

Proceed with caution

On the first of May, the Australian Marine Safety Authority (AMSA) published their proposal for an exemption allowing recreational boat owners to enter the holiday and accommodation industry.

The *Marine Safety (Short term marina accommodation) Exemption 2018* will provide for vessel owners to let their vessels out as holiday accommodation and make use of platforms such as Airbnb and Beds on Board. The importance of the exemption is that vessel owners are able to do this without complying with the full complement of onerous requirements of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the National Law).



The Airbnb revolution has swept through the hotel and holiday industry, Beds on Board is achieving the same effect with holiday makers looking to stay on a boat for a change of scenery. Until recently this has been a difficult business to undertake in Australia as a result of the differentiation between domestic commercial vessels (DCVs) and recreational vessels.

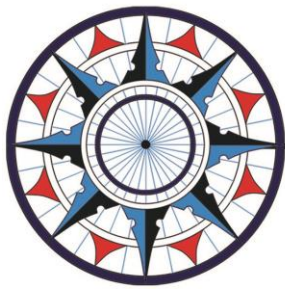
A recreational vessel becomes a DCV when it is used in connection with a commercial activity by virtue of section 7 of the National Law. Thus, when a recreational vessel is let as holiday accommodation and the owner begins to make an income, the vessel is being used in connection with a commercial activity and becomes a DCV.

Classification as a DCV can be a taxing imposition on a recreational vessel owner, suddenly the vessel requires a certificate of survey, certificate of operation, among others. Under this policy recreational vessel owners will be permitted to let out their vessels and be exempt from a selection of the DCV requirements, so long as certain conditions are satisfied (see below table).

The obvious benefit to the draft exemption is that the legislative requirements will be brought into line with the risks associated with the vessel's use as short-term accommodation. However, there is a concern that vessel owner must not underestimate or be ignorant of, and that is **insurance**.

There are two pieces of legislation that apply to vessel insurance, the *Insurance Contracts Act 1984* (ICA) and the *Marine Insurance Act 1909* (MIA). The ICA is the same legislation that relates to everyday insurance contracts for your home and car, and is generally considered to be 'consumer friendly'. The MIA applies specifically to marine insurance contracts, and has strict warranties that generally means that the MIA is more 'insurer friendly'. Recreational vessels are exempt from the application of the MIA and recreational vessel insurance contracts continue to be governed by the ICA. However, this proposed AMSA exemption will allow





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recreational vessels to be used for limited commercial purposes. Therefore, it is possible that the insurance industry will begin to apply the MIA to recreational vessels when being used for holiday accommodation on any more than a ‘minor, infrequent or irregular’ basis. This issue is not addressed by the currently proposed exemption, leaving vessel owners uncertain as to their insurance cover.

To take an example scenario; a guest to the vessel is accidentally injured. They make a claim against the vessel owner. The owners turn to their insurance policy. When the vessel was considered to be a recreational vessel, and for example, the guest was a friend of the owner, the ICA continues to apply and the insurance policy covers the damage. However, once the vessel is being used commercially on more than a minor, infrequent or irregular basis, the MIA may govern the insurance policy. Depending upon the circumstances, that may mean that the insurance policy might not respond to the claim.

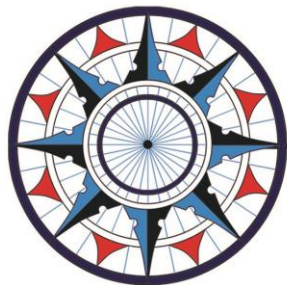
What’s the answer? There are a couple of steps that can be taken to resolve this problematic insurance issue:

1. The exemption is presently open to public consultation; make your concerns and opinions known for AMSA to consider,
2. Talk to your insurer and find out if they already have a policy on the use of vessels for short term accommodation.a

Finally, while this exemption is progress, it is still, at this stage, a proposal and as such is not in effect. Until the exemption enters into force any vessel used for holiday accommodation remains a commercial vessel with the DCV requirements in application.

Conditions;	Obligations remains to;	Exemption provides;
The vessel; <ul style="list-style-type: none"> • is berthed at a marina and can be accessed on a ‘step on, step off’ basis; • has a written safety management system implemented and maintained by the owner. • has written approval from the marina authorizing the use of the vessel for short term accommodation. • complies with specific standards in respect to electrical, gas and fire safety; • is not operated or the engine started by a person staying on the vessel at any time. 	<ul style="list-style-type: none"> • Obtain a National Law unique identifier and display it on the vessel; • Comply with the general safety duties outlined in Part 3 of the National Law; • Comply with State and Territory laws that apply to the vessel, including local waterways management laws, environmental management, workplace health and safety and gas and electrical safety. 	<ul style="list-style-type: none"> • Certificate of survey not required (subject to Schedule 1, Division 1) • Certificate of operation not required (subject to Schedule 1, Division 2) • Exemption doesn’t apply if the vessel has been issued with an improvement notice, prohibition notice, or detention notice in the previous 12 months. • The National Regulator has the discretion after inspecting a vessel, write a written determination that the vessel is not eligible for the exemption.





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