



## Proposed new general exemption Marine Safety (Short term marina accommodation) Exemption 2018

### External consultation draft and explanatory material

External consultation closes: 25 June 2018

#### Who needs to know about this proposed new exemption?

- Stakeholders who are considering renting out their vessel on a 'sharing economy platform', for example, 'Air BnB' or 'Beds on Board'
- Stakeholders who operate, or are proposing to start operating, a sharing economy platform
- Commercial marina operators
- Existing domestic commercial vessel (DCV) owners
- Stakeholders who provide insurance products for vessel owners
- Accredited marine surveyors and recognised organisations
- Marine safety inspectors (MSIs)

#### What are the key elements of the proposal?

AMSA is proposing to create a new general exemption to exempt owners of vessels <24m being used for short term marina accommodation\* from the requirement to have a certificate of survey and a certificate of operation, subject to meeting specific conditions.

*\*short term marina accommodation means the use of a stationary vessel berthed at a marina for accommodation by a person who pays to use the vessel up to fourteen days. It does not include circumstances where:*

- (a) the vessel is not berthed at a marina;*
- (b) a tender or similar is required to access the vessel;*
- (c) a person is able to operate the vessel or start the vessel's engines at any time, including the main propulsion, a combustion engine or a generator; or*
- (d) electrical power is not provided by the marina.*

The purpose of creating this proposed approach is to provide a way for vessels to be used for short term marina accommodation which balances the risks to safety of persons on board the vessel against the regulatory burden imposed under the current regulatory framework.

To assist your review of the proposed new general exemption we have prepared the following information:

[Part 1 – Background to the proposed general exemption](#)

[Part 2 – Summary of proposed general exemption](#)

[Part 3 - Specific questions for stakeholders consideration](#)

[Part 4 –The proposed general exemption](#)



## What next?

AMSA will publish a consultation feedback report outlining the feedback received during public consultation and our responses, when we publish the new general exemption, if made, on the AMSA website.

## Part 1 – Background to the proposed exemption

AMSA has received an increasing number of enquiries from stakeholders, including vessel owners, boat builders, boating associations and MSIs, about what requirements schedule 1 of the *Marine Safety (Domestic commercial vessel) National Law Act 2012* (the National Law) imposes in relation to recreational vessels that are hired out for short term accommodation through online platforms such as 'Air BnB' or 'Beds on Board'.

It is AMSA's view that a vessel that is hired out for short term accommodation would be a domestic commercial vessel (DCV) on the basis that it is being used in connection with a commercial activity. Although the vessel may be stationary in a marina, it is unlikely that this will prevent a vessel being considered a DCV for the purposes of the National Law.

It has been identified that applying the full extent of the National Law, including the requirement to obtain a certificate of survey and certificate of operation, to vessels being used in this way does not appropriately match the risk with the regulatory burden imposed. As such, applying a 'lighter regulatory treatment' that still fosters minimum safety standards has been identified as the preferred approach.

## Part 2 – Summary of proposed general exemption

The key features of the proposed general exemption are as follows:

- the definition of 'EX27 vessel' and of 'short term marina accommodation' operate to limit the application of the exemption to the intended types of vessels and operations;
- it is 'as of right', so no application to or approval from the AMSA is required;
- It exempts an owner of an EX27 vessel from:
  - the requirement to have a certificate of survey for the vessel, subject to the vessel meeting the conditions set out in Schedule 1, Division 1 (Design, construction and equipment requirements); and
  - the requirement to have a certificate of operation for the vessel, subject to the vessel meeting the conditions set out in Schedule 1, Division 2 (Operations).
- AMSA can make a written determination that a vessel is not exempt from the requirement to have a certificate of survey or certificate of operation, after considering the matters listed in subsection 3(3) of the exemption. This provision has been included to ensure that AMSA can discontinue an exemption for a particular vessel where allowing the vessel to operate under the exemption may jeopardise the safety of the vessel or persons on board, and/or any other vessels in the marina; and
- a vessel that has been the subject of an improvement notice, a prohibition notice or a detention notice in the preceding 12 months **will not be eligible** for this exemption.

The proposed new exemption **does not** exempt vessel owners from:

- compliance with the general safety duties relating to DCVs as outlined in Part 3 of the National Law;
- compliance with State and Territory laws that apply to the vessel in relation to local waterways matters, including environmental management, workplace health and safety, and gas and electrical safety;
- the requirement for vessels to obtain a unique identifier; and

- liability to pay levies and/or fees for the vessel which the owner may be liable to pay to AMSA and/or State/Territory marine safety agencies.

### Part 3 – Specific questions for stakeholders consideration

AMSA welcomes responses to the following eight questions:

**Question 1:** Do you think the proposed new exemption provides an appropriate regulatory outcome for recreational vessels used only to provide short term marina accommodation, weighing up the risk profile of these vessels and the costs associated with full compliance with the National Law?

**Question 2:** Only owners of vessels that are <24 metres in length are eligible for exemption under the proposed general exemption. Do you think this cut-off is appropriate?

**Question 3:** There is no requirement for owners of vessels wishing to operate under the general exemption to apply to AMSA for approval. Do you think approval should be obtained? Alternatively, should vessel owners proposing to use this general exemption be required to notify AMSA of this intention?

**Question 4:** Schedule 1 of the proposed exemption requires an owner of an EX27 vessel to comply with a number of conditions which are designed to ensure that the safety of the vessel, or other vessels in the marina, and persons on board is not jeopardised. Do you think these conditions are appropriate? In particular, do you think the conditions at Division 1 of Schedule 1 (design, construction and equipment requirements) are adequate?

**Question 5:** Should the conditions at Division 1 of Schedule 1 require compliance with any additional technical standards relating specifically to accommodation and/or accommodation providers? Examples could include compliance with standards relating to safety of bunk beds and other measures designed to ensure the safety of children and other potentially vulnerable passengers (See eg: AS/NZS 4220:2010 - *Bunk beds and other elevated beds*, and, HB393 - *Bunk beds for the short-term rental accommodation industry*).

**Question 6:** Do you think an owner of an Exemption 27 vessel should also be required to keep written evidence that the vessel complies with the technical standards mentioned in Division 1 of Schedule 1 (eg: *ABP or proof of installation*)?

**Question 7:** Do you think that the proposed general exemption (below) is clear and easy to understand?

**Question 8:** Is there any specific guidance AMSA can provide to assist industry with the proposed general exemption, if implemented?

### Part 4 – The proposed general exemption

The proposed new general exemption is at **Attachment 1**.

**EX27: Marine Safety (Short term marina accommodation) Exemption 2018**

**1. Name of instrument**

This instrument is *Marine Safety (Short term marina accommodation) Exemption 2018*.

**2. Duration**

This instrument commences on [date to be advised] and ceases to have effect at the end of 30 June 2020.

**3. Exemption**

(1) Exemption from the requirement to have a certificate of survey

(a) For sections 43 and 44 the national law, the owner an EX27 vessel that is not the subject of a written determination under subsections 3(3) or 3(4) is exempt from the requirement to have a certificate of survey, subject to compliance with the conditions set out in Schedule 1, Division 1.

(2) Exemption from the requirement to have a certificate of operation

(a) For sections 53 and 54 of the national law, the owner an EX27 vessel that is not the subject of a written determination under subsections 3(3) or 3(4) is exempt from the requirement to have a certificate of operation, subject to compliance with the conditions set out in Schedule 1, Division 2.

(3) However, an owner of an EX27 vessel that has been issued with an improvement notice, prohibition notice, or a detention notice in the 12 months prior to this exemption commencing is not exempt under subsections 3(1) and 3(2).

(4) Also, the National Regulator may make a written determination that an owner of an EX27 vessel is not exempt under subsections 3(1) and 3(2) after considering:

- (a) the results of any inspection or audit of the vessel; and
- (b) any improvement notice, prohibition notice, or detention notice issued to a person that relates to an action or activity relating to the vessel; and
- (c) whether exempting the vessel may jeopardise the safety of a vessel or a person on board a vessel.

*Note for paragraph 3 (4)(c) This allows the National Regulator to consider the safety of persons on board other vessels in the marina that may be affected by the EX27 vessel.*

**4. Definitions**

In this instrument:

**EX27 vessel** means a vessel which is considered a domestic commercial vessel solely because it is used for short term marina accommodation, and which is <24 m in length.

**hirer** means persons to whom the owner has hired the vessel.

*Note* The meaning of 'hirer' is different to the definition in section 6 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

**marina** means a commercial marina where berths are booked or leased through a central office, and where there are a set of rules in place governing vessels which are secured there.

**persons on board** means any person on board the vessel who is not the hirer.

**short term marina accommodation** means the use of a stationary vessel berthed at a marina for accommodation by a person who pays to use the vessel for up to fourteen days. It does not include circumstances where:

- (a) the vessel is not berthed at a marina;
- (b) a tender or similar is required to access the vessel;
- (c) a person is able to operate the vessel or start the vessel's engines at any time, including the main propulsion, a combustion engine or a generator; or
- (d) electrical power is not provided by the marina.

## **Schedule 1**

### **Division 1      Design, construction and equipment requirements**

#### **1. Electrical**

- 1.1 The owner of the vessel must ensure that the vessel complies with either:
- (a) NSCV Subsection C5B – *Electrical*; or
  - (b) AS/NZS 3004.2:2014 - *Electrical installations - Marinas and boats Boat installations*.

#### **2. Gas**

- 2.1 Liquefied petroleum gas installations for appliances must comply *AS/NZS 5601.1:2013 - Gas installations General installations* and *AS/NZS 5601.2:2013 - Gas Installations – LP Gas installations in caravans and boats for non-propulsive purposes*.

*Note* A space heater, other than a room-sealed type, must not be installed on a vessel.

#### **3. Arrangements for safe access**

- 3.1 The owner of the vessel must ensure that each vessel has a safe means of getting on and getting off the vessel.

#### **4. Fire safety**

4.1 The owner of the vessel must ensure that the vessel's galley arrangement comply with *ISO 9094: 2015 Small craft – Fire protection*:

- (a) Ch.4.1 Cooking and heating appliances; and
- (b) Ch.4.2 Materials near cooking and heating appliances.

4.2 The owner of the vessel must ensure that the vessel is fitted with the following appliances:

- (a) a minimum of one self-contained photoelectric smoke alarms complying with *AS3786:2014 Smoke alarms using scattered light, transmitted light or ionisation* located outside of each sleeping cabin (1 alarm may serve multiple cabins where the cabins are grouped together) and within internal stairwells;

*Note* To comply with *AS3786* using a non-removable battery type smoke alarm, the operating life of the battery in the smoke alarm must be ten years or greater.

- (b) a minimum of one carbon monoxide detector; and
- (c) a flammable vapour detector if the vessel has a petrol engine.

4.3 The owner of the vessel must ensure that appliances required to be fitted under clauses 4.1 and 4.2 operate effectively and are fit for purpose.

## 5. Safety equipment

5.1 The owner of the vessel must ensure that the vessel carries the equipment and meet the standards required by the State or Territory recreational boating requirements for the State or Territory in which the vessel is berthed.

5.2 The owner of the vessel must ensure that the safety equipment carried on board the vessel must operate effectively and be fit for purpose.

*Example: A lifejacket must be the correct size for the person who must wear it.*

5.3 The owner of the vessel must ensure that there is at least 1 set of pictorial instructions for the use of lifejackets displayed in a prominent place near their storage so that they are readily understandable by any person on board the vessel.

## Division 2 Operations

### 1. Approval in writing by the marina

1.1 The owner of the vessel must:

- (a) obtain from the marina where the vessel will be berthed approval in writing for the short term accommodation operation; and
- (b) keep a copy of that approval in the vessel's safety management system.

1.2 The owner of the vessel must ensure that the rules applicable to vessels berthed in the relevant marina are complied with at all times.

### 2. Infringement or prohibition notices

2.1 The vessel must not have had an infringement or prohibition notice issued in the last 12 months.

### 3. Safety management system

3.1 The owner of the vessel must develop, implement and maintain a written safety management system which:

- (a) identifies the risks of the vessel and its operation; and
- (b) describes the systems and procedures to eliminate or minimise risks to safety and ensure that, so far as is reasonably practicable, the vessel and its operations are safe; and
- (c) includes, as a minimum, the matters specified in Table 1; and
- (d) is kept on board the vessel so that it is readily accessible to any person on board.

*Note The national law requires the owner to implement and maintain a safety management system that ensures that the vessel and the operations of the vessel are, so far as reasonably practicable, safe – see section 12 of the national law. 'Reasonably practicable' is defined in section 27 of the national law.*

**Table 1 - Safety management system requirements**

Element	SMS content requirement
Persons on board, age and health	<p>(a) Identification of any limitation of any persons accommodated or on board the vessel due to health, age or other relevant factors.</p> <p>(b) Maximum number of persons on board that can be accommodated or on board the vessel at any one time (if any), taking into account the following:</p> <ul style="list-style-type: none"><li>(i) the amount of space available for persons on board; and</li><li>(ii) the kind of safety equipment on board the vessel; and</li><li>(iii) the facilities on board the vessel.</li></ul> <p><i>Example for (b)(iii) berths, toilets, showers etc.</i></p>

Element	SMS content requirement
Information to be given to the hirer	<p><b>Briefing</b></p> <p>(a) The owner must ensure that a verbal briefing is given to the hirer at the beginning of the hire of the vessel; and</p> <p>(b) The briefing must include:</p> <ul style="list-style-type: none"> <li>(i) the maximum number of persons permitted on board the vessel;</li> <li>(ii) whether or not any persons who are not the hirer are permitted on the vessel; and</li> <li>(iii) advice about any commonly known risks; and</li> <li>(iv) the emergency procedures (the emergency plan); and</li> <li>(v) the location and correct way to operate any on board equipment including safety equipment; and</li> <li>(vi) how to summon help; and</li> <li>(vii) any other procedures or rules that are to be followed under the safety management system or required by the marina.</li> <li>(viii) The requirement for the hirer to brief any other persons on board the vessel.</li> </ul> <p><i>Note for (a)</i> The matters addressed in a verbal briefing must also be included in the safety management system for the vessel.</p> <p><i>Note for (b)(iii)</i> Specific mention should be made of the risks, causes and effects of carbon monoxide poisoning in enclosed spaces, flammable vapours, and fire safety.</p> <p><i>Note for (b)(v)</i> This includes the smoke, vapour and carbon monoxide detectors.</p>
Emergency preparedness	<p>(a) An emergency plan must be developed, be recorded in writing, and kept on board the vessel so that it is readily accessible by any person on board.</p> <p>(b) The emergency plan must include procedures for responding to each of the following situations should this risk be applicable to the type of vessel and operation:</p> <ul style="list-style-type: none"> <li>(i) fire on board or on an adjacent or nearby vessel;</li> <li>(ii) a person overboard;</li> <li>(iii) a personal injury or other medical emergency;</li> <li>(iv) vessel flooding;</li> <li>(v) any other circumstance identified by the risk assessment that may require an emergency response.</li> </ul> <p>(c) The emergency plan must include assembly points in the marina in the event of evacuation.</p>