



Our ref DT/11/00581
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Dear Mr Fladun

WA Department of Transport Comments on the Proposed Regulatory Plan for domestic commercial vessels and their crew under the Maritime Safety National Law

Thank you for the opportunity to comment on the Proposed Regulatory Plan (the Plan) for domestic commercial vessels and their crew under the Maritime Safety National Law. The Western Australian Department of Transport (WA DoT) supports the proposed National System for Commercial Vessel Safety (the National System) and has been involved with its formulation in cooperation with the Commonwealth and the other State and Territory governments.

The main benefits of the National System are expected to be to industry, through:

- the consistent application of national standards and the removal of inefficiencies arising from multiple jurisdictions' legislation and enforcement regimes; and
- ensuring businesses and individuals can operate with greater ease across jurisdictional boundaries.

The WA DoT is of the view that the transition to a National System must occur with minimal disruption to existing operations and in that regard we support the proposals to allow for and preserve different types of treatment for existing vessels, as well as the proposals to enable seafarers to continue undertaking existing activities using their existing certificates of competency.

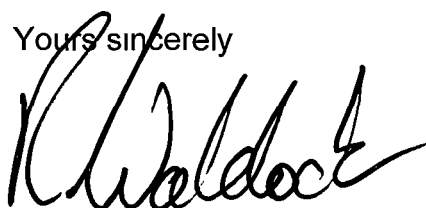
The current proposals should achieve an appropriate balance between improving safety outcomes and reducing regulatory burden, without affecting the continued operation of existing business activities.

While enabling the preservation of existing arrangements may limit the extent to which vessels and seafarers can move seamlessly across Australia at the outset of the system, the WA DoT is confident that the benefits of the system will continue to grow over time as the existing fleet is replaced with new vessels and as more seafarers take up the option of national certificates of competency

Please find attached the WA DoT's submission in response to the September 2011 version of the Plan.

The WA DoT looks forward to continuing to work with AMSA to formulate the Maritime Safety National Law.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Reece Waldock', written in a cursive style.

Reece Waldock
Director General

11/10/2011

WA Department of Transport Comments on the Proposed Regulatory Plan

In addition to the comments below, please see Attachment 1 (Table of WA Department of Transport comments - National System Regulatory Plan) for detailed comments on specific areas of the Plan.

A. Scope and Key Definitions

A.1 Scope of the Regulatory Plan

WA DoT supports the scope of the system and acknowledges that it will capture some operations currently not treated as commercial. The transition arrangements should minimise the impact on such operations.

A.2 Key definitions

The Plan proposes different treatment for vessels according to a range of factors, including whether they are “new” or “existing”. Existing vessels that were registered, held a certificate of survey, or otherwise operated commercially within Australia at any point during the 24 months prior to the commencement of the national system are proposed to be regarded as “existing commercial vessels”.

ISSUE FOR COMMENT 1:

Do you believe that 24 months is an appropriate time period for the purposes of this definition?

Response:

The view of the WA DoT is that this is an appropriate timeframe subject to the following qualifications:

- This definition assumes the vessel is complete and would see vessels *midway through design or construction upon commencement of the system* treated as new. It would be unfair to apply new provisions where an application to build has been submitted and accepted within that same 2 year period, assuming that budgeting and design would have been based on pre-existing standards. This is not an appropriate outcome and WA DoT suggests that the definition of existing vessel also needs to include these types of vessels, along the lines of the treatment usually accommodated in the Amendment Lists to the Uniform Shipping Laws Code (see the extract at Attachment 2 for an example)
- In some jurisdictions “type approvals” may have been carried out, whereby a manufacturer intending to produce multiple vessels of the same type submits design plans for a particular type of vessel – these “type” approvals may have been purported to be valid for a period beyond the commencement of the National System. It would be unfair if vessels whose plans have received “type approval” to be treated as new vessels. Any vessels built subject to a type approval should be treated as an existing vessel, given the manufacturer would be expecting to design

them to existing standards and to sell them as compliant with existing requirements. This would be especially true for mass production vessels where capital intensive equipment has been purchased for assembly line production. See clause 3.7 2 of NSAMS Section 4.

- It would be useful to build into this allowance of 24 months, some discretion for the national regulator to enable special circumstances to be taken into account. For example a vessel may be surveyed and certificated, but at one time during its life it is modified. When a vessel is modified its certification may be allowed to lapse while the vessel is not in operation. During that time, it is possible that a delay may occur unrelated to the complexity of modifications that requires more than 24 months to complete the modifications (e.g. death of the owner, commercial contract delays). Such a vessel should not be required to meet new standards as it is essentially still a commercial vessel, though not being operated or subject to any in-force certificates.

B. Treatment of Vessels

B.1 New vessels: The WA DoT supports the proposals for the treatment of new vessels in relation to design, construction, equipment, operation and survey. We note that the standards that are proposed to apply to new vessels were developed through the NMSC consultative processes and have already been subject to nationwide industry consultation.

B.2 Existing vessels: The WA DoT are generally supportive of the proposed grandfathering arrangements for survey, design, construction & crewing for existing vessels in all categories, S, NS and O, including the timeframes that will be provided within which compliance must be achieved. Key comments in relation to the treatment of existing vessels are set out below, with further details in Attachment 1.

B.2.1 Vessels in Survey

We note that the regulatory plan states in relation to existing vessels in survey (Scheme S):

“It is proposed that an existing vessel in survey will be able to retain its existing periodic survey arrangements provided the vessel does not change operations, is not modified and does not move its geographic area of operation. In other words, provided it continues to operate in the same manner as it did before the commencement of the national system.” (Page 11, 3.1.1, see also Page 15, 4.4)

Similar words are also used throughout the Plan in relation to triggers for review of other vessel requirements which are also proposed to be eligible for grandfathering arrangements.

The WA DoT understands this to mean that a vessel which is not subject to any restrictions can continue to operate within the bounds of its existing vessel service category without being required to do anything else. For example, a WA surveyed 2C vessel with no restrictions, could continue to operate as a 2C vessel in any WA waters within 30 nautical miles from the

seaward limit of the coast or of a safe haven, including designated smooth or partially smooth waters. If the vessel:

a) changed from a 2C vessel to another (increased risk) service category;
or

b) moved operations to another State or Territory

then the vessel survey arrangements would be reviewed

However, it is not clear from the Plan how vessels entering a State or Territory which recognises (whether automatically or by issue of some form of certificate) their certificate of survey issued in another jurisdiction, will be treated. The WA DoT submits that if a vessel, prior to the commencement of the system, undertakes operations in a State or Territory other than the one its certificate of survey was issued in it should be able to continue to do so without triggering any new requirements.

ISSUE FOR COMMENT 2:

An alternative approach (Option B) would be for all vessels subject to periodic survey to be required to transition to the NSAMS Section 4 survey regime by 2016. As NSAMS Section 4 is a risk-based standard, there would be some scope for less frequent survey schedules to be retained where justified.

Do you support this option or the one described in the paragraph above this box?

Response:

The WA DoT is of the view that if there is a clear cost benefit in changing over to the National Standard for the Administration of Marine Safety (NSAMS), market forces will drive the change and owners will opt in. The current survey scheme has managed risk adequately and should be left in place for existing vessels where the owner sees no benefit in changing over.

However, if persons are compelled to comply with NSAMS Section 4 by a set date, and if 2013 will be the 1st year of commencement of the national regulator, and given that the NSAMS survey cycle is a 5 year one (5th year survey is a major survey almost equivalent to the initial survey, with "out-of-water surveys" on the 3rd and 5th years), it might be most practical and convenient to enforce the NSAMS Section 4 survey regime at the survey in:

a) 2016; or

b) The first out-of-water survey under the old regime, after 2016.

Whichever occurs earlier.

The goal would be to ensure minimum impact on the operator as well as to avoid the entire transitioned fleet having the same out of water surveys due in the same year.

The WA DoT notes that the Plan states that existing vessels that seek to take advantage of the new requirements in NSAMS "must meet a construction and equipment standard equivalent to that which applies to new Scheme S vessels" (clause 4.4 on page 15 refers). WA DoT disagrees with this proposal

- the survey frequency has no impact on the technical requirements applying to a vessel.

Requiring a vessel to comply with new construction standards as a result of “opting in” to the NSAMS survey regime could have significant impacts and should be limited. Further comment is provided in paragraph 2 of comment 8 in the table at Attachment 1.

B.2.2 Vessels not in survey

The WA DoT supports the proposal for treatment of existing vessels not in survey subject to the following qualifications and the comments at Attachment 1:

- The Plan states (Page 18, 5.5) that for existing NS vessels the existing crewing requirements will continue to apply “where these requirements have been specified on the vessel’s pre-existing State or Northern Territory certificates.” The WA DoT notes that crewing is not specified on WA certificates but is still set by clear and transparent measures via inclusion in the schedules to our *W.A. Marine (Certificates of Competency and Safety Manning) Regulations 1983* or a manning determination issued by the Department in accordance with those regulations. Presumably these crewing requirements would also continue to apply.
- With respect to the proposal that for NS vessels existing State and Northern Territory minimum qualification or licensing requirements would continue to apply (Page 19, 5.6), the WA DoT notes that this may not always be appropriate and the suitability of any existing requirements should be reviewed from a safety perspective before they are perpetuated under the National Law. In some cases there may be no existing minimum qualification requirement in relation to particular vessels and this may not be appropriate.

B.2.3 Scheme O vessels

The WA DoT supports the inclusion of category O as an appropriate way for dealing with novel vessels and as well as for vessels that serve an important education and/or safety function. In the case of the latter it is important to balance safety outcomes and regulatory burden so as not to deter individuals, clubs and businesses from participation in the National System and the advantages that come from this – such as the performance of search and rescue services or programs for education of children in a marine environment. The proposal to review the status of these vessels by 2016 is supported.

The proposal to grandfather existing State and Territory requirements for these vessels is also supported, at least for the transition period. However, as mentioned in relation to existing scheme NS vessels, existing State and Territory requirements may not be appropriate in the long term and should be reviewed from a safety perspective before they are perpetuated under the National Law.

Commercial vessels used for the purpose of training for a recreational qualification may also need special consideration under scheme O – this is because of the need to ensure that:

- a) training for a recreational qualification can occur on vessels that are predominantly designed and equipped as recreational vessels, and
- b) onerous qualification and crewing requirements are not imposed that would be impossible to meet when the crew is comprised of unqualified people undertaking training.

Annex B of the regulatory plan accounts for vessels used in recreational training that are currently in scheme NS – that is, which are not currently in survey, and indicates that these vessels would not be subject to minimum crewing requirements. However, the Plan does not account for vessels used in recreational training that may currently be subject to survey and would therefore fall within scheme S. WA is not aware of any such vessels but cannot be certain that they do not exist. This may need to be accommodated in the Plan, and we suggest that such vessels would possibly be better dealt with under scheme O, which could also provide greater clarity for stakeholders.

In addition, WA suggests that the proposal to allow for Nil minimum crewing for vessels used in recreational training may be appropriate, but not always. The trainer at least may require a qualification particularly if undertaking training in a high risk area and/or involving high risk vessels.

C. Treatment of Seafarer Certificates

C.1 New Certificates of Competency: The WA DoT supports the proposal that all new entrants to the system only be issued a national certificate and look forward to the consultations on the national certificates including prerequisites and revalidation requirements. This detail will be important to our stakeholders who are looking for a flexible system that encourages people to take up a career in the maritime sector, in which the existing skills shortage is well known.

C.2 Existing Certificates of Competency:

C.2.1 Certificates that require revalidation

The Plan states (Page 3, 1.3, & Page 24, Part 8) that existing unrestricted certificates will be able to be transitioned across to a national certificate without additional requirements. At the date the existing certificate requires revalidation, a national certificate will be issued provided the same requirements are met as currently apply (such as meeting the medical and first aid requirements). It is not clear if this means the holder will have to meet the revalidation requirements currently applicable in the State or Territory in which they obtained their certificate, those in the current approved version of the NSCV Part D, or some new revalidation requirements that broadly align with existing requirements – further detail is required.

C 2.2 Perpetual certificates

The WA DoT supports the proposal to enable holders of perpetual certificates (restricted or otherwise) to continue to operate with these certificates if they do not change their location or operation. In the case of unrestricted perpetual certificates we understand this to mean that if a person holds, for example, a Master Class 5 which, according to the current NSCV Part D, allows the holder to operate as a Master on any fishing or trading vessel less than 24m in length for offshore operations (within 200 nm), that holder can continue to operate as Master on any vessel that the certificate permits, anywhere within the holder's current State or Territory within 200nm.

C 2.3 Other

One area that needs further discussion is treatment of existing certificates that are subject to existing mutual recognition arrangements. Page 13 indicates that for crewing purposes, existing certificates will continue to be recognised within the jurisdiction that they were issued. However, some certificates holders may have sought recognition of their certificate in another jurisdiction (which may also have involved payment of a fee) and would expect to continue to be able to use their certificate in any other jurisdictions in which the certificate has already been recognised.

Table of WA Department of Transport Comments on the Proposed Regulatory Plan

Comment number	Page	Clause & other location descriptor	Quoted text if required	Comment
1	2	1.2 - last dot point	"continues to operate in the same geographic area"	<p>WA takes this to mean the vessel does not change operational area as per its certificate of survey That is, a vessel of class 1C does not become 1B, or a vessel of class 2C does not seek to change class to 2D, for example.</p> <p>However, when the operational area is "decreased" (30 NM becomes Sheltered Waters), there is an argument that risks are decreasing, and so there should also be no change to requirements. See NMSC's document for applying new standards only where there is an increase in risk: "ADMINISTRATIVE PROTOCOL FOR THE APPLICATION OF THE NATIONAL STANDARD FOR COMMERCIAL VESSELS TO THE EXISTING FLEET". We also suggest this standard be the guide for determining what is considered a "significant structural modification", which is also used as a trigger for reassessment in the Plan.</p> <p>This grandfathering should, in some instances, also apply where the "geographic area" extends across two or more jurisdictions. For example, if a vessel has traditionally and regularly, preceding the national system, been travelling between Fremantle and Cairns in order to conduct its operations, then as long as it continues to do so (or decreases its risk profile by limiting itself to the same operations, but only in a single jurisdiction), then the vessel should still be eligible for grandfathering arrangements. It is noted that this wider acceptance of grandfathered vessels might be difficult to provide for in the legislation and / or enforce</p>

Comment number	Page	Clause & other location descriptor	Quoted text if required	Comment
2	3	1.3 - paragraph 3	“There will also be arrangements for transitioning existing certificates of competency to a national certificate of competency. An existing unrestricted (Uniform Shipping Laws (USL) Code or NSCV) certificate of competency will be able to be transitioned across to a national certificate without additional requirements. At the date the existing certificate requires revalidation, a national certificate will be issued provided the same requirements are met as currently apply (such as meeting the medical and first aid requirements).”	<p>Is this paragraph saying that for those certificates of competency that require revalidation, the same revalidation requirements will apply after 2013 as before when applying for a national certificate? That is, if pre-2013 revalidation requirements do not require a course of study whilst post 2013 revalidation requirements do, or post 2013 revalidation requires a course of study that is different from pre-2013, it is the pre-2013 requirements that will apply? Further clarification is needed.</p> <p>It would be preferable if revalidation courses, where required, were the courses that applied at the time of revalidation – not those courses that applied at the time the original certificate of competency was attained. It would be difficult for training establishments to continue to provide superseded courses, and the whole point of revalidation is to keep up with changes in the industry.</p>
4	4	Table 1 - Scheme NS, and Scheme O, Certificates column	“Crew qualifications to be in accordance with local (or State and Territory) requirements”	<p>WA would not support this if it required WA to maintain legislation and an administrative ability to provide for such local certification requirements – we assume that the local or State / Territory requirements would be captured under the National Law.</p> <p>Note that relying upon legislation that has been superseded will require enforcement officers to be familiar with past legislation, and this should be avoided where possible.</p>
5	4	Table 1 - All Schemes: Vessel and operations standards	Certificates, Crewing requirements, Vessel and operations standards, Survey.	<p>Similar to comment 4 immediately above. WA assumes that pre-2013 survey requirements (construction/equipment standards, operational requirements and survey regime) that will remain after 2013 for existing vessels will be administered under national law, and not superseded state laws.</p>

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6	4	Table 1 - Scheme O: other vessels, Survey (right hand columns)	"Existing State and Territory requirements"	Repeating the concern at comment 4 and 5 immediately above, WA would only support this provided WA does not need to maintain its existing legislation to achieve this.
7	5	2.2.1 - Vessels under the Navigation Act, 3 rd dot point	"Australian flagged vessels which apply for or maintain Safety of Life At Sea Convention (SOLAS) Certification, regardless of where they operate "	<p>We don't have any major concerns with the scope of the Commonwealth Navigation Act as proposed in this Plan. We note that SOLAS cuts in at 500 gross tons, and in WA most vessels are not assessed for tonnage as length instead is the measure of the vessel's complexity in our State legislation. As such, it would be useful if the new Navigation Act specified an equivalent length of 35 metres as this will give clarity to State regulators and vessel owners as to which legislation applies.</p> <p>In addition, SOLAS does not apply to fishing vessels and cannot because of provisions such as subdivision and Load Line. Is it intended that fishing vessels above a certain size, even if they proceed on interstate or intrastate voyages as they do now, will be administered under the Navigation Act? Jurisdictions may wish to comment on this. WA does not object to continue with current arrangements but would be willing to discuss the alternative if that were AMSA's intention.</p> <p>Background: If a fishing vessel that does not travel beyond the EEZ but the owner (or the national regulator) wants it to comply with the Navigation Act and not be administered under the National Law, then perhaps the Torremolinos Convention could replace the SOLAS convention for the vessel to be considered as one subject to the Navigation Act.</p> <p>If fishing vessels are intended to be non-domestic vessels above a certain size, then whatever convention (or other</p>

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				<p>instrument) is used to extract them from the National Law, it should cut in at, ideally, 35 metres length to align with non-fishing vessels. Examining the NSCV, 35 metres appears in the NSCV as a convenient break-point (Construction – Part C3, Fire Safety – Part C4, Engineering – Part C5 and Navigation Equipment – Part C7C all refer to Classification societies or SOLAS at 35 metres or 500 GRT)</p> <p>But Watertight Integrity – Part C2, refers to SOLAS or Torremolinos at 46.9 metres, Damage and flooding – Part C6B refers to SOLAS or Torremolinos at various lengths (60, 80, 100 metres).</p>
8	6	2.3.1 - last dot point	“vessels which upgrade in service to the extent that for the upgrade the National Regulator (or its delegate) requires all or part of the vessel to be investigated and verified that it meets prescribed standards.” – will be treated as new vessels”	<p>Is this saying that the entire vessel will be regarded as “new”, or only those parts of the vessel to the extent that for the upgrade, the National Regulator will investigate?</p> <p>It is suggested that structural design (as that structure resisting hydrostatic and dynamic loads) will never be required to be altered just because a vessel changes the standard under which it is assessed. Structure should never be required to be changed unless there is such a significant change in structural loads that warrants the structure to be strengthened or altered, similar to the situation if standards had not changed from USL to NSCV Similarly, items of the vessel that require structural changes independent of “loads” on them should be required to be reassessed only under the most onerous of circumstances, and changed only to the extent to rectify the heightened risk (e.g. There is an alteration to the vessel that restricts visibility and so windows have to be moved, or additional high risk spaces are added to the vessel so that structural fire protection has to be added but only to the extent that evacuation is not made more likely or more difficult to achieve and the spread of fire or smoke is not made more likely, or a previously protected</p>

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				<p>hatch becomes unprotected requiring watertight integrity to be improved). Where the owner changes a part of a vessel's structure, to then require the entire vessel to be regarded as "new" might dissuade owners from modifying their vessels. We recommend that the National System adopt and apply the principles in the NMSC's document "ADMINISTRATIVE PROTOCOL FOR THE APPLICATION OF THE NATIONAL STANDARD FOR COMMERCIAL VESSELS TO THE EXISTING FLEET")</p>
9	8	Table 2 - Certificate of Operation, last paragraph	<p>"For vessels that are in survey, each vessel will be treated as a separate operation and the Certificate of Operation will be subject to renewal in accordance with the survey schedule."</p>	<p>There are some hire and drive vessels that may be subject to a certificate of operations over the entire hire and drive operation involving multiple vessels, in addition to, or instead of, a certificate of operations for each vessel. E.g. 4D vessels that fit in Annex C of this paper, that are "Survey Level 3", or "Compliance to NSCV required (no pre-determined survey)", or "Other".</p> <p>It is suggested that the statement that every vessel will be treated as a separate operation might not apply to all surveyed vessels in all circumstances. There may be some vessels such as jet skis that, due to their high risk, would be surveyed, and when operating in a supervised hire situation would be better administered for operations on a collective basis. Regarding each jet ski (or similar craft, such as the marine equivalent of Go Karts) regarding each vessel as a separate operation would produce little benefit.</p>
10	8	Table 2 - Certificate of survey	<p>"Evidence that the vessel has been verified (initially and/or periodically where required) against specified standards in the manner and to the extent specified by the legislation. It contains the detail of the survey schedules for the vessel."</p>	<p>We assume survey "schedules" here refers to the intervals at which survey should occur, and not the detailed schedules setting out the "what" & "how" that a particular survey must cover. The survey schedules of the latter kind are very large and extensive, and not practical to include on a Certificate of Survey (if that is instead what is being suggested here). However, if that is what is intended,</p>

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				perhaps this should refer instead to major items where the marine authority has special dealings with the vessel owner, such as the date the propeller shaft has to be removed, the date ballast / fuel tanks have to be opened up, the date the rudder has to be dropped etc.
11	9	Table 3 - 3 rd row under Vessel and Operational Standards	General Safety Standard	<p>WA supports this proposal.</p> <p>It is noted that the draft General Safety Standard requires vessels proceeding further than 2 nautical miles to sea to carry a life raft or a dinghy. This is a big increase in safety requirements over that already applying in WA for vessels less than 8 metres in length and without passengers operating within 5 nm of the mainland coast. As noted in WA's initial comments on the Standard, WA suggests that consideration should be made to permitting internal buoyancy in lieu of a life raft.</p>
12	11	3.1.1 - Paragraph 2, "Survey arrangements"	"It is proposed that an existing vessel in survey will be able to retain its existing periodic survey arrangements provided the vessel does not change operations, is not modified and does not move geographic area of operation. If the vessel seeks to change its operations, is modified, or seeks to move its geographic area of operation, the existing survey arrangements will cease to be grandfathered and it will be reassessed under the NSCV.	<p>WA understands this to mean that a vessel which is not subject to any restrictions can continue to operate within the bounds of its existing vessel service category without being required to do anything else. For example, a WA surveyed 2C vessel could continue to operate as a 2C vessel in any WA waters within 30 nautical miles from the seaward limit of a safe haven or the coast, including designated smooth or partially smooth waters. If it (a) changed from a 2C vessel to another service category or (b) moved operations to another State or Territory then the vessel survey arrangements would be reviewed</p> <p>Further, it is agreed that if operations change, in general this should trigger new standards. However, "change operations" should not simply mean to change class, but to change class in a manner that increases risk. Also, to change operations should mean to change them in a substantial way, such as by carrying passengers when previously the</p>

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				<p>vessel did not. A change from Cray fishing to wet-lining or tuna poling should not require grandfathering to be suspended. See also comment 1 paragraphs 1 and 2.</p> <p>Also, where a vessel continues to operate from WA via the NT to QLD for example, as long as operations do not change so as to alter the vessel risk profile, then the vessel should also be grandfathered (Refer to Comment 1, 3rd paragraph)</p>
13	11	3.1.1 - "Design, construction and crewing", paragraph 2	"An existing vessel with exemptions or local equivalent solutions, and a pre-USL Code vessel, will not be required to upgrade its design and construction and crewing provided the vessel does not change operations, is not modified and remains within the State or Territory where it operated prior to the commencement of the national system. . "	Same comment applies here as to comment 12
14	12	Table 4 - 2 nd row, "Current vessel-specific survey arrangements" 3 rd paragraph	"An existing vessel in survey that would be subject to a lesser survey regime under the proposed Regulatory Plan (including under NSAMS Section 4) can gain the advantage of the new requirements provided that the vessel meets an equivalent standard to that applicable to new vessels in the same class.	<p>WA supports the proposal for people to opt in to the new survey arrangements. However this paragraph suggests that opt in to the new survey regime will only be available if it would decrease the frequency of vessel survey. WA suggest that the National System also allows opt in to the new regime, even if the vessel will be subject to more rigorous survey under NSAMS Section 4 (because there may be other benefits, such as a contract of sale requiring current standards to be met).</p> <p>In WA some operators prefer to have their vessel in survey as a safety measure even though they aren't required to and</p>

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				<p>may opt in for this reason. If someone <i>chooses</i> to be in survey, they shouldn't then automatically be required to meet all the other requirements of a vessel in scheme S – in survey - and it shouldn't be an offence if they happened to be out of survey. The Certificate of Operation could be used to make the vessel's status clear for enforcement purposes.</p> <p>The National Law also needs to ensure that we have the power to issue a survey certificate to a vessel that may not be required to have one (i.e. where a person opts in to survey arrangements) and that a fee can be charged for this service. Without the head power it may be impossible for government agencies to charge a fee unless the certificate is actually a legal requirement.</p>
15	12	3.1.2 - 2 nd paragraph	"Vessels which hold existing State or Territory certificates of survey or registration will be issued a national certificate in lieu of their current certificate at an appropriate time in the survey or renewal schedule. In any event, the national certificate must be obtained within three years of commencement of the national system."	<p>We assume that this paragraph refers to certificates of survey and certificates of registration.</p> <p>The provisions for certificates should also recognise the transitional arrangements in that a vessel holding a national certificate of survey does not necessarily meet the NSCV standards.</p>
16	13	3.2.1 - 2 nd paragraph	"It is proposed that ... continue to operate on the same basis as they currently do. This grandfathering arrangement is available to mariners who do not change their location or operation."	See comment 12
17	13	3.2.1 - 2 nd paragraph	"However, if the certificate requires revalidation, after the new national	See Comment 2.

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			seafarer certification NSCV standard is agreed, the holder will transition to a National Seafarer Certificate when they apply for revalidation.”	
18	13	3.2.1 - 2 nd paragraph	“... Holders of existing certificates of competency that are perpetual can continue to operate in the same manner and the same jurisdiction as they currently do. If their operations change or move, they will need to transition to a National Seafarer Certificate.”	See comments 2 and 12.
19	13	3.2.2 - 1 st paragraph	“Existing certificates of competency, including those with restrictions, will continue to be recognised within the issuing jurisdiction, subject to any applicable restrictions.”	It is assumed that any endorsements or extensions, whatever term is used, will also continue, subject to conditions as are also on the existing certificate of competency.
20	13	3.2.2 - 2 nd paragraph	“It is proposed that unrestricted certificates of competency issued after 1981 (under the USL Code or Part D of the NSCV or equivalent) will be transitioned to national certificates at the date that the holder revalidates the existing certificate.”	See comment 2.
21	13	3.2.2 - 4 th paragraph	“It is also proposed that restricted certificates of competency will transition to a National Seafarer Certificate if and when they are	WA notes the intention to reduce the number of restriction types is to facilitate movement between “waterways with similar conditions”. It is assumed that this means “between jurisdictions” as well, and so this paragraph refers to how

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			required to be revalidated. ... An objective will be to reduce the current number of different restrictions to facilitate movement between waterways with similar conditions.”	those certificates of competency will be recognised in other jurisdictions outside the issuing jurisdiction WA would support the reduction in certification restriction types and the recognition of qualifications between jurisdictions, as long as holders of existing certificates of competency are not unreasonably affected.
22	14	4.3 - 2 nd paragraph, “Transitioning existing certificates ”	“When existing vessel certificates are up for renewal or revalidation, national certificates will be issued in lieu of the current State or Territory certificate at an appropriate time in the periodic survey schedule. All vessels must have a national certificate of operation by 2016 ”	<p>Where other state “certificates” have been issued (such as Load Line, Radio, Compass – if they can be referred to as “certificates” – given that radio and compass “certificates” are really just confirmation that the equipment complies with standards) then the question arises whether these could continue in force and effect until they also expire (some of them span a period exceeding 1 year). It is recommended that they should.</p> <p>It is also not clear if such equipment “surveys” (for Load Line, or of radios, compasses etc.) remain valid seeing as they were conducted before the vessel’s latest Certificate of Survey expires, and that some of these “surveys” may be a service that is subject to appointment under the National Law. The National Law might have to contain transitional provisions to recognise Load Line surveys and equipment “surveys” (that is, on pieces of equipment such as radios and compasses) conducted in the course of a vessel’s periodical survey before any appointments are made.</p>
23	15	4.4 - “Existing vessels in Scheme S – survey requirements”	“An existing vessel may continue to comply with the vessel’s existing periodic survey regime provided the vessel does not change operations, is not modified and does not move its geographic area of operation	See comment 12.

Comment number	Page	Clause & other location descriptor	Quoted text if required	Comment
24	16	4.4 - “Existing vessels in Scheme S – design, construction and crewing”, 1 st paragraph.	“Existing Scheme S vessels may continue to comply with the vessel’s existing construction, survey and crewing requirements. An existing vessel in periodic survey with no exemptions from the USL Code or local equivalent solutions to the NSCV...”	Note: Here, exemptions do not include Global Equivalent Solutions because these can be recognised by other jurisdictions as “national” already, and therefore if such vessels holding a Global Equivalent Solution are grandfathered in one jurisdiction they should be grandfathered in another.
25	15	4 4 - “Existing vessels in Scheme S – design, construction and crewing”, last paragraph.	“An existing vessel will be able to take advantage of the grandfathering arrangements for crewing provided the vessel does not change operations, is not modified and does not move its geographic area of operation.”	See comment 12 It appears (not only by this paragraph) that the Regulatory Plan links the Survey Requirements, the Survey Regime, and Crewing in a way that where something (like a modification, or change in operational area) triggers a change in one of these things, then all of these things lose their grandfathered status and must be reassessed. WA would not support a proposal that required WA to maintain legislation and an administrative ability to provide for such local certification requirements – we assume that the local or State / Territory requirements would instead be captured under the National Law
26	17	5 3 - 1 st paragraph, last sentence of 5.3.	“In all cases, vessel identification will be on an individual vessel basis.”	In instances where a hire operation is registered, and the “vessels” are not suitable for individual identification, it would be useful to have only the operations registered with a vessel type identifier. An example might be a white water rafting operation where tractor tubes are used to navigate river rapids. Vessel ID would probably not serve any useful purpose here.
27	18	5.3 - “Obtaining national	“After the commencement of the national system, new Scheme NS vessels must obtain a national	It is assumed that the national certificate referred to is a certificate of operations. If this is the case, the certificate may apply to an operation rather than to any one vessel

Comment number	Page	Clause & other location descriptor	Quoted text if required	Comment
		certificates” 1 st two paragraphs	certificate prior to entering into service.” “Existing Scheme NS vessels must obtain a national certificate by 2016.”	
28	18	5.4 - 2 nd paragraph “Existing vessels in Scheme NS” Middle of paragraph	“Existing vessels in Scheme NS may be required to meet the equipment requirements of the General Safety Standard by 2016; or where relevant due to the size and operations of the vessel, the NSCV Section C7A transitional requirements.”	WA notes that, in terms of time to comply, this is more lenient than that required of Scheme S vessels. Presumably this reflects the generally low risk nature of the operations and the less critical need to comply with contemporary standards. WA agrees with this approach.
29	18 and 19	5 5 - 2 nd paragraph: “New vessels in Scheme NS” and duplicate wording at - 1 st paragraph, top of page 19: “Existing vessels in Scheme NS”	“The extent of a vessel’s safety management obligations under Part E is currently being identified through the national standard development process, and will be specified in NSCV Part E before the commencement of the national system. It is anticipated that vessels in Scheme NS will have the least onerous obligations. This means that new Scheme NS vessels will be obliged to maintain safe operating practices and to be prepared for emergencies, but not have a formal safety management system. However, this is currently being considered by the NMSC ”	A vessel that is not surveyed may be categorised as such because it is low risk, but the only means of managing that risk is the operational standard that is applied To this extent, it should not be a foregone conclusion that the operational management of the vessel will be automatically less onerous than that of a surveyed vessel. With regard to a “formal safety management system”, it is not clear what is meant by “formal” here We presume it means they may not need a documented system, but they would still be required to have a functional and reliable system which meets the formal requirements of the NSCV Part E Chapters 1-3. Given that the National Law suggests that registration will be periodical, it would be useful to remind operators of their responsibilities if at the time of every registration, this declaration of having operational plans is required.

Comment number	Page	Clause & other location descriptor	Quoted text if required	Comment
30	19	5.5 - 2 nd paragraph from the top of page 19: "Existing vessels in Scheme NS"	"Where existing Scheme NS vessels have crewing requirements specified on their pre-existing certificates, these will continue to apply, provided the vessel does not change operations, is not modified and does not move its geographic area of operation. In other words, provided it continues to operate in the same manner as it did before the commencement of the national system. If the vessel seeks to change its operations, is modified, or seeks to move its geographic area of operation, it would be reassessed to determine if the risk of the operation would increase and, where so, whether the additional risks justify an alteration of the vessel's crewing requirements."	The same comments apply to the application of requirements (whether or not the vessel is in the NS Scheme, relating to the construction, operation and crewing) as mentioned at comments 8 2 nd paragraph, and 12.
31	24	8.2.3 - Last paragraph on this page: "The Proposed National Seafarer Certificate System"	"If a valid State or Northern Territory unrestricted certificate under the USL Code or Part D of the NSCV is held, and the current operating location and operation does not change, a seafarer can continue to operate using that certificate until it requires renewal or revalidation."	See comments 2 and 12.

Extract from Amendment List 7 to the USL Code

2. Application of Amendments

(1) Subject to clauses 2(2), 2(3) and 2(6) below, the amendments contained in this Amendment List 7 shall apply only to:

- new vessels;
- existing vessels subject to initial survey (being a vessel which is investigated and verified for the first time as meeting prescribed standards); and
- existing vessels subject to upgrade in service to the extent that for the upgrade the Authority requires all or part of the ship to be investigated and verified that it meets prescribed standards.

(2) Despite clause 2(1) above, applicable legislation or an Authority may require existing vessels to comply with the USL Code as amended by Amendment List 5, Amendment List 6 or this Amendment List 7.

(3) Despite clause 2(1) above, the amendments to Section 15 of the USL Code contained at clause 8 of this Amendment List 7 apply to all vessels.

(4) For the purposes of this clause 2, a new vessel is one the keel of which is laid, or:

- construction identifiable with the particular vessel has begun;
- and a portion of the vessel has been fabricated and finally assembled, having a mass of not less than the lesser of—
 - a) 50 tonnes; or
 - b) one per cent (1 per cent) of the estimated mass of all structural material of the vessel as proposed to be completed,on or after the Commencement Date.

(5) For the purposes of this clause 2, an existing vessel is one which is not a new vessel

(6) Despite clause 2(1) above, a vessel:

- for which an application for design approval has been lodged with the Authority prior to the Commencement Date [of the Amendment List]; and
- the keel of which is laid, or:
 - a) construction identifiable with the particular vessel has begun; and
 - b) a portion of the vessel has been fabricated and finally assembled, having a mass of not less than the lesser of—
 - i. 50 tonnes; or
 - ii. one per cent (1 per cent) of the estimated mass of all structural material of the vessel as proposed to be completed,before the date that is 3 years after the Commencement Date,shall have the option of complying with the parts of the USL Code superseded by Amendment List 7.

(7) For the purposes of this clause 2, an —application for design approval includes the following.

- an application for vessel design, plans or construction drawings approval;
- an application for new vessel construction;
- an application for the examination of vessel plans;
- an application for initial survey or a vessel survey application; and
- in Queensland, the completion, by an accredited designer, of a certificate of compliance for design in a form acceptable to Maritime Safety Queensland

(8) The amendments contained in this Amendment List 7 apply in all jurisdictions unless otherwise specified to apply in a particular jurisdiction or in particular jurisdictions.