

**National Interest Analysis [2015] ATNIA 14**

**with attachment on consultation**

**Amendments to the *International Convention for the Safety of Life at Sea (SOLAS), 1974,*  
as amended  
Resolution MSC.380 (94) (21 November 2014)**

**[Chapters II-2, VI and XI-1 and Appendix]**

**[2015] ATNIF 24**

**Head Agreement: [1983] ATS 22**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### Amendments to the *International Convention for the Safety of Life at Sea (SOLAS), 1974*, as amended

Resolution MSC.380 (94) (21 November 2014)

[Chapters II-2, VI and XI-1 and Appendix]

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#### Nature and timing of proposed treaty action

1. The *International Convention for the Safety of Life at Sea, 1974* ('SOLAS'), [1983] ATS 22 entered into force generally in 1980 and for Australia in 1983. SOLAS is administered by the International Maritime Organization ('IMO'), a specialised agency of the United Nations. The IMO Committee with responsibility for SOLAS is the Maritime Safety Committee ('MSC'). The main objective of SOLAS is to specify minimum standards for the construction, equipment and operation of ships, to ensure their safety.
2. At its 93rd Session, the MSC approved a number of draft amendments to SOLAS. These amendments were adopted at the 94th session of MSC under IMO Resolution MSC.380 (94) ('Resolution'), on 21 November 2014. The Resolution amends three of the Chapters of the Annex to SOLAS (Chapters II-2, VI and XI-1) and its Appendix, as detailed below ('the Amendments').
3. The Amendments will be deemed to be accepted by IMO Members who are Parties to SOLAS on **1 January 2016** unless more than one third of the Contracting Governments to the Convention or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, notify the IMO of an objection prior to that date. If accepted, the amendments will automatically enter into force for relevant IMO Members on **1 July 2016**.

#### Overview and national interest summary

4. The Amendments make three principal changes to SOLAS:
  - (a) An amendment to the title of **Regulation 10, paragraph 5.2** in **Annex Chapter II-2** (construction - protection, fire detection and fire extinction) in **Part C** (Fire safety measures for passenger ships carrying not more than 36 passengers) of SOLAS, which provides requirements for the suppression of fire on board ships. The amendment specifically clarifies its application.
  - (b) The amendment to **Chapter VI** (Carriage of cargoes and oil fuels) **Part A** (General Provisions) **Regulation 2** of SOLAS adds three new paragraphs after existing paragraph 3 to provide a requirement for the verification of the weight of containers before they are loaded onto a ship. Current SOLAS regulations

require the shipper of the cargo to ensure the weight of cargoes in cargo transports units (including containers) is in accordance with the weight declared on the shipping documents. This new requirement is intended to:

- (i) ensure that a consistent approach on how verification of weight is done and provides two options for this process; and
- (ii) ensure such information is provided to the master of the ship and the terminal representative.

Under the amendments to **Regulation 2**, the shipper (person responsible for arranging the shipment of the container) of the cargo is responsible for verifying the weight of a container and providing this information to the master of the ship and the terminal representative. The regulation prescribes two options to verify the weight of the container, either by measuring the weight of the loaded container or by a summation method.

- (c) **Chapter XI-1** (special measures to enhance maritime safety) of SOLAS insert a new **Regulation 7** that requires every cargo ship on international voyages (that is, ships to which **Chapter I** of SOLAS applies) to carry an appropriate portable atmosphere testing instrument to test the air from the outside of an enclosed space to ensure that they are safe to enter. Such instruments already on board ships may fulfil this new requirement.

- 5. In addition, the **Appendix** to SOLAS (Certificates) will be amended by the Resolution to require certificates carried by ships to include an entry for the total number of persons for which life-saving appliances are provided.
- 6. Acceptance of the Amendments is in Australia's national interest as it will allow Australia to ensure that foreign ships entering Australian waters adhere to internationally recognised regulatory standards. The acceptance and implementation of the Amendments is consistent with Australia's commitment to improve maritime safety.

#### **Reasons for Australia to take the proposed treaty action**

- 7. The Amendments will revise and update international safety of life at sea regulations regarding the verification of the gross weight of containers, and the requirement for ships to carry a portable atmosphere testing instrument for testing the air from outside enclosed spaces prior to entry. The proposed treaty action is in Australia's interests to ensure the safety of workers both on board ships and ashore, the safety of cargo and overall safety of the ship at sea.
- 8. Incorrectly declared weights on board container ships or within port operations, may result in loss of life or loss of property. Accurate weights are vital if containers are to be stowed safely on a ship, as such weights underpin calculations that:
  - (i) Ensure the maximum weight of any particular stow is not exceeded so as not to compromise the structural integrity of the ship;
  - (ii) Ensure the appropriate lashing arrangements are applied to ensure containers are not lost at sea with a resultant risk to the environment and the ship itself (this has been identified as a significant problem);

- (iii) Calculate the stability of the ships to ensure the ship has sufficient stability when it sails, and throughout the voyage, to ensure the ship can withstand the ordinary perils of the voyage; and
  - (iv) Calculate the sheer force, bending moments and torsional effects of the cargo on the structure of the vessel to ensure it is not compromised (this issue has result in the loss of a number of container vessels).
9. It is Australian Government policy to ensure that Australia remains compliant with its obligations at international law, including Australia's treaty obligations as stipulated by the SOLAS Convention. Implementation of the Resolution the subject of this treaty action will ensure that Australia continues to meet its international obligations. It also means that Australia can apply the obligations set out in the Resolution to foreign ships in Australian ports, thus ensuring that a high safety standard is met by all ships in Australian waters.

### Obligations

10. Australia's obligations under the proposed SOLAS Amendments will change to take account of:
- (a) the minor amendments to the title of **Chapter II-2 Regulation 10 paragraph 5.2**,
  - (b) the new requirement for mandatory verification of the gross mass weight of containers (as defined in the *International Convention on Safety of Containers*) which are to be stowed on SOLAS ships, and
  - (c) the new requirement that ships to which **Chapter I** of SOLAS applies carry an appropriate portable atmosphere testing instrument.

### Implementation

11. The Australian Maritime Safety Authority ('AMSA') administers a number of Marine Orders under the *Navigation Act 2012* (Cth), which implements SOLAS in Australia. Implementation of the SOLAS Amendments under the Resolution will be delivered through existing resources and will only require minor amendments to Australia's Marine Orders, as outlined below.
12. In relation to the amendment to **Chapter VI, Part A, Regulation 2** of SOLAS (as detailed at **Paragraph 4(b)** above), **Marine Order 42** on cargo stowage and securing has provisions relating to ensuring the weight of cargo transport units (including containers) is in accordance with the weight declared on the shipping documents. **Marine Order 44** on safe containers requires that containers must not be loaded to, or unloaded from a ship, if the weight of the container exceeds the maximum weight that has been approved for the container. AMSA is currently evaluating the most appropriate means of implementing these proposed treaty amendments. The treaty amendment may result in a minor increase to costs and a minor amendment to regulations or Marine Orders.
13. As indicated above, **Marine Order 42** on cargo stowage and securing, made under the Navigation Act, provides for ensuring the weight of cargo transport units is in accordance with the weight declared on shipping documents and a minor reference to the SOLAS verification amendment (as detailed at **Paragraph 4 (b)** of this NIA) will be added to this Marine Order for the purpose of implementation of the SOLAS Amendment. Additional amendment to this Marine Order may be required as detailed above.

14. The other treaty amendments effected by the Resolution (as detailed at **Paragraph 4 (a)** and (c) of this NIA) do not require any changes to either Australia's legislation or regulations.
15. In regard to the amendment relating to **Chapter XI-1**, no changes are required to Marine Orders. Ships that are subject to the *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003* that need to undertake confined space entry will already carry atmosphere testing equipment.
16. Australia does not propose to lodge an objection to the Resolution.

### **Cost**

17. The proposed Amendment to the title of **Chapter II-2, Regulation 10, and paragraph 5.2** is expected to lead to reduced costs, as it will limit the application of this provision, as was originally intended.
18. Indicative costs relating to Australia's implementation of the amendment to **Chapter VI** are that some ports are charging around **\$5** plus GST per shipping container, for weighing containers that leave the port by road. Similar costs could be expected for containers arriving at a port and some ports may need to upgrade their weighing equipment. The weight of the container can, however, be verified at other points of the transport chain. In this regard it should be noted that container weight is currently required to be verified by **Section 11 of Marine Order 42** (Cargo Stowage and Securing) for loading onto ships, whereby trucks are required to be able to verify weights under a mass management system adopted by the National Heavy Vehicle Regulator ('NHVR') under the *National Heavy Vehicle Accreditation Scheme Standards and Business Rules – Mass Management Standards*.
19. Given that the majority of shipping containers arrive at port by truck and that AMSA has confirmed they will accept the documentation used to verify the cargo weight to fulfil the requirement under **Section 11 of Marine Order 42**, the impact to industry is expected to be minimal. The Bureau of Infrastructure, Transport and Regional Economics *Waterline* publication—which provides data on container exports from the five container ports in 2014—indicates that approximately 700,000 forty foot full containers and 700,000 twenty foot full containers will need their weight verified as a result of the amendment to Chapter VI of SOLAS entering into force. All containers transported by ships worldwide will have to comply with this requirement.
20. Indicative costs arising from the implementation of the amendment to **Chapter XI** of SOLAS are estimated to be **\$1300** per ship with ongoing annual maintenance costs of **\$450**. It is likely that fewer than five Australian ships will need to obtain new portable atmosphere-testing instruments. This cost is only likely to be an additional cost for those cargo ships that do not already carry portable atmosphere testing instrument.

### **Future treaty action**

21. Any future amendments to SOLAS must be effected in accordance with the amendment provisions specified in **Article VIII** (Amendments) of SOLAS. **Article VIII** provides for two methods of amendment (amendment after consideration within the Organisation and amendment by a Conference) and in both cases, amendments are subject to a 'deemed' or 'tacit acceptance' procedure, whereby the amendments are deemed accepted on a [specified] date on which the amendment is by the Contracting Governments, unless a [defined] number of Contracting Governments object by a [specified] date. Any

amendments enter into force automatically on a specified date for those Contracting Governments that have not lodged an objection.

22. Notwithstanding the provisions of **Article VIII** of SOLAS, any future amendments to SOLAS will remain subject to completion of Australia's domestic treaty-making requirements, including tabling in Parliament, consideration by JSCOT and Executive Council approval .

#### **Withdrawal or denunciation**

23. **Article XI** (Denunciation) of SOLAS states that a Contracting Government may denounce the Convention at any stage following five years from the date on which it entered into force for that Government. This is achieved by depositing an instrument of denunciation with the Secretary-General of IMO, who shall inform other Contracting Government of such receipt. A denunciation shall take effect one year after receipt of the instrument, unless the instrument specifies a longer period.

#### **Contact details**

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## ATTACHMENT ON CONSULTATION

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**Resolution MSC.380 (94) (21 November 2014)**

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### CONSULTATION

24. The Amendments to SOLAS were developed by the International Maritime Organization ('IMO') which is comprised of 171 member states, including Australia and adopted by the IMO Maritime Safety Committee at its ninety-fourth session. In addition to government representation, the IMO encourages Non-Government Organizations ('NGOs') to hold "consultative status" which enables the inclusion of a range of NGO interests to be incorporated into IMO discussions and resolutions. Shipping industry representatives are frequently present at the IMO.
25. The Australian Maritime Safety Authority ('AMSA') has undertaken consultation with Shipping Australia Limited, Australian Shipowners Association and Australian Maritime Unions. No adverse comments have been received. Consultation with Australian industry and community representatives revealed that the impact of the proposed amendments is limited.
26. AMSA has consulted with industry on the proposed amendment in regard to **Chapter VI** of SOLAS. Consultation has been undertaken with various shipping industry bodies all with strong support for the resulting SOLAS amendment (including World Shipping Council, Australian Peak Shippers Association ('APSA'), Shipping Australia Limited, Australian Shipowners Association (now Maritime Industry Australia Ltd ('MIAL')), Baltic and International Maritime Council ('BIMCO'), and Ports Australia). Industry is supportive of this regulatory measure, as the loading and stowing of containers without the weight verified, can lead to significant safety problems and serious incidents. AMSA has also commenced consultations with a range of land freight logistics and shipper bodies about the implications of implementation of the new requirements. AMSA and the Department will continue to consult with relevant stakeholders in the lead up to implementation of the Resolution.
27. New **Regulation 7 of Chapter XI -1** will require relevant vessels (that is, those to which SOLAS **Chapter I** applies) to carry an appropriate portable atmosphere testing instrument to test the air from enclosed spaces to ensure that they are safe to enter. Consultation has been undertaken with Shipping Australia Limited, MIAL, and Australian Maritime Unions. No adverse comments have been received.