



Marine Notice 10/2016

International delivery of Domestic Commercial Vessels and Near Coastal Vessels operating overseas

Purpose

This Marine Notice is to provide general guidance to owners and/or operators of Domestic Commercial Vessels (DCV) who intend to:

- build a vessel overseas and bring the vessel to Australia to be certified as a DCV;
- sail a DCV overseas on occasional voyages (for example: for sale or for delivery to new owners after sale); or
- operate a DCV outside Australian waters on an ongoing basis.

This notice is issued as general guidance only. It may not apply to all circumstances and should be read in conjunction with the relevant Acts, Marine Orders and Standards. This document does not constitute legal advice and is not a substitute for independent professional advice. AMSA may be contacted directly for confirmation of requirements.

Introduction

All Australian commercial vessels 24 metres or more in tonnage length, and any Australian vessel (including DCV and recreational craft) in international waters, are required to be registered in accordance with the *Shipping Registration Act 1981* (unless a specific exemption applies).

All Australian vessels which operate in international waters fall within the definition of a Regulated Australian Vessel (RAV) as a result of s15 of the *Navigation Act 2012* (Navigation Act). The Navigation Act regulates matters related to the construction and safety of vessels operating internationally. All RAV are required to hold certification issued under the Navigation Act.

As the basis for the issue of Navigation Act certification a vessel that is currently a DCV, or will be DCV once delivered to Australia, may be able to rely on certification issued under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law). National Law certification, of itself, does not permit a vessel to undertake international voyages regardless of the service category.

Options for delivering a 'domestic' vessel to, or from, Australia

There are generally three options for delivery to, or from, Australia for Australian owned vessels:

1. Carry the vessel as cargo; or
2. Where the vessel is Australian owned, sail the vessel under the Australian flag as a RAV;
3. For a delivery voyage to Australia where the vessel is not yet Australian owned or for overseas delivery of an Australian flagged vessel under demise charter to a foreign operator, sail the vessel under another flag.

Note: *Where a vessel is being sent overseas to be operated by an Australian owner it will need to be appropriately certified. This is covered in detail in this marine notice under 'DCVs intending to operate overseas'.*

1. Carry the vessel to, or from, Australia as cargo

a. Vessels carried to Australia to be DCV

Where a vessel is carried to Australia as cargo on another vessel, there will not necessarily be a requirement for the vessel to be certified as a RAV. This depends on the circumstances related to delivery, including any sea trial requirements, and AMSA needs to be advised in advance of any such delivery before it takes place.

b. Vessel carried from Australia for delivery to owners

A vessel being exported from Australia for delivery to foreign owners may be built to a standard required by the National Law (the NSCV) or any other international standard and need not necessarily be certified for export purposes. What is required will depend on the circumstances in each case and the ship builder should discuss this with AMSA.

2. Sail the vessel to, or from, Australia as a RAV

If an Australian owner and/or operator chooses to sail a vessel on its own bottom to or from Australia, it must be Australian registered and a short term Certificate of Survey as Class 2A, issued under the Navigation Act, will be necessary.

In relation to registration it is recommended that an application for a Temporary Pass be considered. This provides the equivalent to registration for the period of the voyage and can be issued in lieu of full registration. This may be a more cost effective option, however, please note that it remains current only for the delivery voyage. Advice should be sought from the Shipping Registration Office. For more information, email sro@amsa.gov.au.

Where the vessel is located overseas but is to be operated as a DCV in Australia, or is currently operating as a DCV in

Australia and is to be delivered to an overseas buyer, then existing National Law certification can be used as the basis of short term Navigation Act certification for the delivery voyage. Short term certification as a Class 2A may be granted with additional conditions addressing any operating limitations and operational requirements for the voyage.

Note: Owners and operators are reminded that certification issued under the Maritime Safety (Domestic Commercial Vessel) National Law Act 2012 cannot be relied upon in lieu of certification under the Navigation Act 2012 irrespective of the service category on such certifications.

Note: Where the vessel being delivered is a fishing vessel then short term 3A certification will generally be issued. However, fishing operations will not be permitted for the voyage unless the vessel fully complies with the Navigation Act requirements for a 3A fishing vessel.

It is important that the owner or operator and AMSA Accredited Surveyor (if one has been engaged) or the appointed Recognised Organisation (RO) (AMSA recognised class society) advise AMSA of the intention to relocate a vessel well in advance. For a new build vessel, it is recommended that this advice be provided at the design stage, if practical, in order for requirements to be identified early and delays or reworks avoided.

Under Australian law international convention requirements may apply; however AMSA will employ the exemption/waiver provisions within the Navigation Act, reflecting those in these conventions where possible. The following general advice should be noted:

- For SOLAS (where applicable), AMSA will generally issue exemptions reflecting regulation 4 of Chapter I of SOLAS to allow the vessel to sail on a Navigation Act Certificate of Survey, with requirements adequate for the delivery voyage.
- Vessels will not normally be allowed to carry cargo or passengers.

- Vessels of 24 metres or more in Load Line length should have an International Load Line Certificate, but exemptions may be granted for a 'one off' international voyage and a DCV Load Line Certificate may then be relied upon.
- Vessels of 24 metres or more in tonnage length should have an International Tonnage Certificate.
- All vessels require evidence of compliance with the *International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001*.
- All vessels will require evidence of compliance with the Maritime Labour Convention 2006. AMSA have a process to manage how compliance can be demonstrated in vessels that would not normally be crewed at all times.
- All vessels must have a valid Minimum Safe Manning Determination issued by AMSA.
- All vessels must have a Safety Management System that meets AMSA requirements.
- MARPOL cannot be exempted where it applies, however some annexes allow for waivers which may be applied.

Note: Operators and AMSA Accredited Surveyors are advised to pay particular note to engine output with respect to Regulation 13 of Annex VI of MARPOL. As a general rule under this regulation, marine diesel engines of more than 130kW installed after 1 January 2000 are required to have an Engine International. Air Pollution Prevention (EIAPP) Certificate and technical file. Most modern marine diesel engines can comply with this requirement, but the engine manufacturer should be advised that the engine will require an EIAPP and the technical file when ordering the engine.

3. Sail the vessel to or from Australia under another flag

Vessels with Australian owners cannot be sailed under a foreign flag, with one exception.

Australian owned vessels being demise chartered to a third party that has a place of business, or is resident, in the proposed foreign flag state may sail under a foreign flag. For the period of the demise charter an exemption from Australian registration may be issued and the Australian registration suspended. Owners and operators are advised that an application needs to be made to the Shipping Registration Office and it is strongly recommended that independent legal advice be sought regarding chartering arrangements.

Where an Australian owned vessel is being exported from Australia under a foreign flag it may be subject to port State control inspection by AMSA, as is the case for any foreign flagged vessel.

Sea trials

For vessels being built in Australia for an overseas buyer, where sea trials are to be undertaken in Australia and the vessel remains in the builder's name, the builder should:

- Seek registration for the period of the sea trials using a "Temporary Pass" issued under the *Shipping Registration Act 1981* (this is a cheaper and simpler option than full registration); and
- Seek an exemption from AMSA under the Navigation Act for the sea trial to be carried out within a specified area (usually within port limits). This will be granted where AMSA is provided evidence - such as a statement of compliance - that the vessel complies with relevant survey requirements.

The same process can also be used where a vessel is to be delivered to owners in Australia and is to change flag after sea trials in Australia have been completed. Where this option is to be considered AMSA should be contacted to provide advice as how this is managed will depend on circumstances of the case.

If an Australian registered vessel is to undertake sea trials overseas, AMSA should be contacted for details of any approvals required.

Role of the Recognised Organisation or AMSA Accredited Surveyor

Recognised Organisations

Any inspection, gap analysis and review that may be necessary for the delivery of any Australian owned vessel, to or from Australia, can be carried out by an RO. ROs can also issue Navigation Act statutory certificates on AMSA's behalf, as an issuing body. A list of ROs and contact details can be found on the AMSA web site.

Owners and operators should be aware that ROs cannot issue certificates to vessels not 'in class' with them, but they can issue "Statements of Compliance" that can be used by AMSA to issue Navigation Act statutory certificates.

Even where an RO is used, AMSA should be advised of the intended operations of the vessel, noting that AMSA involvement is necessary and early advice will minimise the risk of problems in the process.

Owners and operators should be aware that where a RO is used, the engagement of the RO is a commercial relationship between the owner/operators and the RO. The costs and mechanisms necessary to undertake these functions are a matter to be agreed between those two parties. AMSA will not be involved in this.

AMSA Accredited Surveyors

AMSA Accredited Surveyors are appointed solely under the National Law. These surveyors are not authorised to issue certification under the Navigation Act. This does not, however, prevent AMSA or ROs from using statements and reports made by an AMSA Accredited Surveyor for the purpose of issuing a short term Navigation Act Class 2A certificate for a delivery voyage to or from Australia. The AMSA Accredited Surveyor may also be used to confirm the provision of operational and material requirements placed on the vessel for the delivery voyage, where it is not practical to use an RO or AMSA employed surveyor.

Owners and operators should be aware that where an AMSA Accredited Surveyor is used in this process, the engagement of the accredited surveyor is a commercial relationship between the owner/operators and the AMSA Accredited Surveyor. It is the owners/operators responsibility to ensure the AMSA Accredited Surveyor can undertake the work. The costs and mechanisms necessary to undertake these functions are a matter to be agreed between those parties. AMSA will not be involved in this.

Owners and operators should be aware that detailed information is likely to be required by AMSA and this should be considered as part of the arrangement. As noted above, early advice to AMSA will help in clarifying what will be required and may assist in mitigating the risk of unforeseen issues.

DCV's intending to operate overseas

Owners and operators of DCVs who intend to operate that vessel for commercial purposes overseas should be aware that the vessel will be considered a RAV and will need to be certified under the Navigation Act as a Class 2A vessel.

This does not mean all vessels have to comply with the full Class 2A requirements. A conditional Class 2A Certificate of Survey will be considered, based on the relevant NSCV operations as adopted within Marine Orders, where such vessels will operate:

- within specific geographic limitations (i.e. a fixed coastal voyage in a given area or within a harbour); and/or
- within a fixed distance from smooth or partially smooth waters or a safe haven; or
- in close proximity to a mother vessel.

Such certificates will detail the operating areas, equipment to be carried and relevant operational requirements. The mechanisms for having such certification issued is the same as that used for the delivery of vessel as described in the guidance above, however in this situation a full term certificate will be issued.

Where the vessel is issued with full term certification, the vessel will be subject to an annual endorsement inspection. Owners and operators should discuss with AMSA how this will be carried out as it will vary depending on the type of vessel and the nature and location of operations. The options may include:

- attendance by an AMSA employed surveyor;
- attendance by an RO;
- attendance by an AMSA Accredited Surveyor to provide a report to AMSA, allowing AMSA to remotely endorse the certificate;
- appointment of a surveyor from the administration of the country where the vessel is operating; or
- a combination of the above.

Note: *Where an accommodation barge is being operated overseas, it will be certified as a Class 1A vessel. All other passenger vessels carrying more than 12 passengers and all cargo vessels of 500 gross tonnage and above are captured by SOLAS so the non-convention survey cannot be employed. Vessels carrying 12 or less passengers will be certified as Class 2A, if they have gross tonnage less than 500.*

Note: *Fishing vessels operating and fishing internationally are subject to Navigation Act Marine Orders as Class 3A vessel.*

It is important to note that where a vessel is to operate internationally on an ongoing basis AMSA cannot 'exempt' a vessel from a convention, where it applies, as this would contravene Australia's obligations as a signatory to the conventions and is not permitted by section 334(5) of the Navigation Act.

Note: *Owners and operators should be aware the MARPOL Annex IV applies to any vessel on international voyages, irrespective of tonnage, where the vessel is certified for, or carries, more than 15 persons.*

Note: *Owners and operators should be aware that Chapter VI and VII of SOLAS in respect to cargo operations and cargoes (including hazardous cargoes) apply to all vessels, irrespective of tonnage.*

Contact

Information on registering a vessel is available at

<http://www.amsa.gov.au/vessels/shipping-registration/>

While information in relation to the matters is provided on the AMSA website, enquiries can be directed to the Shipping Registration Office:

By email: sro@amsa.gov.au; or

By phone: +61 2 6279 5000.

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