dissemination of safety education within their jurisdictions.

- ***Collecting and analysing statistics.***

In consultation with maritime jurisdictions, the National Regulator will determine what information is needed for analysis and informed decisions. The data will include incident data, compliance statistics, vessel statistics and seafarer statistics.

- ***Co-ordinating development of decentralised national databases, and possibly moving to a centralised database over time.***

Subject to the outcome of the National Database Business Case, it is envisaged that the National Regulator will lead the collaborative development of a common national system data set. This will be achieved partly through lessons learnt from the business case and by working with authorities in each State and Territory to accommodate all required fields. By developing and maintaining national data in a decentralised database, information can still be consolidated in a consistent format and will provide a uniform basis for trend analysis and reporting. Further, the transition to a centralised database, if that decision is taken at a later date, will be facilitated by a collegiate development process. Should a centralised database be agreed at a later date, the National Regulator will commission its development in close consultation with all jurisdictions.

○ ***Consulting with jurisdictions and industry.***

The National Regulator will be the focal point for all communications in relation to the national system, its legislative framework, operational policy and application. In addition to consultation on the national law amendments, including Marine Orders revisions, amended or updated standards, the National Regulator will actively seek industry opinion on issues of concern. The National Regulator will also publish guidance material and maritime safety statistics. Proposed changes to the operational functions of the national system will be developed in close consultation with jurisdictions and will consider the impact on industry. The National Regulator will also coordinate regulatory impact analyses compliant with the requirements of the Australian Government's Best Practice Regulation Handbook, including consultation with the Office of Best Practice Regulation.

○ ***Developing a uniform national vessel identification system which would be implemented under national law.***

The National Regulator will support and facilitate national vessel identification of all commercial vessels other than those exempted, including through the maintenance of transitional arrangements, until the Standing Council decide on the future of a national centralised vessel identification system. The National Regulator will coordinate an analysis to inform the Standing Council on the impacts of national vessel identification. Should the preferred option be a centralised vessel identification system, the National Regulator will facilitate its development in close consultation with all jurisdictions.

## OPERATIONAL FUNCTIONS

- B2. On commencement of the national system in 2013, operational functions of the National Regulator will be primarily delivered by existing States and Territory maritime safety administrations, although particular functions, for example survey and on water compliance services, may also (or only) need to be delivered by other accredited service providers. This will be achieved by the National Regulator through delegation or accreditation powers, which are expected to be used, especially in the areas of decision making, compliance and on-water enforcement. Delegation and accreditation will be available for individuals and/or organisations including jurisdictional maritime agencies or, where agreed by the relevant State or Territory, other appropriate entities' (i.e. Water Police), or private sector service providers. This will allow jurisdictions to control staffing and administration.

Jurisdictional agencies who will be the primary agencies for service delivery within their respective jurisdiction will be:

- New South Wales – New South Wales Maritime;
- Victoria – Transport Safety Victoria;
- Queensland – Maritime Safety Queensland;
- Western Australia – Department of Transport;
- South Australia – Department for Transport, Energy and Infrastructure;
- Tasmania – Marine and Safety Tasmania;
- Northern Territory – Department of Lands and Planning;
- Australian Capital Territory – Australian Maritime Safety Authority/ New South Wales Maritime; or the successors of these agencies.

Jurisdictions will continue to carry out (under delegation or accreditation from the National Regulator where it involves the execution of the national law) all activities they previously

undertook, other than those which will now be undertaken by the National Regulator. Activities to be undertaken by jurisdictions include:

- ***Participating in the national processes that determine the National Regulatory framework including the development of standards, codes and guidelines.***

State and Territory maritime safety administrations will actively participate in the ongoing maintenance and development of the national law and national standards by a combination of representation on technical reference groups and standards development groups, and development of proposals for the continuous improvement of maritime safety for commercial vessels. Subject to privacy obligations, Maritime safety agencies will also provide agreed information to the National Regulator on specific events in their jurisdictions which are likely to impact upon, or trigger amendment of, the national law and its subordinate legislation. This will be a cooperative and transparent process between the National Regulator and State and Territory jurisdictions through the Maritime Safety Committee under the auspices of the AMG.

- ***Operating national compliance arrangements under the national law within the jurisdictions, including undertaking, or working with State agencies to undertake survey activity and commercial vessel safety inspections, as well as determining and approving operating requirements for vessels.***

State and Territory maritime safety agencies and private service providers will conduct a range of activities to give operational effect to the national system. These activities will be conducted either under delegation or accreditation from the National Regulator. In consultation with maritime safety agencies, the National Regulator will provide guidelines and codes of conduct for these activities to promote consistency across the country. Activities will include the initial and periodic survey of commercial vessels, the auditing of safety management systems and national qualifications administration, including assessment of seafarer eligibility. It will also include the delivery within each jurisdiction of the agreed level of industry safety oversight by way of inspections and audit. The determination of the details of the operating certificate that sets out the details of any operational requirement needed for operations either solely within a jurisdiction or nationally will be carried out by the local national regulator delegate.

- ***Maintaining the databases of vessel registration and seafarer qualifications within the national rules and providing advice to the National Regulator and other jurisdictions as required.***

Subject to future decisions about a national database for seafarer and vessel registration, jurisdictions will continue to maintain existing individual databases with a view to contributing to the development of a national system data set. Advice and information sharing will be facilitated between the National Regulator and jurisdictions in accordance with privacy principles. Jurisdictions will participate in data analysis activities to identify trends in maritime safety with a view to continuous improvement of standards and regulations.

- ***Undertaking investigations and compliance and enforcement activities, including negotiating enforceable undertakings with individual industry operators. These activities will be conducted in accordance with national guidelines developed through cooperative Commonwealth/State/Territory processes.***

State and Territory maritime safety agencies will be delegated all necessary powers, including the ability to engage third party enforcement agencies to conduct incident investigations and exercise a range of operational policy, compliance and enforcement

powers, such as the power to vary, suspend or cancel certificates, as well issue infringement notices and prepare briefs for prosecutions on behalf of the National Regulator. These arrangements will enable the most appropriate regulatory response to be used to secure compliance with and enforce the National Law. These activities will be conducted to agreed guidelines and codes of conduct and jurisdictions will be involved in the setting of such protocols through consultative functions described above.

## NATIONAL DATABASE

- B3. A detailed business case for a national database is currently in the process of being developed. This will inform the Standing Council of the most appropriate way forward for the management of national data. In the interim, it is proposed to operate a decentralised database hosted in the jurisdictions at least until 2016 when Ministers will reconsider the operation and funding of the national system. This will require jurisdictions to continue to meet the costs of operating existing systems, and will allow time for staged planning for a centralised database, if this be the preferred option. Such a staged approach would also give time for future changes to jurisdiction based databases, including agreement on a common data set.



# Statement of Intent

## INTERGOVERNMENTAL AGREEMENT ON COMMERCIAL VESSEL SAFETY REFORM

### Features of the National System

- C1. The national system will cover vessel construction, survey, vessel operation, crewing, crew qualifications and vessel safety equipment. There will also be a registration requirement (although “deemed to comply” provisions will be developed so that separate Commonwealth registration is not required at least for the transitional period) and a general safety obligation that will apply to parties connected with the construction, survey, ownership and operation of vessels (including passengers on vessels). It is not proposed that the national law will cover:
- occupational health and safety (these will co-exist with maritime safety law);
  - transportation of dangerous goods (jurisdiction arrangements apply);
  - marine pollution, other than vessel construction requirements (other arrangements will remain unchanged and will be managed through existing IGAs);
  - search and rescue (arrangements remain unchanged and will be managed through existing IGAs);
  - waterways management (e.g. alcohol and drugs testing, speed limits, closures); and
  - ports or harbours management (e.g. pilots and pilotage).
- C2. The national system is ultimately intended to cover all commercial vessels in Australian waters. However transitional/grandfathering provisions are being designed to ensure introduction of the national system occurs in a progressive and structured manner.
- C3. This work is being undertaken on the general rule that a vessel used for the same operations, operating in the same geographic area and in the same manner as it did prior to the implementation of the national system will be permitted to retain its current operational practices, design, construction and survey requirements (if applicable). These arrangements will be expressly provided for in the national system subordinate legislation. Furthermore, the National Regulator will only apply existing national standards that have previously been endorsed by Ministerial Council. Any new standards proposed by the National Regulator will require the unanimous agreement of Ministerial Council prior to their implementation.
- C4. The service delivery arrangements already agreed by ATC, whereby State and Territory maritime agencies will be delegated a range of operational and compliance functions, should also ensure that local circumstances are recognised through means such as the vessel operating certificate. Provided the approach is consistent with guidance issued by the National Regulator, and developed through a collegiate process oversighted by the Australian Maritime Group (AMG), the delegated bodies in each jurisdiction will be empowered to tailor an operational certificate in a way that recognises the specific characteristics of an operation in their geographical region. Central to this approach will be recognition that no two waters are the same and that state regulators, acting as delegates of the national regulator, are best placed to manage the risks of these operations. Schedule B to the IGA outlines responsibilities of AMSA as the National Regulator, and those functions that will be delegated to States and Territories. Detailed arrangements to give effect to this framework will be developed collaboratively from now until commencement of the national system.

- C5. Subordinate legislation (eg. Regulations and Marine Orders) will be developed by AMSA closer to commencement of the national system. While the National Regulator will be responsible for the development of this legislation, the IGA includes provision for the Ministerial Council to arbitrate in the event of an objection by a jurisdiction to either a proposed or implemented piece of subordinate legislation.



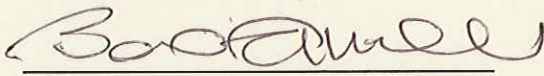
The Parties have confirmed their commitment to this Agreement as follows:

Signed for and on behalf of the Commonwealth of Australia by




**The Honourable Julia Gillard MP**  
Prime Minister of the Commonwealth of Australia  
19 August 2011

Signed for and on behalf of the State of New South Wales by



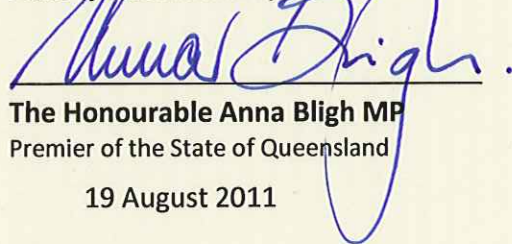
**The Honourable Barry O'Farrell MP**  
Premier of the State of New South Wales  
19 August 2011

Signed for and on behalf of the State of Victoria by




**The Honourable Ted Baillieu MLA**  
Premier of the State of Victoria  
19 August 2011

Signed for and on behalf of the State of Queensland by



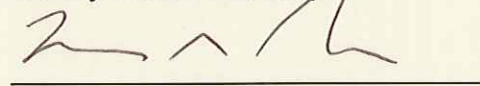
**The Honourable Anna Bligh MP**  
Premier of the State of Queensland  
19 August 2011

Signed for and on behalf of the State of Western Australia by



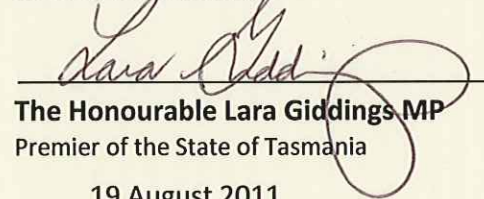
**The Honourable Colin Barnett MLA**  
Premier of the State of Western Australia  
19 August 2011

Signed for and on behalf of the State of South Australia by



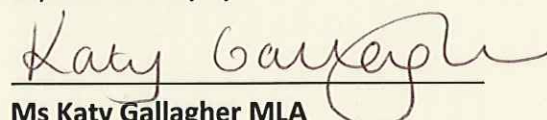
**The Honourable Mike Rann MP**  
Premier of the State of South Australia  
19 August 2011

Signed for and on behalf of the State of Tasmania by




**The Honourable Lara Giddings MP**  
Premier of the State of Tasmania  
19 August 2011

Signed for and on behalf of the Australian Capital Territory by



**Ms Katy Gallagher MLA**  
Chief Minister of the Australian Capital Territory  
19 August 2011

Signed for and on behalf of the Northern Territory by



**The Honourable Paul Henderson MLA**  
Chief Minister of the Northern Territory of Australia  
19 August 2011