

**Transport Operations (Marine
Safety-Domestic Commercial Vessel
National Law Application) Bill 2015**

Report No. 11, 55th Parliament

Utilities, Science and Innovation Committee

February 2016

Utilities, Science and Innovation Committee

| | |
|---------------------------|--|
| Chair | Mr Shane King MP, Member for Kallangur |
| Deputy Chair | Mr Robert Molhoek MP, Member for Southport |
| Members | Mr Don Brown MP, Member for Capalaba Mr Jason Costigan MP, Member for Whitsunday Mr Dale Last MP, Member for Burdekin Mr Chris Whiting MP, Member for Murrumba |
| Committee Staff | Ms Kate McGuckin, Research Director Ms Rachelle Stacey, Principal Research Officer Ms Lisa Van Der Kley, Executive Assistant Ms Julie Fidler, Executive Assistant |
| Technical Scrutiny | Ms Renee Easten, Research Director |
| Secretariat | Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer Ms Tamara Vitale, Executive Assistant |
| Contact Details | Utilities, Science and Innovation Committee Parliament House Cnr George and Alice Streets Brisbane Qld 4000 |
| Telephone | +61 7 3553 6633 |
| Fax | +67 7 3553 6639 |
| Email | usic@parliament.qld.gov.au |
| Web | www.parliament.qld.gov.au/usic |

Acknowledgements

The Committee acknowledges the assistance provided by the Department of Transport and Main Roads.

Contents

| | |
|---|-----------|
| Abbreviations | 3 |
| Glossary | 3 |
| Chair’s foreword | 4 |
| Recommendations | 5 |
| 1. Introduction | 6 |
| 1.1 Role of the Committee | 6 |
| 1.2 Inquiry process | 6 |
| 1.3 Objectives of the Bill | 6 |
| 1.4 Consultation on the Bill | 7 |
| 1.5 Should the Bill be passed? | 7 |
| 2. Background | 8 |
| 2.1 Regulation of marine matters | 8 |
| 2.2 National regulation of safety matters for domestic commercial vessels across Australia | 8 |
| 2.2.1 Intergovernmental Agreement | 8 |
| 2.2.2 Introduction of the National Law | 8 |
| 2.3 Application of the National Law in Queensland | 9 |
| 3. Examination of the Bill | 11 |
| 3.1 Part 2 - Model application provisions | 11 |
| 3.1.1 Clause 5 – Application of Commonwealth laws as laws of this State | 11 |
| 3.1.2 Clause 6 – Interpretation of Commonwealth domestic vessel national law | 11 |
| 3.2 Part 3 – Functions and powers under applied provisions | 12 |
| 3.2.1 Clause 7 – Function and powers of the National Regulator and other authorities and officers | 12 |
| 3.2.2 Clause 8 – Delegations by National Regulator | 12 |
| 3.3 Part 4 – Offences | 12 |
| 3.4 Part 5 – Administrative Laws | 12 |
| 3.5 Part 6 – Fees and fines | 13 |
| 3.5.1 Licensing and certification fees | 13 |
| 3.6 Part 7 – Miscellaneous | 14 |
| 3.7 Part 8 - Transitional provisions | 14 |
| 3.7.1 Committee comment and recommendation | 15 |
| 3.8 Estimated cost of government implementation | 15 |
| 4. Compliance with the <i>Legislative Standards Act 1992</i> | 16 |
| 4.1 Fundamental legislative principles - the Bill | 16 |
| 4.1.1 Rights and liberties of individuals | 16 |
| 4.1.2 Institution of Parliament | 18 |
| 4.1.3 National scheme legislation | 19 |
| 4.2 Fundamental legislative principles - the National Law | 20 |
| 4.2.1 Rights and liberties of individuals | 20 |
| 4.2.2 Institution of Parliament | 24 |

| | |
|--|-----------|
| 4.3 Explanatory Notes | 24 |
| Appendix A – Submission | 25 |
| Appendix B – Department public briefing list of witnesses | 26 |

Abbreviations

| | |
|----------------------------------|---|
| AMSA | Australian Maritime Safety Authority |
| the Bill or the Application Bill | Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Bill 2015 |
| COAG | Council of Australian Governments |
| the Committee | Utilities, Science and Innovation Committee |
| Cwlth | Commonwealth |
| the Department | Department of Transport and Main Roads |
| FLPs | fundamental legislative principles |
| MSQ Act | <i>Maritime Safety Queensland Act 2002</i> |
| National Law | Marine Safety (Domestic Commercial Vessel) National Law, <i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i> , Schedule 1 |
| National Law Act | Cwlth, <i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i> (National Law) |
| National Law Bill | Cwlth, Marine Safety (Domestic Commercial Vessel) National Law Bill 2012 |
| OQPC | Office of the Queensland Parliamentary Counsel |
| SLC | Scrutiny of Legislation Committee (former) |
| TOMSA | <i>Transport Operations (Marine Safety) Act 1994</i> |
| TOMSOL | Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015 |
| USLC | Uniform Shipping Laws Code |

Glossary

| | |
|-----------------------------|--|
| 'constitutional gap' vessel | Queensland ships beyond the constitutional reach of the Commonwealth Government due to the fact that the Commonwealth cannot regulate commercial vessels owned by individuals, sole traders, partnerships and other non-corporate entities operating on inland waters. |
|-----------------------------|--|

Chair's foreword

This Report presents a summary of the Utilities, Science and Innovation Committee's examination of the Transport Operations (Marine Safety— Domestic Commercial Vessel National Law Application) Bill 2015.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The Committee has unanimously agreed that the Bill be passed.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on the Bill. I also thank the Committee's secretariat and the Department of Transport and Main Roads for their assistance.

I commend this Report to the House.



Mr Shane King MP

Chair

February 2016

Recommendations

Recommendation 1

7

The Committee recommends the Transport Operations (Marine Safety - Domestic Commercial Vessel National Law Application) Bill 2015 be passed.

Recommendation 2

15

The Committee recommends the Minister, in the second reading speech on the Bill, include a statement clarifying that the Application Bill and its contents apply only to 'constitutional gap' vessel owners and operators and not to those already operating under the National Law and System.

1. Introduction

1.1 Role of the Committee

The Utilities, Science and Innovation Committee is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Main Roads, Road Safety and Ports
- Energy and Water Supply
- Housing and Public Works
- Science, Information Technology and Innovation.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles (FLPs)
- for subordinate legislation – its lawfulness.

The Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Bill 2015 (Application Bill) was introduced into the House and referred to the Committee on 27 October 2015. In accordance with the Standing Orders, the Committee of the Legislative Assembly requires the Committee to report to the Legislative Assembly by 5 February 2016.

1.2 Inquiry process

On 29 October 2015, the Committee wrote to the Department of Transport and Main Roads (the Department) seeking advice on the Bill and invited stakeholders and subscribers to lodge written submissions to its inquiry. One [submission](#) from the Australian Maritime Safety Authority (AMSA) was received and [written advice](#) was received from the Department on 27 November 2015 providing detailed information on the Bill and responding to an issue raised in the AMSA submission. On 2 December 2015, the Committee held a public departmental briefing (see Appendix B for witness details).

The submission, the [transcript](#) of the public briefing, and other inquiry-related documents are available on the [Committee's webpage](#).

1.3 Objectives of the Bill

The principal objective of the Bill is to apply the Commonwealth's Marine Safety (Domestic Commercial Vessel) National Law (National Law) which is contained in Schedule one of the [Marine Safety \(Domestic Commercial Vessel\) National Law Act 2012](#) as a law of this State. The Explanatory Notes advise this is necessary to ensure that a small percentage of vessels that are beyond the constitutional reach of the Commonwealth Government are governed by the National Law as agreed by Queensland in a 2011 Intergovernmental Agreement. The Bill also proposes to apply Commonwealth legislation, rather than Queensland legislation, to matters relating to interpretation, administration and enforcement of the applied provisions.²

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² See the Explanatory Notes, 2015:1-2

1.4 Consultation on the Bill

The Explanatory Notes to the Bill advise that, as a national initiative, the Commonwealth was responsible for the consultation on the national reforms and that consultation on the national reforms previously undertaken by AMSA was generally positively received by the public and marine industry.³

The Explanatory Notes explain that the Department will contact known vessel owners and operators who will be transitioning to the national system through the application of the National Law in Queensland to advise them that:

- Queensland registrations that are current at the time of the commencement of the amendments will be recognised as certificates of operation under the National Law until the expiry of the registration term, and
- shortly before their Queensland registration expires, they will be notified and invited to apply for a certificate of operation under the National Law, subject to the same conditions as their Queensland registration and for the same fee that applies to Queensland registration.⁴

At the public briefing the Department advised that the six operators that will be affected have been contacted in writing and by phone and that, amongst other things, they have been assured that the operating licences they now hold will continue under the National Law.⁵

The Department has also advised the Committee that it will continue to advocate on behalf of Queensland vessel owners and operators as part of its service delivery arrangements with the National Regulator.⁶

1.5 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives which it will achieve and consideration of the information provided by the Department and from stakeholders, the Committee is making a recommendation that the Bill be passed.

Recommendation 1

The Committee recommends the Transport Operations (Marine Safety - Domestic Commercial Vessel National Law Application) Bill 2015 be passed.

³ Explanatory Notes, 2015:11

⁴ Erratum to Explanatory Notes, 2015:1

⁵ Public briefing transcript, 2 Dec 2015:2

⁶ Department written brief, 27 Nov 2015:7

2. Background

2.1 Regulation of marine matters

Under Australia’s constitutional arrangements, the States, the Northern Territory and the Commonwealth have overlapping power to make laws governing Australia’s domestic commercial vessels.

Prior to 2013, each Australian jurisdiction regulated the safe operation of vessels in its own waters. There were eight separate marine safety regulators, each with its own system and collectively administering more than 50 pieces of legislation. Queensland has used its power to legislate with respect to maritime safety by enacting the *Transport Operations (Marine Safety) Act 1994* (TOMSA) and the *Maritime Safety Queensland Act 2002* (MSQ Act).

Marine safety regulation across the nation was not uniform, nor consistently legislated or administered. The Department advised that this often resulted in inconsistent application of safety requirements, vessel survey recognition, safety certification and qualifications/certificates of crew, as well as variations in the level and nature of ongoing monitoring and compliance with safety standards.⁷

2.2 National regulation of safety matters for domestic commercial vessels across Australia

2.2.1 Intergovernmental Agreement

In 2011, an Australian Government’s Intergovernmental Agreement was signed by the Council of Australian Governments (COAG) that reflected the joint decision of the Commonwealth, States and territories that the Commonwealth take over the safety regulation of *domestic commercial vessels*. The Department advises that the Agreement:

*... recognises the mutual interests in developing a national system for commercial vessel safety and working cooperatively to achieve this outcome. While the reforms seek to provide a simplified administrative process, there is an equally important objective of delivering improved safety outcomes in terms of less fatalities and serious injuries arising from the operations of commercial vessels.*⁸

Under the Agreement, the Queensland Government is bound to undertake certain actions and make financial contributions to support transition to the national system.⁹

2.2.2 Introduction of the National Law

The implementation of the Agreement resulted in the introduction of the National Law which is contained in schedule 1 of the Commonwealth’s [Marine Safety \(Domestic Commercial Vessel\) National Law Act 2012](#) and commenced on 1 July 2013. The National Law introduced a national system for regulating domestic commercial vessels, which are defined as vessels ‘for use in connection with a commercial, governmental or research activity’.¹⁰

The Explanatory Notes to the Bill advise that, as a national initiative, the Commonwealth was responsible for the consultation on the national reforms and that consultation on the national reforms previously undertaken by AMSA was generally positively received by the public and marine industry.¹¹

⁷ Department written brief, 27 Nov 2015:2

⁸ Department written brief, 27 Nov 2015:2

⁹ Department written brief, 27 Nov 2015:2

¹⁰ The National Law, [Marine Safety \(Domestic Commercial Vessel\) National Law Act 2012](#), schedule 1:section 7

¹¹ Explanatory Notes, 2015:11

AMSA's public engagement activities included consultation on the Regulatory Plan outlining the proposed elements of the Commonwealth's Marine Safety (Domestic Commercial Vessel) National Law Bill 2012 (National Law Bill (Cwth)), a detailed [discussion paper](#)¹² providing an overview of the legislation and the [National Law Bill \(Cwth\)](#) itself.

Comments and feedback from 19 formal public submissions received by AMSA were considered and incorporated into the National Law Bill as appropriate.¹³ AMSA released a [consultation feedback report](#) in May 2012 detailing the responses to these submissions.¹⁴

The Department advised that:

- domestic commercial vessels work predominately around the Australian coastline, vary widely in nature and purpose and include vessels such as fishing craft, passenger and trading boats and a wide range of other small and medium sized vessels
- the National Law does not regulate vessels which operate internationally or foreign vessels, as they are regulated under the *Commonwealth Navigation Act 2012* and also does not regulate recreational vessels which continue to be regulated under State legislation.¹⁵

*The overarching policy objective of the National Law is to provide for the consistent regulation of the domestic commercial vessel industry across Australia. This is to ensure that, irrespective of where a commercial vessel is in Australian waters, it is required to meet the same nationally agreed safety standards. This means, for example, that those who design and build commercial vessels in one jurisdiction do not need to have the vessels re-certified for use in another jurisdiction. It also means that companies which operate nationally and have vessels in different jurisdictions do not need to deal with different regulatory requirements to manage their fleet and crew.*¹⁶

Legislation based on the National Law model application provisions has been introduced in New South Wales, Victoria, South Australia, Tasmania and the Northern Territory. The Explanatory Notes explain that the effect of the legislation in all these jurisdictions is to apply the Commonwealth Marine Safety National Law Act as a law of those jurisdictions.¹⁷

This Bill proposes to apply the National Law as a law of Queensland.

2.3 Application of the National Law in Queensland

Pursuant to Australian constitutional practice, once the National Law commenced, it assumed precedence over Queensland's laws to the extent of any inconsistency. Additional Commonwealth laws (for example, those relating to the investigation and prosecution of criminal offences, administrative appeals and Ombudsman complaints/investigations) are applied and displace State based laws.¹⁸

The National Law has therefore regulated safety matters for the vast majority of Queensland's domestic commercial vessel fleet (comprising approximately 5,000 ships) since July 2013 and for those Queensland vessels already covered by the National Law, the passage of this Bill would have no practical effect.

¹² AMSA, [Discussion Paper](#): Marine Safety (Domestic Commercial Vessel) National Law Bill 2012, Dec 2011

¹³ Explanatory Notes, 2015:11

¹⁴ AMSA, [Consultation Feedback Report](#), May 2012 [accessed 20 Jan 2016]

¹⁵ Explanatory Notes, TOMSOL Amendment Bill 2015:1

¹⁶ Explanatory Notes, TOMSOL Amendment Bill 2015:1

¹⁷ Explanatory Notes, 2015:11

¹⁸ Department written brief, 27 Nov 2015:2

However, there are a small number of ships beyond the constitutional reach of the Commonwealth (approximately 5% of Queensland’s commercial fleet)¹⁹ due to the fact that the Commonwealth cannot regulate commercial vessels owned by individuals, sole traders, partnerships and other non-corporate entities operating on inland waters. Therefore, these ‘constitutional gap’ vessels are currently still regulated under Queensland legislation. Examples of ‘constitutional gap’ vessels are sightseeing ferries operating on an inland lake, or fishing vessels that operate exclusively on inland waterways such as eel fishers or seafood harvesting vessels. There are nine commercial vessels, and six operators, that currently fall within this category.²⁰

The intent of the Intergovernmental Agreement was for all commercial vessels to be regulated by the Commonwealth under the National Law and therefore the Agreement provides that each jurisdiction is to apply the National Law within its jurisdiction. The principal objective of this Bill is to apply the National Law as a law of this State to transfer the regulation of Queensland’s ‘constitutional gap’ vessels to the Commonwealth.

The Explanatory Notes advise that to maintain separate State-based regulatory schemes for such a small percentage of the commercial vessel fleet would require an unnecessary duplication of administration and legislation and could result in confusion for ship owners and operators and for enforcement officers. The passage of this Bill will ensure that the National Law regulates all *domestic commercial vessels* that operate in Queensland.²¹

A complementary Bill, the Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015 (TOMSOL), was introduced into the House and referred to the Committee for consideration on 27 October 2015. TOMSOL proposes to amend existing State legislation so there is no overlap in the regulation of the same matters the National Law governs for domestic commercial vessels. TOMSOL removes redundant legislation no longer required due to the enactment of the National Law for domestic commercial vessels (such as licensing and registration of commercial vessels and fishing ships).²²

Queensland’s marine safety legislation will still provide for the regulation of recreational vessels and those vessels explicitly excluded under the National Law (such as school vessels, surf lifesaving vessels and those vessels that do not meet the Commonwealth’s definition of a trading entity).²³ TOMSOL will also make consequential amendments to ensure Queensland’s marine safety legislation continues to apply to these vessels. The Committee’s report on TOMSOL can be accessed on the [Committee’s webpage](#).

¹⁹ Explanatory Notes, 2015:3

²⁰ Public briefing transcript, 2 Dec 2015:3

²¹ Explanatory Notes, 2015:1-2

²² Department written brief, 27 Nov 2015:1

²³ Department written brief, 27 Nov 2015:4

3. Examination of the Bill

This section of the Report discusses issues raised during the Committee’s examination of the Bill. It also includes examination of some implementation issues that were brought to the Committee’s attention during its inquiry into the Bill.

3.1 Part 2 - Model application provisions

The provisions of the Bill are based on model application provisions prepared by the Commonwealth Parliamentary Counsel’s Committee. Under this approach, the Commonwealth legislation is applied by the State jurisdictions to all domestic commercial vessels within their jurisdictions. The applied provisions are then ‘federalised’ by legislative provisions so that the law may be applied and enforced by the Commonwealth. This federalisation of the law removes the need for regulators and enforcement officers to determine whether a particular vessel is covered by the Commonwealth legislation or the applied State legislation. As a result, the Bill and the National Law facilitate a national scheme which can be administered seamlessly for all domestic commercial vessels.²⁴

3.1.1 Clause 5 – Application of Commonwealth laws as laws of this State

Clause 5 of the Bill applies the National Law as the law of Queensland.

Sub-clause 5(2) has the effect of extending the applied provisions to those matters in relation to which Queensland may make the laws whether or not the Commonwealth has a constitutional head of power to do so. This means the National Law can apply to Queensland commercial vessels which are not otherwise within the Commonwealth’s power.

Sub-clause 5(3) clarifies that sub-clause 5(2) does not operate to exclude a law of Queensland relating to marine safety that would not otherwise be excluded by the National Law. The Explanatory Notes explain that this puts beyond doubt that current Queensland laws that regulate marine safety but which are not directly affected by the National Law continue to have effect. For example, this includes provisions of TOMSA and the *Transport Operations (Road Use Management) Act 1995* dealing with pilotage, harbor management, speed limits and prohibitions against alcohol and drug use.²⁵

Sub-clause 5(4) allows a regulation to be made that provides that the National Law applies as if amendments made to the law by the Commonwealth and specified in the regulation had not taken effect.

*This provides a mechanism for Queensland to make a regulation which excludes any future amendment of the National Law from taking effect in this state. As a result, Queensland will retain the ability to control whether any changes to the National Law are to apply to this state.*²⁶

3.1.2 Clause 6 – Interpretation of Commonwealth domestic vessel national law

Clause 6 of the Bill clarifies which interpretative Act is to apply for the interpretation of the applied provisions. In particular, it provides that the *Acts Interpretation Act 1901* of the Commonwealth applies and that the Queensland *Acts Interpretation Act 1954* does not apply. The Explanatory Notes advise that this approach is consistent with the approach adopted in the introduction of other national schemes.²⁷

²⁴ Explanatory Notes, 2015:2

²⁵ Explanatory Notes, 2015:13

²⁶ Explanatory Notes, 2015:13

²⁷ Explanatory Notes, 2015:13

3.2 Part 3 – Functions and powers under applied provisions

3.2.1 Clause 7 – Function and powers of the National Regulator and other authorities and officers

Clause 7 provides that the National Regulator (AMSA) established under the National Law and other authorities and officers have the same functions and powers under the applied provisions as they have under the National Law.

3.2.2 Clause 8 – Delegations by National Regulator

Clause 8 provides that any delegation by the National Regulator under the National Law is taken to have effect for the purposes of the corresponding provision of the applied Law. The Department advises that Queensland officials are currently performing functions of the National Regulator under the National Law, such as:

- Assessing applications for, and issuing certificates of survey, competence and operation
- Varying, suspending and revoking those certificates
- Appointing marine safety inspectors.²⁸

Clause 8 ensures that these existing delegations apply in relation to dealing with ‘constitutional gap’ vessels.

3.3 Part 4 – Offences

Clauses 9 to 12 relate to offences. In summary they:

- further the purpose of the National Law by providing that an offence against the applied provisions is to be treated as if it were an offence against the law of the Commonwealth
- apply Commonwealth procedures in relation to offences under the applied provisions in the Bill to promote consistency in the enforcement of the National Law across the States and territories
- provide that the functions or powers conferred on Commonwealth officers or authorities because of the application of the Commonwealth laws are also conferred on the officer or authority in relation to an offence against the corresponding provision of the applied provisions
- provide that a person is not liable to be punished for an offence under the applied provisions in Queensland if the person has been punished for the same offence by the Commonwealth under the National Law.

3.4 Part 5 – Administrative Laws

Clauses 13 and 14 apply the Commonwealth administrative laws as the laws of Queensland to any matter arising in relation to the applied provisions with certain limitations; and provide that a function or power conferred on a Commonwealth officer or authority is also conferred on the officer or authority in relation to the applied provisions.

²⁸ Explanatory Notes, 2015:14

3.5 Part 6 – Fees and fines

Clauses 15 to 17 relate to fees and fines and, in summary, they:

- enable a regulation to be made that prescribes fees payable to Queensland for anything done under the National Law or the applied provisions by an officer or employee of Queensland who is acting as a delegate of the National Regulator (the Explanatory Notes advise that the purpose of the clause is to simply change the legislative basis for the charging of fees rather than to introduce any new fees)²⁹
- facilitate payments into and refunds from Queensland’s consolidated fund in respect of infringement notice fines
- require that all fees, penalties, fines and other money that, under the applied provisions, are payable by a person must be paid to the Commonwealth except where regulations made under the proposed Act require the fees to be payable to Queensland.

3.5.1 Licensing and certification fees

The National Law does not prescribe fees, rather, it recognises existing fee arrangements across the respective jurisdictions continue for certification and licensing for domestic vessels. The Department has provided a table (see Table 1 below) that shows that pricing arrangements will remain a State responsibility until July 2017 at which time AMSA will assume the pricing/cost recovery arrangements for the National Law. AMSA is still determining the final pricing strategy and States will have no direct role in setting prices post July 2017.

The following table sets out the registration fee payable by domestic vessels (including ‘constitutional gap’ vessels) over the transition period. The Department has advised that pricing differences between the fee that applied prior to the commencement of the National Law in 2013 and those fees that currently apply are due to inflation and government approved consumer price index increases.³⁰

| Vessel type and length | Before National Law 1 Jul 2013 (TOMSR 14 Dec 2012) | Current fees and on commencement of Qld Application Law | Post Qld Application Law (2017 onwards) AMSA responsible for setting fees |
|----------------------------------|--|---|--|
| Fishing ship 10m in length | Registration fee total \$165.90 | Certificate of operation \$183.90 | To be determined by AMSA |
| Fishing ship 20m in length | Registration fee total \$452.35 | Certificate of operation \$501.55 | To be determined by AMSA |
| Commercial ship 10m in length | Registration fee total \$576.85 | Certificate of operation \$639.70 | To be determined by AMSA |
| Commercial ship 20m in length | Registration fee total \$947.05 | Certificate of operation \$1050.15 | To be determined by AMSA |

²⁹ Explanatory Notes, 2015:16

³⁰ Department written brief, 27 Nov 2015:5

At the public hearing the Committee asked the Department whether the licensing fees will be more expensive for vessel operators once AMSA takes over the pricing controls in mid-2017. The Department advised that AMSA is currently working through its fee structures and is expected to consult with both State and industry players in 2016.³¹ The Department went on to explain that:

*At the moment under the Queensland pricing strategy we do not fully cost recover. We recover about 35 to 40 per cent of our costs, and the government provides an explicit cross-subsidy for the remaining costs. AMSA itself operates under a full cost recovery regime, so they need to be able to recover all of their costs. They are trying to tailor their regulatory system to ensure that their costs do not exceed the regulatory services they provide... they are crunching those numbers now, and they will be coming out next year to the states and the industry with the outcomes of their discussions and their proposals for pricing post July 2017.*³²

3.6 Part 7 – Miscellaneous

Clauses 18 to 22 contain miscellaneous provisions regarding documents, explains certain references used in Queensland legislation, provision of information to the National Regulator and a regulation-making power.

3.7 Part 8 - Transitional provisions

Clauses 23 to 31 contain transitional provisions which aim to ensure that affected operators can transition from regulation under the Queensland scheme to the national scheme with minimal disruption to their business. These clauses afford owners and operators of the nine ‘constitutional gap’ vessels the same sort of grandfathering and transitional arrangements that were provided to the vessels that came under the Commonwealth regulation on 1 July 2013.³³ The Application Bill provides for a 12 month transitional period for vessel owners/operators to comply with any new requirements, with the exact timeframe dependent on the nature of the requirement.³⁴

The Committee received one submission from AMSA which suggests that the Application Bill be amended to include notes in Parts 2 and 8 of the Bill to highlight the very narrow range of vessels in relation to which the National Law, as applied by Part 2 and modified by Part 8 of the Bill, applies. The submission argues that:

*In the absence of notes highlighting the confined reach of the law applied by Part 2 and modified by Part 8, there is an increased risk that Part 8 could be incorrectly construed as modifying the National Law as it applies, as Commonwealth law, to the vast majority of ships in Queensland, when Part 8 cannot have the effect of modifying Commonwealth law.*³⁵

The Department responded by advising that there is no significant risk of the provisions being incorrectly construed as:

- in Queensland, the *Legislative Standards Act 1992* requires that all Bills be accompanied by an Explanatory Note which outlines the policy objectives of the Bill and the reasons for them and that Section 14B of Queensland’s *Acts Interpretation Act 1954* provides that the Explanatory Note is extrinsic material to which reference can be had to assist in the interpretation of a provision

³¹ Public hearing transcript, 2 Dec 2016:4

³² Public hearing transcript, 2 Dec 2016:4

³³ Explanatory Notes, 2015:18

³⁴ Explanatory Notes, 2015:2

³⁵ AMSA submission, 1:1

- page three of the Explanatory Notes makes clear that the application of the National Law by the Bill will only impact on the constitutional gap vessels
- page two and 18 of the Explanatory Notes make it clear that the transitional provisions in Part 8 apply only to the constitutional gap vessels.³⁶

Further, the Department advised that the Application Bill is unlikely to commence before 1 July 2016 and by that time majority of the transitional dates under the National Law will already have passed and:

Finally, for further clarity, TMR will recommend that the Minister's second reading speech on the resumption of debate, include a statement that the Application bill and its contents applies only to 'constitutional gap' vessel owners and operators and not to those already operating under the National Law and System.³⁷

3.7.1 Committee comment and recommendation

Committee comment

The Committee notes the submission by the Australian Maritime Safety Authority that argues a note should be included in Parts 2 and 8 of the Application Bill to highlight the very narrow range of vessels that the Bill applies to.

The Committee accepts the advice from the Department that there is no significant risk of the provisions being incorrectly construed due to the clarification provided in the Bill's Explanatory Notes that the Bill only applies to 'constitutional gap' vessels. However, the Committee believes that further clarity would be achieved by the Minister stating, in the second reading speech on the Bill, that the Application Bill and its contents apply only to 'constitutional gap' vessel owners and operators and not to those already operating under the National Law and System.

Recommendation 2

The Committee recommends the Minister, in the second reading speech on the Bill, include a statement clarifying that the Application Bill and its contents apply only to 'constitutional gap' vessel owners and operators and not to those already operating under the National Law and System.

3.8 Estimated cost of government implementation

The Department advises that implementation of the Bill will require changes to administrative systems and any costs incurred will be met from within existing budget allocations.³⁸

³⁶ Department written brief, 27 Nov 2015:8-9

³⁷ Department written brief, 27 Nov 2015:10

³⁸ Explanatory Notes, 2015:2

4. Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles - the Bill

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’.

The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The Committee has reviewed potential FLP issues in clauses 5, 6, 8, 10, 13, 21 and 31.

4.1.1 Rights and liberties of individuals

Rights and liberties of individuals - Section 4(2)(a) Legislative Standards Act 1992

Clause 21 – Provision of information and assistance by Queensland information holder

Clause 21 of the Bill provides that information held by the Department may be provided to the National Regulator where it is reasonably required by the Regulator to administer or perform a function under the National Law. This may raise the issue of whether sufficient regard has been given to protecting a person’s privacy.

The Explanatory Notes state:

Clause 21, however, is an important part of the national scheme legislation as it is a component of the information-sharing regime that must exist between Queensland, which will continue to regulate some matters for domestic commercial vessels, and the National Regulator, which will assume responsibility for regulation of safety matters for all domestic commercial vessels in Queensland.

The other component exists in section 11 of the Australian Maritime Safety Authority Act 1990 (Cwlth) which allows the National Regulator to disclose information, including personal information, for a number of purposes including maritime safety, efficiency of maritime services and protection of the marine environment.

Without this information-sharing process, there would be information held by Queensland and by the National Regulator about the individual vessels which could not be shared between the agencies. This would be inefficient and could impose an additional burden on vessel owners and operators to provide similar pieces of information to two separate regulators.

It is believed that sufficient regard has been given to a person’s privacy in that only information necessary for the administration of the National Law is authorised to be disclosed. The amendment does not allow the disclosure of any information that is not relevant to the matters regulated under the National Law.³⁹

Committee comment

The Committee notes that clause 21 has been modelled on section 42 of the *Heavy Vehicle National Law Act 2012* and is based on standard wording for national scheme legislation and considers that; on balance, the potential FLP breach is justified in the circumstances.

³⁹ Explanatory Notes, 2015:5

Delegation of administrative power - Section 4(3)(c) Legislative Standards Act 1992

Clause 8 – Delegations by the National Regulator

Clause 8 of the Bill provides that a delegation by the National Regulator under the National Law, as it applies as a law of the Commonwealth, is taken to extend to, and have effect for the purposes of, the corresponding applied provision. As Queensland will not be developing its own schedule of delegations, this may raise the FLP that administrative power should only be delegated to appropriate persons.

The Office of the Queensland Parliamentary Counsel (OQPC) Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.⁴⁰

The Explanatory Notes argue:

Clause 8, however, is an important part of the national scheme as it ensures that delegates under the National Law can exercise powers in relation to all domestic commercial vessels. It also removes the need for the state to develop and maintain a delegation schedule that is separate to the existing schedule for the National Law that is maintained by the National Regulator. To require Queensland to maintain a separate schedule of delegations would be contrary to the objective of moving to a nationally administered and enforced scheme.⁴¹

The Explanatory Notes continue to explain that:

- section 11 of the National Law only allows the National Regulator to delegate its powers and functions to officers and employees of an agency of the Commonwealth, a State or the Northern Territory
- section 11(7) provides that the National Regulator must not delegate a power or function to an officer or employee of an agency of a State or the Northern Territory without the agreement of the relevant State or Territory and that
- while the section does allow for sub-delegation, any sub-delegation remains under the control of the delegate who, in turn, can be subject to direction from the National Regulator (see section 11(3) to (5)).⁴²

The Explanatory Notes state that in practice:

...the National Regulator has delegated its functions and powers to the chief executive of the Department of Transport and Main Roads. The chief executive has sub-delegated those functions and powers to appropriately qualified persons who are employees of the department for the purpose of administering the National Law.⁴³

Committee comment

The Committee notes the justification provided in the Explanatory Notes in relation to the delegation of administrative powers by the National Regulator and considers that, on balance, the potential FLP breach may be justified in the circumstances.

⁴⁰ OQPC, Fundamental Legislative Principles: *The OQPC Notebook*:33

⁴¹ Explanatory Notes, 2015:5

⁴² Explanatory Notes, 2015:5

⁴³ Explanatory Notes, 2015:5

4.1.2 Institution of Parliament

Amendment of an Act only by another Act – Section 4(4)(c) Legislative Standards Act 1992

Clause 31 – Transitional regulation-making power

The proposed Bill extends the application of the National Law to a small proportion of domestic commercial vessels that are beyond legislative reach of the Commonwealth Government. Accordingly, clause 31 seeks to provide transitional arrangements for that small proportion of vessels from Queensland regulations to National Law.

There is a potential FLP issue as a Bill should only authorise the amendment of an Act by another Act.⁴⁴ A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause. The former Scrutiny of Legislation Committee's (SLC's) approach to Henry VIII clauses was that if an Act was purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the SLC would voice its opposition by requesting that Parliament disallow the part of the instrument that breaches the FLP requiring legislation to have sufficient regard for the institution of Parliament.⁴⁵ The SLC considered the possible use of Henry VIII clauses in the following limited circumstances:

- to facilitate immediate executive action
- to facilitate the effective application of innovative legislation
- to facilitate transitional arrangements
- to facilitate the application of national scheme legislation.⁴⁶

The OQPC Notebook explains that the existence of these circumstances did not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause did not fall within any of the above situations, the SLC classified the clause as 'generally objectionable'.⁴⁷

In this case, the scope of the power is limited to only making regulations that are of a transitional or savings nature, and that are necessary to allow or facilitate the transition from Queensland regulation to regulation under the National Law.

The Explanatory Notes state:

It should be noted that the Transport Operations (Marine Safety) Regulation 2004, which is a significant component of maritime regulation in Queensland, is currently under review and, due to its staged expiry under the Statutory Instruments Act 1992, is currently being rewritten. Given the complexity of the legislative task of applying the National Law at the same time as rewriting this regulation, it is appropriate to include a transitional regulation-making power.⁴⁸

Committee comment

The Committee notes the former SLC's objections to the use of Henry VIII clauses, however it considers that the limited scope of the regulation making power in clause 31 of the Bill, and subsequent disallowance powers, provide sufficient regard to the institution of Parliament.

⁴⁴ *Legislative Standards Act 1992*, section 4(4)(c)

⁴⁵ OQPC, Fundamental Legislative Principles: *The OQPC Notebook*:159

⁴⁶ OQPC, Fundamental Legislative Principles: *The OQPC Notebook*:159

⁴⁷ OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, page 159; Alert Digest 2006/10:6, paras 21-24; Alert Digest 2001/8:28, para 31

⁴⁸ Explanatory Notes, 2015:4

4.1.3 National scheme legislation

Clauses 5, 6, 10 and 13 - are any limitations on the sovereignty of the Queensland Parliament justifiable?

The Bill, particularly clause 5, will apply the National Law as a law of Queensland, in accordance with the 2011 Intergovernmental Agreement. Further, clauses 6, 10 and 13 apply Commonwealth legislation rather than Queensland legislation to matters regarding the interpretation, administration and enforcement of the applied provisions. For example, clause 6 provides that Queensland's *Acts Interpretation Act 1954* does not apply to the applied provisions and, instead, the Commonwealth's *Acts Interpretation Act 1901* is to be used in interpreting those provisions. The abovementioned clauses are based on model provisions prepared by the Commonwealth Parliamentary Counsel's Committee, which has developed a protocol for the drafting of national uniform legislation, including a precedent for applied national law.

There is a potential FLP issue as the implementation of a national scheme potentially limits the sovereignty of the Queensland Parliament.

Currently, the National Law already regulates the vast majority of ships in Queensland which fall within the national definition of a *domestic commercial vessel*. The Explanatory Notes state this is because:

...the Commonwealth has constitutional power to regulate the activities of the majority of domestic commercial vessels. The substantive change that applying the National Law as a law of Queensland will make is that domestic commercial vessels that are beyond the regulatory power of the Commonwealth to regulate will become regulated by the National Law. These are ships that are owned by non-corporate entities and that only operate on inland waters.

The Bill is designed to ensure that this relatively small number of ships (approximately 5% of Queensland's commercial fleet) is regulated according to the same rules as the vast majority of domestic commercial vessels under the National Law. To maintain a separate state-based regulatory scheme for this small number of ships would require an unnecessary duplication of administration and legislation and could result in confusion for ship owners and operators and for enforcement officers.

As noted above, the application of the National Law brings into consideration the principle that sufficient regard should be afforded to the institution of Parliament.

In respect of this, the Explanatory Notes state:

While the proposed Bill has been drafted as a result of the 2011 Intergovernmental Agreement, the Queensland Parliament retains the power to approve, reject or amend the Bill during the normal parliamentary process. In addition, clause 5(4) of the Bill provides a mechanism for Queensland to make a regulation which excludes any future amendment of the National Law from taking effect in this State. As a result, Queensland will retain the ability to control whether any changes to the National Law are to apply in this State. In accordance with established procedure, any such regulation would be subject to the scrutiny of the Parliament through the disallowance process.⁴⁹

Other provisions in the Bill also provide the potential for a regulation to vary the application of the Act. Clause 10(2) provides that an offence against the applied provisions is taken to be an offence against the laws of the Commonwealth and not against the laws of this State. Clause 13(3) provides a similar regulation-making power in relation to Commonwealth administration laws applying to the applied provisions. However, both these clauses contain provisions, providing Queensland with an ability to

⁴⁹ Explanatory Notes, 2015:3

modify the application of the National Law in this State and the regulations made under these provisions will be subject to the Parliamentary disallowance process.⁵⁰

Committee comment

The Committee supports the proposed application of the National Law to domestic commercial vessels that are beyond the legislative power of the Commonwealth as this will ensure nationally-consistent regulation and enforcement of safety matters for these vessels. Given the benefits of adopting a national approach to safety and regulation for domestic commercial vessels and in light of provisions allowing Queensland to modify certain aspects of the National Law, the Committee is of the view that, on balance, sufficient regard has been given to the institution of Parliament.

4.2 Fundamental legislative principles - the National Law

The Explanatory Notes provide useful background information about the matters within the National Law:

The National Law was passed by the Commonwealth Parliament in 2012 and already applies to approximately 95% of domestic commercial vessels operating in Queensland. The overarching policy objective of the National Law is to provide for the consistent regulation of safety matters for domestic commercial vessels across Australia. This is to ensure that irrespective of where a commercial vessel is in Australian waters, it is required to meet the same nationally-agreed safety standards. This means, for example, that those who design and build commercial vessels in one jurisdiction do not need to have the vessel re-certified for use in another jurisdiction. It also means that companies which operate nationally and have vessels in different jurisdictions do not need to deal with different regulatory requirements to manage their fleet and crew.

There are significant advantages therefore in applying the National Law in Queensland so that the remaining ships that the Commonwealth otherwise has no power to regulate come into the same system under which all other domestic commercial vessel are regulated in Australia.

The National Law contains a number of provisions which, when applied to the remaining domestic commercial vessels in Queensland, may raise issues relating to the fundamental legislative principles.⁵¹

These potential breaches within the National Law are outlined below.

4.2.1 Rights and liberties of individuals

Right and liberties of individuals - Section 4(2)(a) Legislative Standards Act 1992

The National Law contains various offence provisions. The maximum penalties for the more serious offences can include a term of imprisonment. For example, terms of imprisonment may be imposed for offences relating to:

- an act or omission by the owner of a *domestic commercial vessel* that is intended to be a risk to the safety of a person or the vessel (see section 13)
- the master of a *domestic commercial vessel* failing to render assistance to a person in distress on another vessel or in the water (see section 85), and

⁵⁰ Explanatory Notes, 2015:3

⁵¹ Explanatory Notes, 2015:6

- an act or omission by an accredited person that contravenes a condition of their accreditation and, as a result, intentionally presents a risk to the safety of a person or a *domestic commercial vessel*.

Justification for the various penalty levels can be found in the Explanatory Memorandum to the Marine Safety (Domestic Commercial Vessel) National Law Bill 2012 (Cwlth) which state:

The penalties in the Bill generally reflect the community’s view that any person who has a work-related duty of care, but does not observe it, should be liable to a criminal sanction for placing another person’s safety at risk. This approach is adopted in the Work Health and Safety Act 2011 and is in line with international practice...

Penalties and the possibility of imprisonment in the most serious cases are a key part of achieving and maintaining a credible level of deterrence to complement other types of enforcement action, such as the issuing of notices by a marine safety inspector. The maximum penalties provided in the Bill reflect the level of seriousness of the offences and have been set at levels high enough to cover the worst examples of offence.⁵²

Natural justice - Section 4(3)(b) Legislative Standards Act 1992

Sections 41(2), 42, 51(2), 52, 63(2) and 64 of the National Law allow various certificates to be suspended or revoked by the National Regulator without the holder of the certificate being given the opportunity to show cause as to why that action should not be taken.

Suspensions and revocations under these sections will only occur in limited circumstances. For example, sections 41(2)(a), 51(2)(a) and 63(2)(a) state that suspensions will be imposed where the National Regulator is satisfied that the suspension is necessary to:

- protect human life
- secure safe navigation of vessels or
- deal with an emergency involving a serious threat to the environment.

A decision to suspend or revoke a certificate under any of these sections is a reviewable decision (see section 139(g) and (i) of the National Law).

Onus of proof – Section 4(3)(d) Legislative Standards Act 1992

Sections 147 to 149 of the National Law deal with the application of the National Law to partnerships, unincorporated associations and trusts with multiple trustees. To ensure enforceability of the National Law, the sections provide that offences that would otherwise have been committed by these entities are taken to have been committed by each partner, member of the association’s management committee and trustee respectively. No offence will be committed, however, where the relevant person can show they:

- did not know of the circumstances that constituted the contravention of the provision concerned or
- knew of those circumstances but took all reasonable steps to correct the contravention as soon as possible after they became aware of those circumstances.

The Explanatory Notes argue that *“placing this obligation on these people is appropriate as the requisite information will be peculiarly within their knowledge”*.⁵³

⁵² [Explanatory memorandum](#), Marine Safety (Domestic Commercial Vessel) National Law Bill 2012:12

⁵³ Explanatory Notes, 2015:10

Power to enter premises – Section 4(3)(e) Legislative Standards Act 1992

The National Law provides marine safety inspectors with various powers including:

- power to enter premises or vessels without consent or warrant (see sections 96 and 97)
- power to require production of documents and answers to questions (see section 98)
- search, seizure and other investigative powers without warrant or consent (see sections 99,100 and 111)
- power to detain vessels (see section 101).

In relation to these powers, the Explanatory Memorandum to the Marine Safety (Domestic Commercial Vessel) National Law Bill 2012 (Cwlth) state:

*Domestic commercial vessels are inherently mobile. The nature of the commercial activities undertaken by these vessels often means that they do not follow any predictable pattern or timetable. This means that monitoring and compliance activities need to be undertaken as and when an opportunity presents.....*⁵⁴

And

The National Law Bill has been drafted consistently with the principles stipulated in The Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (the Guide) developed by the Criminal Justice Division of the Attorney-General's Department.

In addition, the National Law Bill provides for enforcement powers equivalent to those provided in current Commonwealth legislation including:

- *Work Health and Safety Act 2011, Section 163 – Powers of entry;*
- *Crimes Act 1913, Section 3T – Searches without warrant in emergency situations;*
- *Quarantine Act 1908, Section 66AB – The monitoring of premises; and*
- *Customs Act 1901, Section 185 – Power to board and search etc. ships and aircraft.*⁵⁵

The Explanatory Memorandum provide significant additional justification for the various powers given to marine safety inspectors under the National Law. Specifically, in relation to the power for an inspector to sample, secure or seize items under section 100 without a warrant, they state:

These powers are limited to use in relation to a vessel, which because of its inherent mobility, may make obtaining a warrant impractical (for example, if the vessel is in a remote area with no mobile phone reception) or may require that action is taken immediately to ensure that evidential material is not lost or compromised. The 72 hour statutory time limit to secure a thing, balances the possibility that the safety operation may be a significant distance from the nearest port, whilst ensuring that a person's property is not inappropriately retained.

*To ensure that the National Regulator can monitor the use of this power and the circumstances in which it is used, an inspector who exercises these powers will be required to report to the National Regulator on the exercise of the powers and the grounds for his or her belief that these powers needed to be exercised without warrant.*⁵⁶

⁵⁴ [Explanatory memorandum](#), Marine Safety (Domestic Commercial Vessel) National Law Bill 2012:8

⁵⁵ [Explanatory memorandum](#), Marine Safety (Domestic Commercial Vessel) National Law Bill 2012:7

⁵⁶ [Explanatory memorandum](#), Marine Safety (Domestic Commercial Vessel) National Law Bill 2012:8

In addition, material provided by the then Commonwealth Minister for Infrastructure and Transport states:

Appropriate safeguards to ensure the lawful and proportionate use of search and entry powers without consent or warrant in limited circumstances is achieved by:

- *Satisfactory experience and qualification prerequisites that a marine safety inspector must satisfy prior to being appointed and authorised to exercise the compliance and enforcement powers.*
- *These qualification and experience standards will be consistent with key elements of Public Sector Training Package (PSP04) that deals with compliance and enforcement, investigation and regulatory control. This training package is the recognised Commonwealth standard for persons exercising such powers and functions.*
- *Safeguards such as reporting requirements including reasons for the exercise when certain compliance and enforcement powers have been exercised without consent or warrant.*⁵⁷

Immunity from proceedings – Section 4(3)(h) Legislative Standards Act 1992

Section 153 of the National Law provides immunity against civil and criminal liability for various persons involved in the administration of the law because of an act done, or omitted to be done, in the exercise of any power conferred on the National Regulator or on a marine safety inspector. The Explanatory Memorandum for the clause state:

Marine safety inspectors, in particular, have a crucial role to play in the promotion of marine safety and in eliminating or minimising serious risks to marine safety. They may be required to exercise judgment, make decisions and exercise powers with limited information and in urgent circumstances.

*As a result, it is important that they and others engaged in the administration of the Bill are not deterred from exercising their skill and judgment due to fear of personal legal liability.*⁵⁸

This level of immunity exists in other Commonwealth maritime legislation (see section 324 of the *Navigation Act 2012* (Cwlth)) and more broadly in other Commonwealth legislation (see section 75P of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cwlth) and section 86 of the *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth)).

Evidentiary Aids – Legislative Standards Act 1992, section 4(2)(a)

Sections 156 and 157 of the National Law provide a number of evidentiary aids to facilitate the process of proving a fact in court. The Explanatory Notes to this Bill state:

The matters dealt with in these sections are expected to be non-contentious and, as the evidence is not stated to be conclusive, a party will have the opportunity to challenge a fact sought to be established by the evidentiary aid.

Right to conduct business – Legislative Standards Act 1992, section 4(2)(a)

Section 7 of the National Law provides a definition of a *domestic commercial vessel*. The definition captures unpowered or low-powered vessels if they are used in commercial operations (for example, through a kayak hire service). Although regulated, these vessels are currently not required to be registered in Queensland. However commercial operations of these vessels owned by corporate entities are already covered by the National Law and have been operating within the national system since it commenced.

⁵⁷ Senate Standing Committee for the Scrutiny of Bills, Seventh Report of 2012, 27 June 2012:277

⁵⁸ Explanatory Notes, 2015:10

The Explanatory Notes state:

To ensure a national approach to the regulation of all domestic commercial vessels, it is important that the Bill extend registration and other requirements under the National Law to these vessels. Importantly, these requirements will be introduced through a 12 month transitional period. To assist these non-corporate owners and operators, it is intended to adopt a zero fee in relation to certification requirements under the National Law for these vessels which also currently applies to the unpowered or low-powered vessels already covered by the National Law.⁵⁹

4.2.2 Institution of Parliament

Delegation of legislative power – Section 4(4)(a) Legislative Standards Act 1992

Section 164 of the National Law allows regulations under the Act and marine orders to incorporate material by reference. That material includes the National Standard for Commercial Vessels and the Uniform Shipping Laws Code (USLC).

The Explanatory Notes state:

These documents provide the technical specifications for a range of safety matters. The National Standards are progressively replacing the USLC and are subject to approval by Transport Ministers. The ability to incorporate this material is essential to the national scheme.

4.3 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an Explanatory Note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an Explanatory Note should contain.

Committee comment

The Committee notes that the Explanatory Notes tabled when this Bill was introduced are detailed and contain the information required by Part 4 of the *Legislative Standards Act 1992* and include a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

⁵⁹ Explanatory Notes, 2015:10

Appendix A – Submission

| Sub # | Submitter |
|-------|--------------------------------------|
| 001 | Australian Maritime Safety Authority |

Appendix B – Department public briefing list of witnesses

| Name | Title |
|------------------|---|
| Dr Graham Fraine | Deputy Director-General, Customer Services, Safety and Regulation, Department of Transport and Main Roads |
| Mr Patrick Quirk | General Manager, Maritime Safety Queensland, Department of Transport and Main Roads |

