

# International Maritime Organization Instrument Implementation Code

## Introduction

- 3.1 This chapter considers the *International Maritime Organization (IMO) Instruments Implementation Code (III Code)* and consequent amendments to the following six IMO Conventions:
- International Convention on Load Lines, 1996;
  - International Convention on Tonnage Measurement of Ships, 1969 [1982] ATS 15;
  - Convention on the International Regulations for Preventing Collisions at Sea 1972 [1980] ATS 5;
  - International Convention for the Safety of Life at Sea, 1974 [1983] ATS 22, as amended (SOLAS);
  - International Convention on Standards of Training, Certification and Watch-keeping of Seafarers, 1978 [1984] ATS 7; and
  - Protocol of 1988 relating to the International Convention on Load Lines, 1966 [2000] ATS 2, as amended.<sup>1</sup>
- 3.2 The amendments were effected by way of seven resolutions adopted by the IMO Assembly in December 2013 and May 2014 and tabled in the Parliament on 5 March 2015.
- 3.3 Additionally, further amendments were adopted for the International Convention for the Safety of Life at Sea (SOLAS), specifically regarding

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<sup>1</sup> National Interest Analysis [2015] ATNIA 5 with attachment on consultation Resolution A.1070 (28) *IMO Instrument Implementation Code (III Code)* [and consequent Amendments to six IMO Conventions], done at London on 4 December 2013 and 22 May 2014 ATNIF 8 (hereafter referred to as 'NIA'), paragraphs 1 and 2.

compliance with steering gear requirements and fire safety and management.<sup>2</sup>

- 3.4 The amendments to the International Convention for the Safety of Life at Sea, the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers and the Protocol relating to the International Convention on Load Lines will all be deemed to be accepted on 1 July 2015, unless, prior to that date, more than one third of the relevant contracting Parties, have notified their objections to the amendments. Subject to this condition being satisfied, the amendments will enter into force on 1 January 2016.<sup>3</sup>
- 3.5 Likewise, the amendment to the Convention on the International Regulations for Preventing Collisions at Sea will enter into force on 1 January 2016, unless by 1 July 2015 more than one third of Contracting Parties have notified their objection to the amendment.<sup>4</sup>
- 3.6 The Foreign Minister, the Hon Julie Bishop MP, wrote to the Joint Standing Committee on Treaties (JSCOT) on 4 March 2015, informing the Committee of the 'deemed acceptance' provisions and requesting JSCOT to expedite its consideration of the treaties.

## Overview and national interest summary

- 3.7 The National Interest Analysis (NIA) states that the objective of the III Code is to provide a mandatory Audit Scheme for assessing Member States' performance in meeting their obligations and responsibilities as flag, port and coastal States under the relevant IMO Conventions and to offer assistance, where required, for Member States to meet their obligations fully and effectively.<sup>5</sup>
- 3.8 According to the NIA, acceptance of the III Code through incorporation into the relevant IMO Conventions is intended to provide audit and assistance functions for all IMO Member States. The NIA argues that by standardising auditing procedures, the III Code will enable IMO Member States to evaluate their compliance with its international obligations. Additionally, the III Code should enable the IMO to better assess its performance as the international maritime standard setting organisation.

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2 NIA, para 4.

3 NIA, para 5.

4 NIA, para 6.

5 NIA, para 9.

The III Code is expected to deliver improved maritime safety and environmental outcomes in Australian and international waters.<sup>6</sup>

## Reasons for Australia to take the proposed treaty action

- 3.9 The NIA maintains that Australia is a long-standing supporter of the institutionalisation of the Audit Scheme. The III Code was preceded by a Voluntary IMO Member State Audit Scheme and it was agreed that the Scheme should eventually be mandatory. The NIA states that Australia was audited under the Voluntary Scheme in 2008.<sup>7</sup>
- 3.10 The preamble to the III Code affirms that States are responsible 'to have in place an adequate and effective system to exercise control over ships entitled to fly their flag, and to ensure that they comply with relevant international rules and regulations in respect of maritime safety, security and protection of the marine environment'.<sup>8</sup>
- 3.11 The III Code is designed to assist States in the implementation of the IMO instruments.<sup>9</sup> To accomplish this objective, the Code recommends that States:
- develop an overall strategy to ensure that its international obligations and responsibilities as a flag, port and coastal State are met;
  - establish a methodology to monitor and assess that the strategy ensures effective implementation and enforcement of relevant international mandatory instruments; and
  - continuously review the strategy to achieve, maintain and improve the overall organizational performance and capability as a flag, port and coastal State.<sup>10</sup>
- 3.12 According to the NIA, the III Code should ensure that IMO Member States adhere to their international obligations, increasing maritime safety and security and improving the protection of the marine environment. As well, the III Code provides an opportunity for the IMO to identify capacity building needs and offer technical assistance to Members States, where required.<sup>11</sup>

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6 NIA, para 10.

7 NIA, para 11.

8 Preamble, *Resolution A.1070 (28), IMO Instruments Implementation Code (III Code)*, adopted on 4 December 2013 (III Code).

9 III Code, Part 1, 1.

10 III Code, Part 1, 3.

11 NIA, para 12.

- 3.13 With regard to the amendments to SOLAS, the NIA suggests that the amendments provide clarity to the Australian shipping industry on regulatory standards, present best practice in vessel fire safety and management and also ensure international regulatory consistency and promote smooth international trade.<sup>12</sup>

## Obligations

- 3.14 Resolution A.1070 specifies that the IMO Assembly adopts the III Code as set out in the Annex to the Resolution.<sup>13</sup>
- 3.15 Each of the IMO Resolutions currently before the Committee (A.1083, A.1084, A.1085, MSC.366, MSC.373 and MSC.375) makes three amendments to the relevant IMO Convention. The amendments listed in each Resolution are identical and can be summarised as follows:
- Amendment 1: creates new definitions for terms of relevance to the III Code including Audit, Audit Scheme, Code for Implementation and Audit Standard;
  - Amendment 2: specifies that Contracting Governments shall use the provisions of the Code for Implementation in the execution of their obligations and responsibilities contained in the respective convention; and
  - Amendment 3: specifies that every Contracting Government shall be subject to periodic audits by the IMO, and that the administration of the Audit Scheme will be the responsibility of the Secretary-General of the IMO and conducted in accordance with the guidelines contained in Resolution A.1067 (28). Amendment 3 also specifies that every Contracting Government shall be responsible for facilitating the conduct of the audit and responding to the findings, based on the guidelines contained in that Resolution.<sup>14</sup>
- 3.16 Resolution A.1067 (28) (not tabled) creates procedural guidelines outlining how the auditing will be undertaken. The purpose of this document is also to describe the objectives, principles, scope, responsibilities and capacity-building aspect of the IMO Member State Audit Scheme and to ensure that auditing procedures are undertaken in an internationally consistent manner.<sup>15</sup>

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12 NIA, para 13.

13 NIA, para 14.

14 NIA, para 15.

15 NIA, para 16.

- 3.17 The amendments to SOLAS presented in Resolution MSC.365 make minor amendments to a number of existing technical standards relating to fire safety in ships and verification of compliance with existing standards. These standards will apply to passenger and cargo ships, tankers, oil tankers and gas carriers.<sup>16</sup>

## Implementation

- 3.18 According to the NIA, no legislative amendment is required to implement the III Code. It would be the responsibility of the Australian Government, as a Party to the relevant IMO Conventions, to facilitate the conduct of a mandatory audit and address the findings.<sup>17</sup>
- 3.19 The NIA also states that no legislative amendment is required to give effect to the amendments to SOLAS presented in Resolution MSC.365. The NIA offers assurance that existing Marine Orders administered by the Australian Maritime Safety Authority (AMSA) are currently capable of capturing the requirements of these amendments.<sup>18</sup>

## Costs

- 3.20 The NIA maintains that implementation of the relevant IMO Resolutions is expected to have negligible administrative impact, with compliance costs likely to remain unchanged.<sup>19</sup>
- 3.21 The NIA states that the amendments presented in Resolution MSC.365 are likely to result in minor cost increases for the Australian shipping industry. Part of constructing any ship includes the installation of fire protection equipment and systems that meet the international standards. The NIA argues that amendments presented in MSC.365 are minor adjustments to those standards and will therefore result in minor costs.<sup>20</sup>
- 3.22 AMSA does not expect departments to require further resources to comply with the Resolutions. AMSA indicated that the voluntary audit carried out in 2008 had been complied with within current resource limits.<sup>21</sup> The

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16 NIA, para 17.

17 NIA, para 18.

18 NIA, para 19.

19 NIA, para 21.

20 NIA, para 22.

21 Mr Brad Groves, General Manager, Navigation Safety and International Division, Australian Maritime Safety Authority (AMSA), *Committee Hansard*, 11 May 2015, p. 7.

Department of Infrastructure and Regional Development said that there was sufficient provision under existing arrangements to meet the requirements.<sup>22</sup>

## Conclusion

- 3.23 The Committee supports Australia's ratification of the IMO Instruments Implementation Code and the amendments to other IMO Conventions required to give the III Code effect and recommends that binding treaty action be taken.

### Recommendation 2

- 3.24 **The Committee supports Resolution A.1070 (28) IMO Instruments Implementation Code, amendments to relevant IMO Conventions and amendments to the *International Convention for the Safety of Life at Sea* and recommends that binding treaty action be taken.**

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22 Mr Andrew McDonald, Director, Maritime Economic Regulation Section, Maritime and Shipping Branch, Surface Transport Policy Division, Department of Infrastructure and Regional Development, *Committee Hansard*, 11 May 2015, p. 7.