

EX27 Marine Safety Exemption Consultation  
Australian Maritime Safety Authority  
82 Northbourne Avenue  
BRADDON ACT 2612

**Email:** [consultation@amsa.gov.au](mailto:consultation@amsa.gov.au)

26 June 2018

Dear Sir/Madam

### **EX27 MARINE SAFETY (SHORT TERM MARINA ACCOMMODATION) EXEMPTION 2018**

The Insurance Council of Australia<sup>1</sup> (Insurance Council) appreciates the opportunity to provide its views on the Australian Maritime Safety Authority's (AMSA) proposed new general exemption *Marine Safety (Short term marina accommodation) Exemption 2018* and the supporting Explanatory Material (the Proposed Exemption). The marine insurance industry has considerable experience in understanding the risks and exposure involved for vessel owners and the public, given that leasing domestic commercial vessels for short term accommodation has become commonplace.

AMSA is proposing to exempt owners of domestic commercial vessels which are less than 24 metres in length and being used for short term marina accommodation (exempt vessels) from the requirement to have a certificate of survey and a certificate of operation, subject to meeting specific conditions. These would include a number of operational, design, construction and equipment requirements, including gas and fire safety and provision of safety equipment and a safety management system being in place.

The Insurance Council is concerned that the proposed exemption does not include any mechanism to monitor compliance. This creates a risk that defective vessels are not identified prior to a problem surfacing, potentially affecting the safety of persons on board exempt vessels. Furthermore, insurers would not be able to identify high risk exempt vessels without separate independent surveys or until claims are submitted.

Under the proposed exemption, insurers would not be able to enquire about key risk factors, including the registration of the vessel and therefore determine whether the vessel is being used for commercial purposes. Accordingly, pleasure craft insurers may inadvertently insure exempt vessels, only to discover the commercial use element at the time of a claim. This is an issue because many pleasure craft policies include a commercial use exclusion to reflect the additional risk involved with insuring such vessels. Accordingly, the proposed exemption

---

<sup>1</sup> The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 95 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. December 2017 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$44.9 billion per annum and has total assets of \$118.6 billion. The industry employs approximately 60,000 people and on average pays out about \$132 million in claims each working day.

increases the exposure and places significant new responsibilities on the owner of the exempt vessel to ensure all specific conditions are met.

The proposed exemption could potentially increase significantly the number of high risk exempt vessels and unfairly expose Australian marine insurers to a material increase in insurance claims. Marine insurers will not be able to accurately determine policyholder compliance without seeking independent surveys for exempt vessels or until claims time, the costs of which would ultimately need to be passed on to insurance policyholders. This would lead to higher marine insurance premiums or reinsurance charges for Australian insurers, with the likely consequence that insurers became more selective in the risks they underwrite.

Attachment A provides the Insurance Council's responses to the AMSA's consultations questions which relate directly to marine insurance issues.

If you have any questions or comments in relation to our submission, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on (02) 9253 5121 or [janning@insurancecouncil.com.au](mailto:janning@insurancecouncil.com.au).

Yours sincerely



Robert Whelan  
Executive Director & CEO

## ATTACHMENT A

### Question 1

There is a high risk of property damage or personal injury associated with the operation of recreational vessels used to provide short term marina accommodation. These include:

- risks arising from renting exempt vessels to parties that are unsupervised and inexperienced with its operation
- food preparation and therefore fire risk in vessels which are in close proximity to a potentially large accumulation of high value vessels and marina infrastructure. There is also the risk and related safety concerns of fire spreading to other property.
- the likelihood of poor maintenance or condition of the vessels is heightened in this type of operation. For example, individuals that can afford to purchase and properly maintain high value new craft are less likely to be involved in seeking rent revenue by occasionally hiring such vessels to third parties. This compares to owners that need to lease their vessels in order to earn supplementary income to fund maintenance costs. This group of owners may cut corners or postpone maintenance and repairs due to financial difficulties.

The proposed exemption reduces the current level of control and increases risks involved with the operation of exempt vessels.

The proposed exemption also does not take into account the frequency of use. Whilst it only applies to vessels used for short term accommodation less than 14 days, a vessel operating continuously as temporary accommodation (for example, a vessel regularly leased twice a month or more) is not distinguished from the case where the owner occasionally leases out the vessel, for instance twice a year. The risk profiles of the two vessels are very different.

### Question 2

The Insurance Council does not consider this cut-off appropriate. A vessel that is up to 24 metres in length is of substantial size and value, increasing exposure in the event a problem arises. The proposed exemption should be limited to smaller craft.

### Question 3

The requirement to apply for an exemption would allow AMSA to align compliance responsibilities including survey, inspection or risk analysis activities more closely with risk points. Whilst AMSA might not choose to inspect a vessel applying for exemption, the need for action can be explicitly considered, with a desktop assessment always possible. This approach would align more with the targeted 'lighter regulatory treatment' of the proposed exemption, rather than removing regulation altogether.

### Question 4

The conditions specified in Schedule 1 of the proposed exemption appear appropriate. However, the conditions in the Schedule place almost all onus on the vessel owner to ensure compliance with these requirements and eliminates AMSA involvement. A significant burden, and potential liability, is therefore introduced on the vessel owner. If for example, the owner fails to identify that an exempt vessel is in poor condition and a subsequent loss occurs, injured parties may potentially hold them liable. This could result in an increase in

exposure and potential liability with a consequent increase in the cost of insurance for the vessel owner.

#### Questions 5 and 6

It would seem appropriate to apply technical standards to exempt vessels equivalent to those applying to land-based property which provides temporary accommodation. Requiring the exempt vessel's owner to provide a written declaration that technical standards had been satisfied would increase awareness and potentially reduce the risk of non-compliance.