

Domestic Commercial Vessel (DCV)

ADVISORY NOTE



DCV-A-029

Date: 1 October 2015

Topic: General Safety Duties

Issue: We have been asked to provide additional information about the general safety duties in Part 3 of the Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (the National Law)*, specifically about who the duties apply to and how they relate to Safety Management Systems for a domestic commercial vessel (DCV) operation.

Advice: This advice is only general in nature and represents the views of AMSA at the time of release of this note. This advice may change without notice as a result of a change in legislation or the subsequent interpretation of legislation by courts. Specific advice may be required in the context of specific circumstances, to ensure compliance is achieved in those circumstances.

General safety duties

Part 3 of the National Law imposes a range of general safety duties on a range of persons.

The primary purposes of the general safety duties are:

- to encourage the development, maintenance and continuous improvement of a safety culture by all parties in the DCV industry; and
- to minimise and mitigate the risk of incidents involving death, injury or damage.

Part 3 imposes general safety duties on:

- owners of DCVs (section 12);
- designers, builders, suppliers and maintainers of DCVs and of marine safety equipment for these vessels (section 14);
- masters of DCVs (sections 16 and 17);
- crew of DCVs (section 19);
- passengers on DCVs (section 21);
- persons embarking, on-board or disembarking DCVs (section 23); and
- persons in relation to loss, destruction or damage to DCVs (section 25).

These general safety duties apply to persons in relation to all DCVs. This includes all new or existing DCVs, even where grandfathered or transitional arrangements may be in place.

Standard for compliance

Some of the general safety duties require that duty holders ensure safety to the extent that this is “reasonably practical” (see sections 12, 14, 16 and 25).

Part 3 of the National Law (section 27) specifies what is “reasonably practicable” to ensure safety. This is not a new standard in Australian work health and safety legislation. For example, Safe Work Australia



has produced a guide that explains the elements of the definition of “reasonably practicable” and provides guidance on how to determine compliance.

Owner’s and master’s general safety duties – safety management systems

Owners and masters have specific general safety duties about safety management systems (SMS) for DCV operations (see National Law section 12(2)(b) and section 16(2)).

For the purposes of the National Law, the owner of a DCV includes:

- a person who has a legal or beneficial interest in the vessel, other than as a mortgagee; and
- a person with overall general control and management of the vessel.

A person who has “overall management and control” of a DCV is an “owner” with corresponding safety duties, even if the person is not the legal owner of the vessel.

The “master” of a DCV is the person who has command or charge of the vessel, but does not include a pilot.

The SMS-related duties imposed on owners and master of DCVs include:

- for the owner, the duty to implement and maintain a SMS that ensures the vessel and the operations of the vessel are, so far as is reasonably practicable, safe; and
- for the master, the duty to implement and comply with the SMS for the vessel and the vessel operation, so far as is reasonably practicable. This duty does **not** apply if the master is the hirer of a vessel and the vessel is a hire and drive vessel being used wholly for recreational purposes. However, other general safety duties may apply to these persons.

These general safety duties reflect the key role that the owner and the master have in ensuring the safe operation of DCVs.

The duty to implement, maintain and comply with a SMS is a separate and co-existing requirement with other parts of the National Law.

For example, the National Standard for Commercial Vessels Part E (Operations) states that an SMS may be used to demonstrate compliance with Part E requirements in documenting operational risks and steps taken to manage those risks. However, an owner’s general safety duties, including the obligations to implement and maintain an SMS, continue to apply, regardless of whether the owner is required to comply with NSCV Part E, or chooses to comply with Part E other than by use of a SMS.

Offences and penalties

The National Law specifies penalties for contravening general safety duties. These penalties include the potential for imprisonment, a criminal fine or being issued with a Penalty Infringement Notice.

Further guidance

Safe Work Australia Guide about how to determine what is reasonably practicable.

<http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/774/Guide-Reasonably-Practicable.pdf>

Contact: AMSA Contact Centre, (02) 6279 5000