

National Interest Analysis [2015] ATNIA

with attachment on consultation

**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

[2013] ATS 29

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and Timing of Proposed Treaty Action

1. The Australian Government ratified the International Labour Organization's (ILO) Maritime Labour Convention, 2006 (MLC, 2006) in 2011 and it entered into force on 20 August 2013. MLC, 2006 was intended to be a comprehensive instrument for the maritime sector, and consolidated, as far as possible, all existing international maritime labour conventions and recommendations, as well as the fundamental principles found in other international labour conventions.
2. MLC, 2006 comprises three parts: the Articles, the Regulations and the Code. The Articles and Regulations set out the core rights and principles, while the Code (mandatory) provides the details for their implementation.
3. The Special Tripartite Committee established under Article XIII of MLC, 2006 adopted a number of amendments to the Code (the Amendments) on 11 April 2014, which were subsequently approved by the 103rd Session of the International Labour Conference on 11 June 2014. In accordance with Article XV of MLC, 2006 the Amendments will automatically come into force for Australia on 18 January 2017.
4. Under Australia's domestic treaty making requirements the Government will need to ensure that all the necessary policy and legislative changes required to implement the Amendments have been made prior to 18 January 2017 to remain compliant with its obligations under MLC, 2006.
5. There are provisions in MLC, 2006 that allow a Government to formally object to the Amendments. If, before 18 July 2016, formal expressions of disagreement are received from more than 40 per cent of Members who have ratified MLC, 2006 and which represent not less than 40 per cent of the gross tonnage of ships of the Members which have ratified MLC, 2006, the Amendments will not be deemed approved by the Conference. This scenario is unlikely. However, any Member (including Australia) who does express such disagreement will not be bound by the Amendments when they enter into force.

Overview and national interest summary

6. MLC, 2006 sets minimum working conditions for seafarers to work on ships. The Amendments of this particular treaty action relate to the abandonment of seafarers and claims for compensation in the case of a seafarer's death or long-term disability due to an occupational injury or illness.
7. It is in the national interest to accept the Amendments, as it will ensure Australia remains compliant with MLC, 2006 and that seafarers covered by MLC, 2006 have appropriate workplace protections in place in the event of abandonment or sickness, injury or death.

Reasons for Australia to take the proposed treaty action

8. As a member of the ILO and a member who has ratified MLC, 2006, as mentioned at paragraph 5 accepting the Amendments will continue to ensure Australia remains compliant with MLC, 2006 and that appropriate workplace protections for seafarers are in place.

Obligations

9. These Amendments will impose the following legal obligations on Australia:
 - **Standard A2.5.2 - Financial security** contains new requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.
 - It requires each State to ensure a financial security system is in place for ships flying its flag, and sets out the requirements of such a system, including that it must provide the abandoned seafarer with direct access to the system, sufficient coverage and expedited financial assistance.
 - **Standards A4.2.1 and A4.2.2 – Shipowners' liability and Treatment of contractual claims** specifies new requirements of the financial security system to assure compensation to seafarers in the case of death or long-term disability due to an occupational injury, illness or hazard.

The Amendments require that:

- seafarers receive prior notification if a shipowner's financial security (such as workers' compensation insurance) is to be cancelled or terminated (new paragraph 9 of A4.2.1);
- insurers notify the competent authority (in Australia's case, the Seacare Authority) if the financial security of an employer is cancelled or terminated (new paragraph 10 of A4.2.1);
- shipowners carry and post in a conspicuous place on-board a ship a certificate, or other documentary evidence, of their financial security, and that this evidence be

- in English or accompanied by an English translation (new paragraphs 11 and 14 of A4.2.1);
- financial securities not cease before the end of their period of validity unless the financial security provider has given prior notification of at least 30 days to the competent authority (in Australia, the Seacare Authority) (new paragraph 12 of A4.2.1);
 - effective arrangements are in place to receive, deal with and impartially settle contractual claims for compensation related to Standard A4.2.1 through expeditious and fair procedures (new paragraph 3 of A4.2.2); and
 - the system of financial security under Standard A4.2.1 may be in the form of a social security scheme or insurance or fund or other similar arrangements (new paragraph 2 of A4.2.2).

Implementation

10. The Commonwealth is primarily responsible for the implementation of MLC, 2006. The Australian Maritime Safety Authority (AMSA) has responsibility for the operational application of the Government's policies to ensure safety and one of its statutory functions is to combat pollution in the marine environment.
11. It is estimated that the Commonwealth legislative instruments that apply MLC, 2006 (Marine Order 11 (*living and working conditions on vessels*) 2015) affects the operation of around 100 Australian registered ships, and while these ships represent a relatively small proportion of total Australian shipping, they are critical to Australia's international and domestic trade and commerce.
12. Legislative amendments are required at the Commonwealth level to give effect to the international obligations that the Government would assume once the Amendments enter into force.
13. These obligations could be implemented through amendments to Marine Order 11 (*living and working conditions on vessels*) 2015 and/or the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act).
14. The Department of Employment has policy responsibility for the Seafarers Act, which provides a workers' compensation scheme for a defined part of the Australian maritime industry. This Act covers a proportion of employees whose employment is covered under MLC, 2006.

15. 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 MLC, 2006 prior to 18 January 2017. One change already announced is that the Government will transfer the Seacare Authority's role of administering the Seacare scheme to the Safety, Rehabilitation and Compensation Commission (SRCC).

Costs

16. The amendment to Standard A2.5 may impose additional insurance premium costs to Australian vessel owners who currently hold Protection and Indemnity insurance, and minor administrative costs if insurers require additional information be provided. It is estimated that this cost will be less than \$200 per vessel per year.
17. 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, which will receive and assist the SRCC to monitor this new information.

Future treaty action

18. The Amendments will automatically come into force for Australia on 18 January 2017 unless Australia lodges a formal objection to the Amendments with the Director-General of the ILO before 18 July 2016. Australia has no plans to lodge any formal objection to the Amendments with the Director-General of the ILO. Any Member (including Australia) who does express such disagreement will not be bound by the Amendments when they enter into force.
19. Future treaty action may occur again if further amendments are deemed necessary to MLC, 2006.

Withdrawal or denunciation

20. The only way the Amendments will be withdrawn or denounced is if 40 per cent of Members which have ratified MLC, 2006 and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified MLC, 2006 notify their disagreement with the amendments by 18 July 2016 to the Director-General of the ILO, as per Article XV of MLC, 2006.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

21. As representatives on the ILO's Special Tripartite Committee, the Australian Government and relevant shipowners and seafarers' organisations were involved in the development and adoption of the Amendments to MLC, 2006.
22. The International Group of Protection and Indemnity Clubs was consulted at length during the ILO Special Tripartite Committee to ensure that its members could facilitate the changes associated with these amendments.
23. The Department of Employment and the Australian Maritime Safety Authority will continue to undertake detailed consultations with maritime industry stakeholders, including employers, unions and workers compensation insurers to bring the appropriate legislation and policies into effect and to ensure compliance with the Amendments prior to automatic entry into force of the Amendments on **18 January 2017**.
24. Briefing on the Amendments was provided to the Standing Committee on Treaties on 29 May 2015.