

## **Amendments of 2014 to the Maritime Labour Convention, 2006, Approved by the Conference at its One Hundred and Third Session**

### **Background**

- 3.1 The International Labour Organisation's *Maritime Labour Convention* (the Convention) is a consolidation of pre-existing international maritime labour conventions and recommendations. The Convention also includes the principles found in other international labour conventions. In essence, the Convention establishes minimum working conditions for seafarers working on ships.<sup>1</sup>
- 3.2 The Australian Government ratified the Convention in 2011 and it entered into force for Australia in 2013.<sup>2</sup>
- 3.3 The Convention comprises three parts: the Articles; the Regulations; and the Code. The Articles and Regulations set out the rights and principles, while the Code contains implementation details.<sup>3</sup>
- 3.4 The process for amending the Code is set out in Article XV of the Convention.<sup>4</sup> Amendments to the Code are proposed by a tri-partite

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1 *National Interest Analysis*, [2015], *Amendments of 2014 to the Maritime Labour Convention, 2006, Approved by the Conference at its One Hundred and Third Session* (Geneva, 11 June 2014), [2015] ATNIF 11 (hereafter referred to as the NIA), para 6.

2 NIA, para 1.

3 NIA, para 2.

4 The Convention, Article XV.

- Committee that includes Government, ship owner and seafarer representatives. The proposed Amendments are then considered by a Conference of the parties to the Convention. If the amendments are adopted by the Conference, all parties to the Convention are formally notified. The amendments are deemed to be accepted two years after notification.<sup>5</sup>
- 3.5 Parties to the Convention can lodge formal expressions of disagreement with an amendment. If formal expressions of disagreement are received from more than 40 per cent of the members that have ratified the Convention, and that 40 per cent represents not less than 40 per cent of the gross tonnage of the ships of the members, the amendments will not be deemed approved by the Conference of the Members.<sup>6</sup>
- 3.6 On 11 April 2014, the Conference adopted a number of amendments obliging signatory flag states<sup>7</sup> to provide: financial support to seafarers abandoned by their shipowners; and compensation for a seafarer's death or long term disability while working for a ship owner.<sup>8</sup>
- 3.7 These amendments constitute the *Amendments of 2014 to the Maritime Labour Convention, 2006, Approved by the Conference at its One Hundred and Third Session* (the proposed Treaty).
- 3.8 The National Interest Analysis (NIA) indicates that the amendment will formally enter force on 18 January 2017.<sup>9</sup>
- 3.9 Under the Convention, the Government must ensure that the required amendments to Australian legislation and practice are in place by that date.<sup>10</sup>
- 3.10 The NIA states that the proposed Treaty will affect about 100 Australian registered ships. The NIA states:
- ...while these ships represent a relatively small proportion of total Australian shipping, they are critical to Australia's international and domestic trade and commerce.<sup>11</sup>

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5 The Convention, Article XV.

6 NIA, para 5.

7 A 'flag state' is a country in which a ship is registered.

8 NIA, para 3.

9 NIA, para 3.

10 NIA, para 4.

11 NIA, para 11.

## The proposed Treaty Action

### Abandonment

- 3.11 The proposed Treaty will amend the Convention's Code to include a new Standard (Standard A2.5.2) which will require flag states to establish a financial security system for seafarers abandoned by their employers.<sup>12</sup>
- 3.12 For the purpose of the Standard, abandonment includes when a shipowner:
- fails to cover the cost of a seafarer's repatriation;
  - has left the seafarer without the necessary maintenance and support; or
  - has otherwise unilaterally severed their ties with the seafarer, including failing to pay contractual wages for a period of at least two months.<sup>13</sup>
- 3.13 The financial security system should provide for:
- up to two months' worth of outstanding wages and other entitlements owed to the seafarer under their employment agreement, relevant collective bargaining agreement, or national law;
  - all expenses reasonably incurred by the seafarer, including repatriation costs; and
  - the essential needs of the seafarer, such as clothing, accommodation, drinking water, fuel for survival on board ship and necessary medical care.<sup>14</sup>
- 3.14 In the event that it takes some time to ascertain the validity of a claim of abandonment, the seafarer should still immediately receive such part of the requested assistance as can be justified.<sup>15</sup>

### Death or long term disability

- 3.15 The proposed Treaty will also amend Standard A4.2 of the Convention so that flag states are required to provide a system of compensation for the death or long term disablement of a seafarer.<sup>16</sup>

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12 *Amendments of 2014 to the Maritime Labour Convention, 2006, Approved by the Conference at its One Hundred and Third Session (Geneva, 11 June 2014)*, [2015] ATNIF 11, (hereafter referred to as the proposed Treaty), Article IA.

13 Proposed Treaty, Article IA.

14 Proposed Treaty, Article IA.

15 Proposed Treaty, Article IB.

16 Proposed Treaty, Article II.

- 3.16 The new obligations include that:
- the compensation is to be paid in full and without delay;
  - there is to be no pressure to accept a sum less than the contractual amount; and
  - where the nature of the disablement of a seafarer makes it difficult to assess the full compensation entitlement, an interim payment will be made to prevent hardship.<sup>17</sup>
- 3.17 The seafarer, their family, or their representative can make a claim for compensation resulting from a long term disability; while a seafarer's family or representative can make a claim in relation to a seafarer's death.<sup>18</sup>

### **Establishing and maintaining the system**

- 3.18 The system of financial security adopted is a matter for the Government of the flag state in consultation with the ship owners' association and seafarers' organisations.<sup>19</sup>
- 3.19 In circumstances where these obligations are met by the ship owners, the ship owners must advise the seafarers and the relevant national authorities if they expect to be unable to meet these financial obligations.<sup>20</sup>

### **Obligations**

- 3.20 Australia will adopt the proposed Treaty obligations in full. The Government authority administering the proposed Treaty obligations is the Seacare Authority. The Seacare Authority is a statutory authority established under the *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Act).
- 3.21 The Seacare Authority is administered by the Safety, Rehabilitation and Compensation Commission (SRCC), which will absorb the Seacare Authority and its obligations in the near future.<sup>21</sup>
- 3.22 Under the proposed Treaty, the Australian Government will ensure a financial system is in place for Australian flagged ships that will provide

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17 Proposed Treaty, Article II.

18 Proposed Treaty, Article II.

19 Proposed Treaty, Article II.

20 Proposed Treaty, Article II.

21 NIA, para 15.

abandoned seafarers with direct access to the system, sufficient coverage and expedited financial assistance.<sup>22</sup>

3.23 The Australian Government will also ensure that Australian ship owners' liability and treatment of contractual claims assure compensation to seafarers or their families in the event of death or long term disability due to an occupational injury, illness or hazard.<sup>23</sup>

3.24 In addition, the Australian Government will require that:

- seafarers working on Australian flagged vessels receive prior notification if a shipowners' financial security (such as worker's compensation insurance) is to be cancelled or terminated;
- insurers notify the Seacare Authority if the financial security of an employer is cancelled or terminated;
- Australian ship owners carry and post in a conspicuous place on board a ship a certificate or other documentary evidence of their financial security; and
- Australia implement arrangements to deal with and impartially settle contractual claims for compensation through expeditious and fair procedures.<sup>24</sup>

3.25 The proposed Treaty permits Australia to determine the system of financial security to be put in place, which may be in the form of a social security scheme; or insurance or fund or other similar arrangement.<sup>25</sup>

## Implementation

3.26 While there have been a number of instances of abandonment of sailors documented internationally, there is no record of an Australian flagged ship abandoning a seafarer since the introduction of the Convention in 2013.<sup>26</sup>

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22 NIA, para 9.

23 NIA, para 9.

24 NIA, para 9.

25 NIA, para 9.

26 Mr Stephen Curry, General Manager, Ship Safety, Australian Maritime Safety Authority (AMSA), *Committee Hansard*, Canberra 9 November 2015, p. 9.

- 3.27 Legislative amendments are required to give effect to the obligations in the proposed Treaty. These will be implemented through amendments to either Marine Order 11 (living and working conditions on vessels) 2015, or the Seafarers Act.
- 3.28 According to the NIA:  
The Government is currently developing a broad package of policy and legislative reforms for the Seacare scheme, including changes to the Seacare Workers' Compensation scheme that will incorporate the required changes to ensure compliance with the Amendments to the [Convention] prior to 18 January 2017.<sup>27</sup>
- 3.29 Compliance with the new requirements will be tested as part of the regular compliance inspections conducted by Australian Maritime Safety Authority. According to the Authority, it conducted 'about 3,752 inspections of ships visiting Australia' in 2014.<sup>28</sup>

## Costs

- 3.30 The proposed Treaty may impose additional insurance premium costs on Australian vessel owners who currently hold protection and indemnity insurance, and minor administrative costs if insurers require additional information to be provided. The NIA indicates that the additional cost will be less than \$200 per vessel annually.<sup>29</sup>
- 3.31 In addition, under the amendments there are likely to be minor supplementary regulatory costs for Seacare scheme employers and insurers, as they will be required to provide additional information to the SRCC and their employees. Minor additional costs are also expected for Comcare,<sup>30</sup> which will assist the SRCC to monitor this new information.<sup>31</sup>

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27 NIA, para 15.

28 Mr Curry, AMSA, *Committee Hansard*, Canberra 9 November 2015, p. 10.

29 NIA, para 16.

30 Comcare is the authority tasked with administering the Australian Government's workers' compensation scheme, amongst other responsibilities.

31 NIA, para 18.

## Conclusion

- 3.32 As indicated above, the proposed Amendments will be deemed accepted on 18 January 2017. The amendments will not therefore require ratification.
- 3.33 Consequently, there is no requirement for the Committee to make a recommendation in relation to the proposed Treaty action.
- 3.34 Nevertheless, the Committee would like to state that it supports the *Amendments of 2014 to the Maritime Labour Convention, 2006, Approved by the Conference at its One Hundred and Third Session.*

**Mr Angus Taylor MP**

**Chair**

23 November 2015

