



AMSA EX03

Marine Safety (Certificates of operation) Exemption 2017

I, Gary Prosser, Acting Chief Executive Officer of the Australian Maritime Safety Authority (the National Marine Safety Regulator under section 9 of the *Marine Safety (Domestic Commercial Vessel) National Law*), make this instrument under subsection 143(1) of the *Marine Safety (Domestic Commercial Vessel) National Law*.

18 July 2017

Gary Prosser
Acting Chief Executive Officer

1 Name of instrument

This instrument is *Marine Safety (Certificates of operation) Exemption 2017*.

2 Duration

This instrument commences on 1 August 2017 and ceases to have effect at the end of 1 July 2019.

3 Repeal

Marine Safety (Certificates of operation) Exemption 2016 is repealed.

4 Definitions — dictionary

The dictionary defines certain words and expressions for this exemption.

Note The dictionary is located at the end of the instrument.

5 Exemption from the requirement for certificate of operation

- (1) Each vessel that is of a kind mentioned in Schedule 1 is exempt from the requirement to have a certificate of operation.
- (2) The exemption is subject to the conditions mentioned in Schedule 1 for the kind of vessel.
- (3) However, if under another exemption granted under subsection 143(1) of the national law the vessel does not have to comply with a condition mentioned in Schedule 1 for a vessel of its kind, the exemption for the vessel is not subject to the condition.

Example

A vessel to which this exemption applies that is operated for recreational purposes that is exempt from the crewing requirements and NSCV Part B operational area limitations under *Marine Safety (Recreational use) Exemption 2013*.

- (4) Also, the exemption for the vessel is not subject to a condition mentioned in Schedule 1 for the vessel for a period if:
 - (a) the owner of a vessel applies to the National Regulator for approval to operate in a way that does not comply with the condition; and
 - (b) the National Regulator approves in writing the operation of the vessel in the way sought in the application.
- (5) For an approval under subsection (4):
 - (a) the period must be not more than 90 days; and
 - (b) the National Regulator may make the approval subject to further conditions.
- (6) For section (1), if more than 1 Division of Schedule 1 applies to the vessel, the owner of the vessel may choose which Division is to apply.

6 Exemption from conditions attached to certificate of operation

- (1) Each vessel mentioned in an item in Schedule 2 is exempt from the condition or conditions attached to a certificate of operation that are mentioned for the item.
- (2) The exemption is subject to the conditions mentioned in the item.

Schedule 1 Exemption from the requirement for certificate of operation

(section 5)

Division 1 Vessels being moved for certification, tenders

Item	Kind of vessel	Conditions
1.1	Vessel that is being moved for the purpose of obtaining a certificate of survey or certificate of operation, including returning the vessel after the survey or other process has been completed	The vessel must be moved and returned by the most direct and practical route
1.2	Tender	The vessel must: (a) be listed in its parent vessel's: (i) certificate of operation; or (ii) safety management system; and (b) have its operational risks addressed either in the parent vessel's safety management system or in the tender's safety management system; and (c) comply with: (i) the operation requirements mentioned in subclauses 6(1) to (6) and subclause 6(8) of Schedule 2 of NSCV Part E; and (ii) the minimum crewing requirements determined by the National Regulator for the kind of operations to be conducted by the vessel or by vessels of its kind

Division 2 General

Item	Kind of vessel	Conditions
2.1	A Class 2 or 3 vessel: (a) that is <7.5 m long; and (b) that operates only in sheltered (D or E) waters; and (c) that does not carry: (i) passengers; or (ii) dangerous goods, other than petroleum or gas products intended for use on the vessel or	Vessel must comply with each condition that would apply to a vessel of its kind under paragraphs 11(1)(a), (c), (d), (e) and (f) of Marine Order 504 Vessel must: (a) continue to meet any conditions to which the vessel is subject under:

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- fireworks carried on the vessel only for use on the vessel for a fireworks display; and
- (d) if a net reel, crane, lifting device or deck load is installed on the vessel:
- (i) on which the use of the net reel, crane, lifting device or deck load is not likely to adversely affect the stability or watertight integrity of the vessel; and
 - (ii) for which a marine surveyor accredited in stability approval has made a written recommendation to the National Regulator stating that the surveyor is satisfied that the net reel, crane, lifting device or deck load is unlikely to:
 - (A) generate a heeling moment that may endanger or capsize the vessel; or
 - (B) create a loading condition that exceeds the maximum loading for the vessel; and
- (e) that is not operated primarily for towage; and
- (f) that does not have an inboard petrol engine, other than a personal watercraft; and
- (g) that is not:
- (i) a support vessel in the offshore oil or gas industry; or
 - (ii) a fast craft; or
 - (iii) a powered landing barge that is of a design or for a use that the National Regulator has determined is likely to adversely affect its stability; or
 - (iv) a vessel determined by the National Regulator to be high risk

Note Paragraphs (a) to (c) are equivalent to the conditions mentioned in 11(1)(g) to (i) of Marine Order 504.

Note for paragraph (d) A recommendation by a marine surveyor accredited in stability approval may have already been

provided to the National Regulator to show that the vessel is exempt from the requirement to have a certificate of survey (see *Marine Safety (Certificates of survey) Exemption 2017*).

- 2.2 A vessel, other than a Class 1 vessel, that:
- (a) is <7.5 m long; and
 - (b) is engaged only in inshore operations; and
 - (c) is used by a sailing school or training organisation to train members of the public for recreational boating qualifications
- 2.3 A human powered vessel, other than a Class 1 vessel or a dragon boat
- 2.4 A sailing vessel, other than a Class 1 vessel, that:
- (a) is <7.5 m long; and
 - (b) has no auxiliary engine, or an auxiliary engine of ≤ 3.5 kW propulsion power
- 2.5 A Class 2 or 3 vessel that
- (a) is a personal watercraft; and
 - (b) does not carry passengers; and
 - (c) is not involved in an aerial freestyle device operation
- 2.6 A Class 2 vessel that:
- (a) is involved in sporting and recreational activities; and
 - (b) is affiliated with a body determined by the National Regulator as having systems in place to manage risk; and
 - (c) is engaged only in inshore operations

Division 3 Dragon boats

Item	Kind of vessel	Conditions
3.1	Dragon boat	<p>Vessel must comply with each condition that would apply to a vessel of its kind under paragraphs 11(1)(a), (c), (d), (e) and (f) of Marine Order 504</p> <p>Vessel must:</p> <ul style="list-style-type: none">(a) continue to meet any conditions to which the vessel is subject under:<ul style="list-style-type: none">(i) a condition of survey; or(ii) an exemption from the requirement to hold a certificate of survey; and(b) comply with all laws that apply to its operation; and(c) comply with any NSCV Part B limitations on each operational area of the vessel including environmental parameters <p><i>Note</i> Paragraphs (a) to (c) are equivalent to the conditions mentioned in 11(1)(g) to (i) of Marine Order 504.</p> <p>However, a dragon boat is exempt from any requirement to comply with NSCV Part E if:</p> <ul style="list-style-type: none">(a) the owner of the vessel is a registered member of the Australian Dragon Boat Federation (the ADBF); and(b) the vessel is operated in accordance with the ADBF safety manual; and(c) the person in charge of the vessel is accredited as at least a Level 3 sweep under the ADBF sweep accreditation scheme; and(d) the sweep for the vessel is accredited as at least a Level 2 sweep under the ADBF sweep accreditation scheme. <p><i>Note for paragraph (b)</i> The ADBF safety manual is available online at the ADBF website at http://www.ausdbf.com.au and includes information about the ADBS sweep accreditation scheme.</p> <p><i>Note for paragraph (d)</i> A Level 3 sweep may also be the person in charge.</p>

Division 4 Bait gathering vessels

Item	Kind of vessel	Conditions
4.1	Vessel that is less than 7.5 m long that is used for bait gathering	<p>Vessel must comply with each condition that would apply to a vessel of its kind under paragraphs 11(1)(a), (c), (d), (e) and (f) of Marine Order 504</p> <p>Vessel must:</p> <ul style="list-style-type: none">(a) continue to meet any conditions to which the vessel is subject under:<ul style="list-style-type: none">(i) a condition of survey; or(ii) an exemption from the requirement to hold a certificate of survey; and(b) comply with all laws that apply to its operation; and(c) comply with any NSCV Part B limitations on each operational area of the vessel including environmental parameters <p><i>Note</i> Paragraphs (a) to (c) are equivalent to the conditions mentioned in 11(1)(g) to (i) of Marine Order 504.</p> <p>The vessel must be used only in the Moreton Bay Marine Park or other smooth or partially smooth waters approved by the National Regulator for bait gathering</p> <p>The master of the vessel must hold any licence that would be required to operate the vessel recreationally in the waters in which the bait gathering is carried out</p> <p>The vessel must not be used for recreational purposes while being used for bait gathering</p>

Schedule 2 Exemption from conditions attached to certificate of operation

(section 6)

Item	Kind of vessel	Certificate of operation condition from which vessel is exempt	Conditions attached to the exemption
1	Heritage vessel for which National Regulator has been given a vessel management plan	Any of paragraphs 11(1)(a) to (f) of <i>Marine Order 504 (Certificates of operation) 2013</i> that the National Regulator approves in writing	<p>Vessel must be maintained and operated in accordance with the vessel management plan</p> <p>Owner of vessel must receive approval from the National Regulator for any change to matters in the vessel management plan</p> <p>Any further conditions imposed by National Regulator to take account of local conditions of waters in which vessel is to operate</p>
2	Personal watercraft in service category Class 2C, 2D or 2E used in an aerial freestyle device operation	Paragraph 11(1)(a) of <i>Marine Order 504 Certificates of operation — national law) 2013</i>	<p>The safety management system for the PWC and its operation must:</p> <p>(a) meet the operation requirements mentioned in the following provisions of Schedule 2 of NSCV Part E:</p> <p>(i) clauses 1 to 5;</p> <p>(ii) subclauses 6(14) and 7(1) and (2);</p> <p>(iii) subclauses 8(1), other than paragraph (c), and (2);</p> <p>(iv) subclauses 10(2), (3) and (4); and</p> <p>(b) include the means of communicating with shore based assistance and other vessels in the operating area; and</p> <p>(c) include a pollution mitigation strategy, including for fuel spilled during refuelling; and</p> <p>(d) include requirements for appropriate communications during any aerial freestyle device operation,</p>

including hand signals to be used;
and

(e) include an assessment procedure to ensure a person who operates the PWC or the aerial freestyle device is not impaired by drugs or alcohol; and

(f) include requirements for safety equipment, including head and ear coverings and personal flotation devices;

The aerial freestyle device must be operated within 2 nm of the shore or the parent vessel of the PWC

The aerial freestyle device must not be operated if:

(a) the swell is more than 1 metre; or

(b) wind speed exceeds 60 km per hour; or

(c) the water depth is less than 4 metres; or

(d) the seafloor is not clear of obstructions; or

(e) the PWC intake is at risk of aeration; or

(f) any other vessel might jeopardise the safety of the operation

The aerial freestyle device operation must be consistent with recommendations of the manufacturer of the personal water craft and the aerial freestyle device

The instructor and any other staff involved in the operation must receive training on safe operations and familiarisation with matters mentioned in the safety management system

The instructor must maintain visual contact with the person on the aerial freestyle device at all times

A third person supporting the aerial freestyle device operation must maintain visual contact with the PWC at all times

The instructor must hold a qualification of at least:

- (a) Coxswain Grade 2 NC; or
- (b) a recreational PWC licence, however described, issued by a State or Territory

Dictionary

(section 4)

(1) In this instrument:

aerial freestyle device means a device that:

- (a) is connected to a PWC that directs the water output of the PWC under pressure through nozzles to lift a person on the device above the surface of the water or to allow a person on the device to dive underwater; and
- (b) is fitted with footholds or straps to secure the person to the device.

aerial freestyle device operation means an operation in which:

- (a) a PWC is controlled by an instructor and creates thrust to propel an aerial freestyle device through and out of the water; and
- (b) the person on the aerial freestyle device can control flight direction, including the direction of the PWC.

bait gathering means the taking, under licence, of a crab, eugary, worm or yabby by hand or by a hand-held implement.

dangerous goods has the same meaning as in the *Navigation Act 2012*.

dragon boat has the meaning given by NSCV Part G.

heritage vessel means a vessel that is:

- (a) owned and operated by a not-for-profit organisation; and
- (b) listed on the Australian Register of Historic Vessels.

instructor means a person who controls a PWC used for an aerial freestyle device operation.

landing barge means a vessel designed for beaching to enable the loading and discharge of cargo or persons by foot or vehicle directly from or onto the shoreline without the use of wharfs or other shore side facilities.

marine surveyor accredited in stability approval means a person who is accredited under section 24 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* in the category of initial survey — stability approval mentioned in paragraph 21(b) of the Regulation.

Moreton Bay Marine Park means the Moreton Bay Marine Park described in the *Marine Parks (Declaration) Regulation 2006* (Qld), other than the following zones mentioned in the *Marine Parks (Moreton Bay) Zoning Plan 2008* (Qld):

- (a) the marine national park zone;
- (b) for the taking of anything other than beachworms — the conservation park zone.

national law means the Marine Safety (Domestic Commercial Vessel) National Law set out in Schedule 1 to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

NSCV — see section 6 of the national law, meaning of ***National Standard for Commercial Vessels***.

NSCV Part B means *Part B — General requirements* of the NSCV.

NSCV Part E means *Part E — Operations* of the NSCV.

NSCV Part G means *Part G — Non-survey vessels* of the NSCV.

personal watercraft (or **PWC**) has the meaning given to **personal watercraft** in NSCV Part G.

recreational boating qualification means a qualification that permits the holder to operate or be a member of the crew of a recreational vessel.

Examples

- a recreational boating licence issued by a State or Territory.
- a Royal Yachting Association qualification.

vessel management plan, for a heritage vessel, means a management plan, certified by an accredited marine surveyor with heritage vessel experience, knowledge and skills, that includes the following:

- (a) the history of the vessel and its significance;
 - (b) the standards to which the vessel was built (if any);
 - (c) the proposed use and operating profile of the vessel;
 - (d) a detailed evaluation, based on a report by an accredited marine surveyor, of the vessel's current condition and fitness for purpose for its proposed use and proposed operating profile as set out in the safety management system;
 - (e) the repair and maintenance schedule for the vessel;
 - (f) how any non-compliance of the vessel with the National Standard for Commercial Vessels is to be managed;
 - (g) survey and inspection arrangements that will apply to the vessel.
- (2) In this instrument, the following terms have the meaning given by the Dictionary in NSCV Part B:

Class 1 vessel	Class 2 vessel	Class 3 vessel
fast craft	inshore operations	partially smooth waters
passenger	sailing vessel	tender

Note For definitions of **certificate of operation**, **certificate of survey**, **crew**, **improvement notice**, **infringement notice**, **master**, **operate**, **owner**, **prohibition notice** and **National Regulator** — see section 6 of the national law