

Outdoors Victoria Submission to the Independent Review of Domestic Commercial Vessel Safety Legislation and Costs and Charging Arrangements 27/01/2023

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Introduction to Outdoors Victoria

OV Purpose

Outdoors Victoria advocates for and supports more Victorians to get active outdoors.

Outdoors Victoria is the peak body for outdoor education and active outdoor recreation. We support our communities through our three objectives:

Objective 1 / Supporting a thriving Outdoors Sector

Objective 2 / Advocating for every Victorian to be active in the outdoors

Objective 3 / A strong a sustainable peak outdoor body

Outdoors Victoria (OV) is the Victorian Government recognised peak body for outdoor education and active outdoor recreation in the state. As a registered non-profit company limited by guarantee this is fully aligned with the principal purpose:

1. The Principal Purpose for which the Company is established is to be the peak body for the outdoor industry in Victoria. The Company is to be a representative, member-based organisation providing information services, membership support, coordination, advocacy and representation, and research and policy development services for members and other interested parties.

OV represents the interests of a broad range of constituents including schools, community organisations, Outdoor Education providers (Commercial and NFP) and recreational users of the outdoors.

Outdoors Victoria's Response

In recent weeks it has come to the attention of OV via one of our member organisations that AMSA is commencing to enforce the requirement for human-powered commercial vessels to either have a UVI or to be covered by a Certificate of Operation. Please see below for recent advice from AMSA received by OV via our member:

Following a AMSA audit conducted at Camp, it has been identified that under Marine Order 504, all human powered vessels are to be covered under a Certificate of Operation. This includes all canoes, kayaks etc, and incorporates all types of water bodies, which will affect camps that facilitate these activities.

And email from AMSA to the camp

Thank you for contacting the Australian Maritime Safety Authority.

If a vessel is a domestic commercial vessel (DCV) it must meet certain key requirements under the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 unless otherwise exempt. These requirements include holding a certificate of operation and a certificate of survey, operation of the vessel by appropriately certified crew, as well as having a unique vessel identifier.

I recommend reviewing the AMSA webpage [‘Is it a domestic commercial vessel?’](#) to view what is and isn’t considered a vessel and to determine if the National Law applies.

However, where a vessel meets the definition of a human powered vessel some of these requirements are altered or removed.

A human powered vessel is a vessel that is:

- *propelled only by human powered devices, or*
- *a canoe or kayak that is propelled by human powered devices and is fitted with:*
 - *an auxiliary motor of ≤3.5 kW propulsion power; or*
 - *an auxiliary electric propulsion motor of ≤24 volts and a total battery capacity of ≤20 kWh.*

Human powered vessels (other than Class 1 vessels) are exempt from the requirement to hold certificate of survey under [Exemption 2 \(Certificates of Survey\)](#) Division 2, item 2.3. They are also exempt from the requirement to have a certificate of operation, under [Exemption 3 \(Certificates of Operation\)](#) Division 2, item 2.3. No application is required for approval under EX02 or EX03 as a human powered vessel.

The requirement to obtain a unique vessel identifier (UVI) depends on whether the vessel is covered by a certificate of operation or not. There are two options available:

Option 1: *Have the vessel/s covered by a [certificate of operation](#), which will require renewing every 5 years. This will allow the vessel/s to be exempted from requiring a unique identifier under [Exemption 1 \(Vessel Identifiers\)](#).*

- *This option may suit operators with a high number of unpowered vessels that are replaced frequently. It may be more cost and time effective to obtain and renew a certificate of operation once every five years, rather than paying the prescribed fee for applying for a unique identifier per vessel.*

Option 2: *Apply for a [unique identifier](#) for each vessel.*

- *This option may suit operators who have only a small number of human powered vessels, or human powered vessels that are not frequently replaced, as UVI's are issued in perpetuity. Exemption 3 can then be utilised for vessels that hold a UVI, meaning there are no ongoing 5 yearly certificate of operation renewals.*
- *Under [Exemption 1](#) human powered vessels that obtain a UVI are not required to display them on the vessel.*

With regards to crewing on human powered vessels, all standard crew competency requirements apply, unless the vessel is a Class 4 hire and drive vessel. I recommend reading [Marine Order 504](#) schedule 2 for requirements that apply to [hire and drive](#) vessels.

Finally, under Marine Order 504 all commercial vessels require a [safety management system](#).

Outdoors Victoria's Response

The shift to commence enforcement of Marine Order 504 raises significant concerns for OV and our constituents. These concerns and our other observations follow.

1. ***Ad Hoc shift to implementation:*** We are most concerned that the shift to implement the provisions of Marine Order 504 to Human powered vessels used within our context has not been communicated openly. In 2018 together with other State peak bodies we negotiated and were given 3 years gratis and a promise of a comprehensive engagement period to fine tune the policy before licensing requirements were imposed. This included a direct call to me as OV CEO from the Office of the Deputy Prime Minister giving an assurance that our sector would stay untouched by marine Order 504 in order that the important educational value of our sector can be maintained. Our members are very used to operating in an environment that requires a range of compliance and regulatory obligations to be met and they strive to be fully compliant. In this instance the shift to implement has left our sector in a state of current "non-compliance". We would expect a much greater level of sector/industry consultation and a comprehensive communications and implementation plan.
2. ***Complexity of exemption regime:*** The information pertaining to exemptions for human powered commercial vessels is difficult to follow and is confusing regarding UVI's and Certificates of Operation. We seek a blanket exemption for human powered commercial vessels used in our context.
3. ***Commercial Use:*** The canoes and kayaks are used by our members in the conduct of school camps and outdoor education programs. Typically, a school will book a package with a camp provider that includes meals, accommodation and a series of facilitated outdoor experiences. Vessels are not "hired" to individuals as such nor are they used as a transport. They are used to instruct participants on canoeing, water safety, teamwork and cooperation as well as recreational use. We would seek an exemption on the basis that this use is not commercial rather educational.
4. ***Prescribed Community Group and users:*** Many of our members fit the definition of a prescribed community group, and the facilitators of the canoe activities are employees of a prescribed community group. However, the users (students) are not members of the prescribed community group. The current provisions of the prescribed community group exemption seem unreasonable and should be extended to include all users.
5. ***Unforeseen consequence of implementation:*** We estimate that within Victoria alone there are around 250 Camps and Outdoor Providers who will be captured by implementation of Marine order 504. Assuming they opt to apply for a Certificate of Operation to cover each fleet of canoes/kayaks rather than individual UVI for each craft, we propose that the administrative burden for AMSA and operators is not justified.
6. ***Call on AMSA services:*** It is our belief that our sector does not present a level of risk or call on AMSA services. Typically operating on enclosed inland waters, vessels used by our sector do not operate in environments that present a level of risk commensurate with the AMSA requirements.
7. ***Australian Adventure Activity Standard (AAAS) and Inland Waters Good Practice Guide:*** This Nationally recognised Standard and associated Good Practice Guide is applied in Victoria as a requirement of Camps/Operator Accreditation as well as Licensed Tour Operator Registration with Parks Victoria and associated Land Managers. It is OV's view that this system already very adequately "regulates" the use of human powered vessels in our context.

Outdoors Victoria's Requests:

Call for Blanket Exemption

We strongly urge a continuation of the previous exemption and request that both current exemptions 1 and 3 be amended to explicitly reference Camps and Outdoor Educational Activity providers.

Further Industry/Sector Consultation

Outdoors Victoria together with other State Peak bodies under the umbrella of the Outdoor Council of Australia seek to work together with AMSA to ensure a satisfactory Outdoor Industry strategy.