



Appendix A - Navigation Amendment Bill
2011 and Explanatory Memorandum

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Navigation Amendment Bill 2011

No. , 2011

(Infrastructure and Transport)

**A Bill for an Act to amend the *Navigation Act 1912*,
and for related purposes**

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1 **A Bill for an Act to amend the *Navigation Act 1912*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Navigation Amendment Act 2011*.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table
8 commences, or is taken to have commenced, in accordance with
9 column 2 of the table. Any other statement in column 2 has effect
10 according to its terms.

11

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the day the Maritime Labour Convention, 2006, done at Geneva on 23 February 2006, comes into force for Australia. However, if the provision(s) do not commence within the period of 6 months beginning on the day the Convention comes into force for Australia, they commence on the day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the <i>Gazette</i> the day the provision(s) commenced. The notice is not a legislative instrument.	
3. Schedule 1, Part 2	The day this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

Schedule 1—Amendments

Part 1—Amendments relating to the Maritime Labour Convention

Navigation Act 1912

1 Subsection 6(1) (definition of *agreement*)

Repeal the definition, substitute:

agreement means:

- (a) in relation to a ship—the agreement between the owner of the ship, or a representative of the owner of the ship, and the crew of the ship; and
- (b) in relation to a seaman belonging to a ship—the agreement between the owner of the ship, or a representative of the owner of the ship, and the seaman.

2 Subsection 6(1)

Insert:

Maritime Labour Convention means the Maritime Labour Convention, 2006, done at Geneva on 23 February 2006.

3 Subsection 6(1)

Insert:

Maritime Labour Convention ship means a ship that is of a kind to which the Maritime Labour Convention applies and is entitled to fly the flag of a country to which the Maritime Labour Convention applies.

4 Division 8 of Part II (heading)

Repeal the heading, substitute:

Schedule 1 Amendments**Part 1** Amendments relating to the Maritime Labour Convention1 **Division 8—Engagement of seamen and masters etc.**2 **Subdivision A—Employment agreements**3 **45A Employment agreements**

- 4 (1) A person commits an offence if:
- 5 (a) the person is the master or owner of a ship; and
- 6 (b) the master takes the ship to sea; and
- 7 (c) a seaman is on board the ship; and
- 8 (d) when the ship is taken to sea an employment agreement that
- 9 complies with this section is not in force in relation to the
- 10 seaman.

11 Penalty: 20 penalty units.

- 12 (2) A person commits an offence if:
- 13 (a) the person is the master or owner of a ship; and
- 14 (b) the master takes the ship to sea; and
- 15 (c) when the ship is taken to sea an employment agreement that
- 16 complies with this section is not in force in relation to the
- 17 master of the ship.

18 Penalty: 20 penalty units.

19 *When an employment agreement complies with this section*

- 20 (3) An employment agreement complies with this section if the
- 21 employment agreement is in accordance with any regulations made
- 22 for the purposes of subsection (4).

23 *Regulations*

- 24 (4) The regulations may prescribe matters relating to employment
- 25 agreements including, but not limited to, the following:
- 26 (a) the content and form of employment agreements;
- 27 (b) the right of a seaman or master to review, and seek advice on,
- 28 an employment agreement before signing it;
- 29 (c) the process for signing employment agreements;
- 30 (d) the information or documents that must be given to, or made
- 31 available to, seamen and masters in relation to employment

- 1 agreements and the manner in which such information or
2 documents must be given or made available;
3 (e) the termination of employment agreements.

4 *Meaning of **employment agreement** etc.*

5 (5) In this section:

6 **agreement** has its ordinary meaning, and, to avoid doubt, includes:

- 7 (a) a contract of employment; and
8 (b) articles of agreement; and
9 (c) an enterprise agreement within the meaning of the *Fair Work*
10 *Act 2009*.

11 **employment agreement** means any agreement, or combination of
12 agreements, dealing with terms and conditions of employment.

13 **Subdivision B—Articles of agreement etc.**

14 **5 Section 46**

15 Repeal the section, substitute:

16 **46 Articles of agreement**

- 17 (1) A person commits an offence if:
18 (a) the person is the master or owner of a ship; and
19 (b) the master takes the ship to sea; and
20 (c) a seaman is on board the ship; and
21 (d) when the ship is taken to sea an agreement that complies with
22 this section is not in force in relation to the seaman.

23 Penalty: 20 penalty units.

24 *When an agreement complies with this section*

- 25 (2) An agreement complies with this section if:
26 (a) the agreement is in accordance with any regulations made
27 under subsection (3); and
28 (b) subsection (4) is satisfied in relation to the agreement.

Schedule 1 Amendments**Part 1** Amendments relating to the Maritime Labour Convention1 *Regulations*

- 2 (3) The regulations may prescribe matters relating to the content or
3 form of an agreement.

4 *Signing*

- 5 (4) An agreement must:
6 (a) be signed first by the owner of the ship or the representative
7 of the owner of the ship, and then by the seaman; and
8 (b) be dated:
9 (i) if the agreement is entered into when the seaman is first
10 engaged—as at the time the agreement is signed by the
11 owner of the ship or the representative of the owner of
12 the ship; or
13 (ii) in any other case—as at the time the agreement is
14 signed by the seaman.

15 *Additional provisions that may be included*

- 16 (5) An agreement may, with the approval of a proper authority, include
17 any provisions agreed upon between the seaman and the owner of
18 the ship or the representative of the owner of the ship, that are:
19 (a) lawful; and
20 (b) not inconsistent with the requirements of this section.

21 **6 Application of item 5**

- 22 (1) The amendment made by item 5 of this Schedule applies in relation to
23 ships taken to sea on or after the commencement of this item.
24 (2) Despite the amendment of section 46 of the *Navigation Act 1912* made
25 by item 5 of this Schedule, that section continues to apply, in relation to
26 ships taken to sea before the commencement of this item, as if the
27 amendment had not been made.

28 **7 Subsection 50(1)**

- 29 Omit “under”, substitute “that complies with”.

30 **8 Section 53**

- 31 Repeal the section, substitute:

1 **53 Owner to make available information about conditions of**
2 **employment**

- 3 (1) The regulations may prescribe:
- 4 (a) information, in relation to the conditions of employment of
5 the master and the seamen engaged on a ship, that the owner
6 of the ship is required to make available to the master and
7 seamen; and
- 8 (b) the manner and form (including electronic form) in which the
9 prescribed information is required to be made available.
- 10 (2) The owner of a ship commits an offence if:
- 11 (a) the owner is subject to a requirement under regulations made
12 for the purposes of subsection (1); and
- 13 (b) the owner, or a representative of the owner, engages in
14 conduct; and
- 15 (c) the conduct results in a contravention of the requirement.

16 Penalty: 5 penalty units.

- 17 (3) Strict liability applies to paragraph (2)(a).

18 Note: For strict liability, see section 6.1 of the *Criminal Code*.

19 **9 Section 61**

20 Repeal the section, substitute:

21 **61 Giving of discharges to seamen**

- 22 (1) If a seaman is discharged from a ship, the master of the ship must:
- 23 (a) give the seaman a written discharge in the prescribed form;
24 and
- 25 (b) return to the seaman any previous discharge of the seaman in
26 the possession of the master.
- 27 (2) A person commits an offence if:
- 28 (a) the person engages in conduct; and
- 29 (b) the conduct contravenes subsection (1).

30 Penalty: 10 penalty units.

31 **10 Subsections 62A(1) and (2)**

Schedule 1 Amendments**Part 1** Amendments relating to the Maritime Labour Convention

1 Repeal the subsections, substitute:

- 2 (1) The master of a ship commits an offence if:
- 3 (a) the master discharges a seaman from the ship at a port
- 4 outside Australia; and
- 5 (b) the master has not given the seaman at least 7 days notice of
- 6 the master's intention to discharge the seaman; and
- 7 (c) the seaman has not consented to being discharged at the
- 8 particular port (whether or not the seaman consents to the
- 9 discharge).

10 Penalty: 10 penalty units.

11 **11 Application of items 9 and 10**

- 12 (1) The amendments made by items 9 and 10 of this Schedule apply in
- 13 relation to a notice of intention to discharge a seaman given on or after
- 14 the commencement of this item.
- 15 (2) Despite the amendments of sections 61 and 62A of the *Navigation Act*
- 16 *1912* made by items 9 and 10 of this Schedule, those sections continue
- 17 to apply, in relation to a notice of intention to discharge a seaman given
- 18 before the commencement of this item, as if the amendments had not
- 19 been made.

20 **12 Division 10 of Part II (heading)**

21 Repeal the heading, substitute:

22 **Division 10—Wages**

23 **13 Sections 70 to 73**

24 Repeal the sections, substitute:

25 **70 Payment of wages—general**

- 26 (1) The regulations may make provision for or in relation to the
- 27 payment of wages to masters and seamen.
- 28 (2) Without limiting subsection (1), the regulations may make
- 29 provision for or in relation to the following:
- 30 (a) the frequency of making payments to masters and seamen;
- 31 (b) the method of making payments to masters and seamen;

- 1 (c) permitted deductions from payments to masters and seamen;
 2 (d) pay slips, including the information relating to exchange rates
 3 that must be included in any pay slip given to a master or
 4 seaman;
 5 (e) the payment of part or all of the wages of a master or a
 6 seaman, with the master's or seaman's consent, to a person
 7 other than the master or the seaman;
 8 (f) the charges that may be imposed for making payments in
 9 accordance with paragraph (e).
- 10 (3) The regulations must not provide for the quantum or amount of
 11 wages payable to masters and seamen.

12 **14 Section 75A**

13 Repeal the section.

14 **15 Sections 77 and 78**

15 Repeal the sections.

16 **16 Sections 82 to 84**

17 Repeal the sections.

18 **17 Subsection 85(1)**

19 After "wreck", insert ", foundering".

20 Note: The heading to section 85 is altered by inserting ", **foundering**" after "wreck".

21 **18 Paragraph 85(4)(a)**

22 After "wreck", insert ", foundering".

23 **19 Subsection 85(5)**

24 After "wreck", insert ", foundering".

25 **20 Sections 91 and 93**

26 Repeal the sections.

27 **21 Application of items 13 to 20**

- 28 (1) The amendments made by items 13 to 20 of this Schedule apply in
 29 relation to wages earned on or after the commencement of this item.

Schedule 1 Amendments**Part 1** Amendments relating to the Maritime Labour Convention

1 (2) Despite the amendments of sections 70 and 85 of the *Navigation Act*
 2 *1912* made by items 13, 17, 18 and 19 of this Schedule, those sections
 3 continue to apply, in relation to wages earned before the
 4 commencement of this item, as if the amendments had not been made.

5 (3) Despite the repeal of sections 71 to 73, 77 and 78, 82 to 84, 91 and 93
 6 of the *Navigation Act 1912* made by items 13, 15, 16 and 20 of this
 7 Schedule, those sections continue to apply, in relation to wages earned
 8 before the commencement of this item, as if the repeal had not
 9 happened.

22 Before section 116

10
 11 Insert:

115 Free provisions

12
 13 A person commits an offence if:
 14 (a) the person is the owner of a ship; and
 15 (b) the owner, or a representative of the owner, does not provide
 16 free provisions to the seamen or the master engaged on the
 17 ship.

18 Penalty: 10 penalty units.

23 Section 117

19
 20 After “size”, insert “, and cultural and religious backgrounds,”.

24 After paragraph 127(1)(b)

21
 22 Insert:
 23 ; or (ba) requires essential dental care;

25 Paragraph 128(1)(a)

24
 25 After “injury of”, insert “, or the provision of essential dental care to,”.

26 Paragraph 128(1)(b)

26
 27 After “injury of”, insert “, or the provision of essential dental care to,”.

27 Subsections 132(1) and (2)

28
 29 After “injury,”, insert “or the need for essential dental care,”.

1 **28 Subsection 132(6)**

2 After “injury” (first occurring), insert “, or a need for essential dental
3 care,”.

4 **29 Subsection 132(6)**

5 After “injury” (second occurring), insert “, or need for essential dental
6 care,”.

7 **30 Subsection 132(6A)**

8 After “injury” (first occurring), insert “, or a need for essential dental
9 care,”.

10 **31 Subsection 132(6A)**

11 After “injury” (second occurring), insert “, or need for essential dental
12 care”.

13 **32 Paragraph 132(6B)(a)**

14 After “injury”, insert “, or need for essential dental care,”.

15 **33 Paragraph 132(6C)(a)**

16 After “injury”, insert “, or a need for essential dental care”.

17 **34 Subsection 134(1)**

18 Omit all the words after “effect to”, substitute “Regulation 1.2 of the
19 Maritime Labour Convention”.

20 Note: The heading to section 134 is altered by omitting “**Medical Examination (Seafarers)**
21 **Convention 1946**” and substituting “**Maritime Labour Convention**”.

22 **35 Subsection 134(2)**

23 Omit “a provision of the Convention”, substitute “Regulation 1.2 of the
24 Maritime Labour Convention”.

25 **36 Subsection 134(2)**

26 Omit “that provision”, substitute “Regulation 1.2”.

27 **37 Subsection 134(4)**

28 Omit “the Convention” (wherever occurring), substitute “Regulation 1.2
29 of the Maritime Labour Convention”.

Schedule 1 Amendments**Part 1** Amendments relating to the Maritime Labour Convention1 **38 Subsection 136(2)**

2 Repeal the subsection, substitute:

3 (2) The regulations may make provision in relation to giving effect to
4 Regulation 3.1 of the Maritime Labour Convention.5 **39 Subsection 136(3)**6 Omit “either Convention”, substitute “Regulation 3.1 of the Maritime
7 Labour Convention”.8 **40 Subsection 136(5)**9 Omit “Conventions” (wherever occurring), substitute “Regulation 3.1 of
10 the Maritime Labour Convention”.11 **41 Section 138**

12 Repeal the section.

13 **42 Section 172A**

14 Repeal the section.

15 **43 Subsection 187(2)**16 After “those Regulations”, insert “, or the Maritime Labour
17 Convention”.18 **44 Subsection 187(3)**19 After “Safety Convention” (first occurring), insert “or the Maritime
20 Labour Convention”.21 **45 Subsection 187(3)**

22 After “(b),”, insert “(ba),”.

23 **46 Subsection 187(3)**24 After “Safety Convention” (second occurring), insert “or the Maritime
25 Labour Convention, as the case requires,”.26 **47 Paragraph 187AA(1)(a)**

27 After “206K,”, insert “206XC,”.

28 Note: The heading to section 187AA is altered by inserting “**or declarations**” after
29 “**certificates**”.

1 **48 Subsection 187AA(2)**

2 After “(b),”, insert “(ba),”.

3 **49 Subsection 187AA(2)**

4 After “prescribed certificate”, insert “, or a declaration referred to in
5 section 206XB,”.

6 **50 Subsection 187AA(3)**

7 After “a prescribed certificate”, insert “, or a declaration referred to in
8 section 206XB,”.

9 **51 Subsection 187AA(3)**

10 After “the prescribed certificate”, insert “or declaration”.

11 **52 Subsection 187AA(4)**

12 After “certificate” (wherever occurring), insert “or declaration”.

13 **53 Subsection 187A(1)**

14 Insert:

15 *declaration of maritime labour compliance* means a declaration
16 issued under subsection 206XB(1) or (2).

17 **54 Subsection 187A(1)**

18 Insert:

19 *interim maritime labour certificate* means a certificate issued
20 under regulations made for the purposes of subsection 206XE(1).

21 **55 Subsection 187A(1) (before paragraph (a) of the definition
22 of *international voyage*)**

23 Insert:

- 24 (aa) for the purposes of Division 2D, a voyage:
- 25 (i) from a port in Australia to a port outside Australia; or
 - 26 (ii) to a port in Australia from a port outside Australia; or
 - 27 (iii) from a port outside Australia to that port or to another
 - 28 port outside Australia; and

Schedule 1 Amendments**Part 1** Amendments relating to the Maritime Labour Convention

1 **56 Subsection 187A(1) (paragraph (b) of the definition of**
 2 ***international voyage*)**

3 Omit “Division 5”, substitute “Divisions 2D and 5”.

4 **57 Subsection 187A(1)**

5 Insert:

6 *maritime labour certificate* means a certificate issued under
 7 subsection 206XC(1) or (2).

8 **58 At the end of paragraphs 190(a), (b) and (c)**

9 Add “or”.

10 **59 After paragraph 190(e)**

11 Insert:

12 ; or (f) assessing the working and living conditions on board ships;

13 **60 Subsection 190AA(2)**

14 Omit “Without limiting the generality of subsection (1), the powers of a
 15 surveyor under that subsection”, substitute “The powers of a surveyor
 16 under subsection (1)”.

17 **61 After subsection 190AA(2)**

18 Insert:

19 (2AA) The powers of a surveyor under subsection (1) extend to:

- 20 (a) the inspection of a ship for the purpose of ascertaining
 21 whether the ship complies with such of the provisions of this
 22 Act and the regulations and orders relating to the working
 23 and living conditions of the seamen on board the ship and of
 24 the master of the ship as apply to the ship; and
 25 (b) requiring the production to the surveyor of any certificate or
 26 declaration relating to those conditions issued in respect of
 27 the ship.

28 (2AB) Subsections (2) and (2AA) do not limit subsection (1).

29 **62 Subsection 190AA(2A)**

30 Omit “or (2)”, substitute “, (2) or (2AA)”.

1 **63 After subsection 190A(1)**

2 Insert:

3 (1AA) If:

- 4 (a) a maritime labour certificate or an interim maritime labour
5 certificate has been issued in respect of a ship; and
6 (b) the working and living conditions of the seamen on board the
7 ship or of the master of the ship change so that the ship does
8 not comply with the requirements of this Act that relate to
9 those conditions (other than requirements from which the
10 Authority has exempted the ship);

11 then, as soon as practicable after the change, written notice of the
12 change must be given to the person prescribed in the form
13 prescribed.

14 Note: Section 206XH deals with exemptions.

15 **64 Paragraph 190A(1A)(a)**

16 After “subsection (1)”, insert “or (1AA)”.

17 **65 After subsection 190A(2)**

18 Insert:

19 (2A) If the Authority has reason to believe that:

- 20 (a) a report referred to in paragraph 206XC(1)(c) or (2)(c) in
21 respect of a ship has been fraudulently or erroneously made
22 or obtained; or
23 (b) a maritime labour certificate or an interim maritime labour
24 certificate has been issued in respect of a ship upon false or
25 erroneous information; or
26 (c) since a maritime labour certificate or interim maritime labour
27 certificate was issued in respect of a ship, the working and
28 living conditions of the seamen on board the ship or of the
29 master of the ship have changed so that those conditions do
30 not comply with the requirements of this Act that relate to
31 those conditions (other than requirements from which the
32 Authority has exempted the ship);

33 the Authority may:

- 34 (d) in any case—cancel any maritime labour certificate or
35 interim maritime labour certificate (as the case may be)
36 issued in respect of the ship; or
-

Schedule 1 Amendments**Part 1** Amendments relating to the Maritime Labour Convention

- 1 (e) if paragraph (c) applies—detain the ship until the Authority is
 2 satisfied that the conditions concerned comply with the
 3 requirements of this Act that relate to those conditions (other
 4 than requirements from which the Authority has exempted
 5 the ship).

6 Note: Section 206XH deals with exemptions.

66 Subsection 190A(3)

8 After “Division 2B”, insert “or cancels a maritime labour certificate or
 9 an interim maritime labour certificate issued in respect of a ship”.

67 Subsection 190A(4)

11 After “Division 2B”, insert “, or a maritime labour certificate or an
 12 interim maritime labour certificate issued in respect of a ship,”.

68 After section 191

14 Insert:

191AA Regulations to give effect to Maritime Labour Convention

- 16 (1) The regulations may make provision for or in relation to giving
 17 effect to the Maritime Labour Convention.
- 18 (2) If a provision of the Maritime Labour Convention applies only in
 19 relation to a particular class of ships or in relation to ships engaged
 20 on a particular class of voyages, any regulation that gives effect to
 21 that provision may be applied to ships of any other class or to ships
 22 engaged in any other class of voyages.
- 23 (3) Regulations and orders giving effect to the Maritime Labour
 24 Convention do not apply in relation to a ship referred to in
 25 paragraph 2(1)(a), (b), (ba), (c) or (d) to the extent that a law of a
 26 State or of the Northern Territory makes provision giving effect to
 27 the Maritime Labour Convention in relation to that ship.

69 Subsection 191A(1)

29 After “the Safety Convention,”, insert “the Maritime Labour
 30 Convention”.

70 After Division 2C of Part IV

32 Insert:

1 **Division 2D—Declarations of maritime labour compliance**
 2 **and maritime labour certificates**

3 **206XA Maritime labour certificates required for steamships**
 4 **registered in Australia**

5 A person commits an offence if:

- 6 (a) the person is the master or owner of a ship; and
 7 (b) the ship is a steamship registered in Australia; and
 8 (c) the ship has a gross tonnage of 500 or more; and
 9 (d) the person takes the ship to sea, or permits the ship to be
 10 taken to sea by the master or the owner (as the case may be),
 11 or another person, on an international voyage; and
 12 (e) when the ship is taken to sea, none of the following
 13 certificates is in force in respect of the ship:
 14 (i) a maritime labour certificate;
 15 (ii) an interim maritime labour certificate;
 16 (iii) a certificate of exemption under section 206XH
 17 exempting the ship from all the requirements of this Act
 18 relating to the working and living conditions of seamen
 19 on board the ship and of the master of the ship.

20 Penalty: Imprisonment for 4 years.

21 **206XB Issue of declarations of maritime labour compliance**

22 *Issue of declarations of maritime labour compliance by Authority*

- 23 (1) The Authority may issue a declaration of maritime labour
 24 compliance in respect of a steamship registered in Australia if:
 25 (a) the Authority has completed Part I of the declaration; and
 26 (b) the owner of the ship has completed Part II of the declaration;
 27 and
 28 (c) a surveyor has inspected the ship; and
 29 (d) after receiving a report of the inspection, the Authority is
 30 satisfied that the measures set out in Part II of the declaration
 31 comply with the requirements of this Act relating to ensuring
 32 initial and ongoing compliance with the requirements set out
 33 in Part I of the declaration.

Schedule 1 Amendments**Part 1** Amendments relating to the Maritime Labour Convention

1 *Issue of declarations of maritime labour compliance by survey*
 2 *authority*

- 3 (2) A survey authority may issue a declaration of maritime labour
 4 compliance in respect of a steamship registered in Australia if:
 5 (a) the Authority or the survey authority has completed Part I of
 6 the declaration; and
 7 (b) the owner of the ship has completed Part II of the declaration;
 8 and
 9 (c) an inspection of the ship has been carried out by or on behalf
 10 of the survey authority; and
 11 (d) having regard to a report of the inspection, the survey
 12 authority is satisfied that the measures set out in Part II of the
 13 declaration comply with the requirements of this Act relating
 14 to ensuring initial and ongoing compliance with the
 15 requirements set out in Part I of the declaration.

16 *Declaration of maritime labour compliance to be in prescribed*
 17 *form*

- 18 (3) A declaration of maritime labour compliance must be in the
 19 prescribed form.

20 *Declaration of maritime labour compliance not a legislative*
 21 *instrument*

- 22 (4) A declaration of maritime labour compliance is not a legislative
 23 instrument.

206XC Issue of maritime labour certificates

25 *Issue of maritime labour certificates by Authority*

- 26 (1) The Authority may issue a maritime labour certificate in respect of
 27 a steamship registered in Australia if:
 28 (a) a declaration of maritime labour compliance is in force in
 29 relation to the ship; and
 30 (b) a surveyor has inspected the ship; and
 31 (c) after receiving a report of the inspection, the Authority is
 32 satisfied that the ship complies with the requirements of this
 33 Act that relate to the working and living conditions of the
 34 seamen on board the ship and of the master of the ship (other

1 than requirements from which the Authority has exempted
2 the ship).

3 Note: Section 206XH deals with exemptions.

4 *Issue of maritime labour certificates by survey authority*

- 5 (2) A survey authority may issue a maritime labour certificate in
6 respect of a steamship registered in Australia if:
- 7 (a) a declaration of maritime labour compliance is in force in
8 relation to the ship; and
 - 9 (b) an inspection of the ship has been carried out by or on behalf
10 of the survey authority; and
 - 11 (c) having regard to a report of the inspection, the survey
12 authority is satisfied that the ship complies with the
13 requirements of this Act that relate to the working and living
14 conditions of seamen on board the ship and of the master of
15 the ship (other than requirements from which the Authority
16 has exempted the ship).

17 Note: Section 206XH deals with exemptions.

18 *Maritime labour certificate to be in prescribed form*

- 19 (3) A maritime labour certificate must be in the prescribed form.

20 *Maritime labour certificate not a legislative instrument*

- 21 (4) A maritime labour certificate is not a legislative instrument.

22 **206XD Duration of maritime labour certificate**

- 23 (1) Subject to this Act, a maritime labour certificate remains in force
24 for the period specified in the certificate.
- 25 (2) The period specified in a certificate under subsection (1) must not
26 exceed the period prescribed by the regulations for the purposes of
27 this subsection.

28 **206XE Interim maritime labour certificates**

- 29 (1) The regulations may make provision for or in relation to interim
30 maritime labour certificates.

Schedule 1 Amendments**Part 1** Amendments relating to the Maritime Labour Convention

- 1 (2) Without limiting subsection (1), the regulations make provision for
 2 or in relation to:
 3 (a) the issuing of interim maritime labour certificates; and
 4 (b) the duration of interim maritime labour certificates.

206XF When a maritime labour certificate ceases to be in force

- 6 A maritime labour certificate, or an interim maritime labour
 7 certificate, ceases to be in force:
 8 (a) if the ship in respect of which it was issued ceases to be
 9 registered in Australia; or
 10 (b) if, after the issue of the certificate, there is a change in the
 11 ownership of the ship in respect of which it was issued; or
 12 (c) in the circumstances referred to in subsection 190A(3); or
 13 (d) in any other circumstances prescribed by the regulations.

206XG Declarations of maritime labour compliance and maritime labour certificates to be made available*Access to declaration or certificate by crew*

- 17 (1) The master of a ship commits an offence if:
 18 (a) a declaration of maritime labour compliance, a maritime
 19 labour certificate or an interim maritime labour certificate is
 20 in force in respect of the ship; and
 21 (b) the master does not ensure that a copy of the declaration or
 22 certificate is posted up in a part of the ship to which all
 23 members of the crew have access.

24 Penalty: 10 penalty units.

Examination of declaration or certificate by persons on board

- 26 (2) The master of a ship commits an offence if:
 27 (a) a declaration of maritime labour compliance, a maritime
 28 labour certificate or an interim maritime labour certificate is
 29 in force in respect of the ship; and
 30 (b) the master does not ensure that a copy of the declaration or
 31 certificate is available at all reasonable times for examination
 32 on request by any person on board the ship.

1 Penalty: 10 penalty units.

2 **206XH Exemptions**

3 (1) The regulations may provide for the Authority to exempt a ship
4 from a requirement of this Act that relates to the working and
5 living conditions of seamen on board the ship and of the master of
6 the ship.

7 (2) The Authority may issue a certificate of exemption in respect of a
8 ship specifying the requirement from which the ship is exempt and
9 the conditions, if any, subject to which the ship is exempt.

10 (3) A certificate of exemption must be in the prescribed form.

11 (4) A certificate of exemption is not a legislative instrument.

12 *Offence*

13 (5) The master and owner of a ship each commit an offence if:

14 (a) a certificate of exemption under this section specifies
15 conditions subject to which the ship is exempt from a
16 requirement specified in the certificate; and

17 (b) the conditions are not complied with.

18 Penalty: Imprisonment for 4 years.

19 **206XI Production of maritime labour certificates to officers of**
20 **Customs**

21 (1) If:

22 (a) an application is made to an officer of Customs in respect of
23 a steamship registered in Australia for a clearance under the
24 Customs Act for a voyage from a port in Australia; and

25 (b) the master of the ship would contravene section 206XA if the
26 master took the ship to sea on that voyage from that port
27 without any of the following certificates being in force in
28 respect of the ship:

29 (i) a maritime labour certificate;

30 (ii) an interim maritime labour certificate;

31 (iii) a certificate of exemption under section 206XH
32 exempting the ship from all the requirements of this Act

Schedule 1 Amendments**Part 1** Amendments relating to the Maritime Labour Convention

1 relating to the working and living conditions of seamen
 2 on board the ship and of the master of the ship;
 3 the master of the ship must, if so required by an officer of
 4 Customs, produce to the officer of Customs any one of those
 5 certificates.

6 (2) If an officer of Customs has required the master of a ship to
 7 produce to the officer any one of those certificates, then, until one
 8 of those certificates is so produced, the officer of Customs may
 9 refuse to grant the clearance, and the ship may be detained.

71 Subsection 207A(1)

10 Repeal the subsection, substitute:

11 (1) A ship is *substandard* for the purposes of this Act if either or both
 12 of the following paragraphs apply:
 13 (a) the ship is seaworthy, but conditions on board the ship are
 14 clearly hazardous to safety or health;
 15 (b) if the ship is of a kind to which the Maritime Labour
 16 Convention applies or is capable of applying—the ship does
 17 not comply with the Maritime Labour Convention.
 18

72 Subsection 290(1)

19 Omit “under”, substitute “that complies with”.

73 Paragraph 377C(d)

20 Repeal the paragraph.

74 Section 377D

21 Before “Application”, insert “(1)”.

75 At the end of section 377D

22 Add:

23 (2) In this section, *certificate* includes a declaration of maritime labour
 24 compliance issued under subsection 206XB(1) or (2).

76 Subsection 397(2)

25 Omit “190A(1)”, substitute “190A(1A)”.

77 Subsection 410(1)

1 Repeal the subsection, substitute:

2 (1) The master of a ship commits an offence if:

3 (a) Part II applies to the ship; and

4 (b) the master does not provide the seamen of the ship with
5 access (whether electronic or otherwise), at all reasonable
6 times, to a copy of:

7 (i) this Act; and

8 (ii) if the ship is a Maritime Labour Convention ship—the
9 Maritime Labour Convention.

10 Penalty: 5 penalty units.

11 Note: The heading to section 410 is altered by omitting “**to be kept**” and substituting “**and**
12 **Maritime Labour Convention to be accessible**”.

13 **78 Subsection 424(5A)**

14 Repeal the subsection.

15 **79 After paragraph 425(1)(e)**

16 Insert:

17 (ea) the training and qualifications of masters and seamen;

18 (eb) the maximum number of hours that masters or seamen may
19 be required to work in a particular period of time;
20

Schedule 1 Amendments**Part 2** Amendments relating to vessel traffic services

1 **Part 2—Amendments relating to vessel traffic**
2 **services**

3 *Navigation Act 1912*

4 **80 Subsection 411(3) (definition of vessel traffic service)**

5 After “1997”, insert “, and as amended from time to time.”

6 **81 After paragraph 425(1)(db)**

7 Insert:

8 (dc) vessel traffic services (within the meaning of section 411);

2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NAVIGATION AMENDMENT BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure and Transport,
the Honourable Anthony Albanese, MP)

NAVIGATION AMENDMENT BILL 2011

OUTLINE

The purpose of the Navigation Amendment Bill 2011 is to amend the *Navigation Act 1912* (Navigation Act) to implement the Maritime Labour Convention (MLC) in Australia and to make some minor amendments relating to vessel tracking services.

Maritime Labour Convention

The MLC, which was adopted by the International Labour Organization (ILO) in February 2006, sets minimum requirements for working and living conditions for seafarers working on ships engaged in commercial activities. The MLC does not apply to ships engaged in fishing or in similar pursuits or to ships of traditional build such as dhows and junks.

The MLC modernises a wide range of existing international labour standards going back over eight decades. It:

- consolidates and updates more than 60 earlier ILO Conventions and Recommendations;
- sets minimum requirements for seafarers to work on a ship;
- addresses conditions of employment, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection;
- promotes compliance by operators and owners of ships by giving governments sufficient flexibility to implement the MLC's requirements in a manner best adapted to their individual laws and practices; and
- strengthens enforcement mechanisms at all levels including:
 - provisions for complaint procedures to be made available to seafarers;
 - the shipowners' and masters' supervision of conditions on their ships;
 - the flag States' jurisdiction and control over their ships; and
 - port State control inspections of foreign ships.

The amendments contained in Part 1 of Schedule 1 of this Bill:

- remove inconsistencies between the MLC and the Navigation Act;
- provide for the making of regulations to give effect to the details of the MLC;
- provide for the issue of declarations of maritime labour compliance and maritime labour certificates to Australian ships and require the carriage of the certificate by any Australian ship with a gross tonnage of 500 and over while such a ship is engaged in an international voyage; and
- allow for the inspection of all ships at Australian ports by surveyors employed by the Australian Maritime Safety Authority (AMSA) to ensure that the ships comply with the requirements of the MLC.

Vessel Tracking Services

Vessel tracking services (VTS) are used to monitor the positions of ships. Part 2 of Schedule 1 of the Bill makes minor amendments to the Navigation Act in relation to VTS to amend the definition of "vessel tracking service" to refer to guidelines adopted by the International Maritime Organization and any amendments to those guidelines. There is also an amendment to the regulation-making power in the Navigation Act to specifically provide for the making of regulations relating to VTS.

FINANCIAL IMPACT STATEMENT

There is no financial impact arising from this Bill.

Abbreviations

AAT:	Administrative Appeals Tribunal
AMSA:	Australian Maritime Safety Authority
Fair Work Act:	<i>Fair Work Act 2009</i>
ILO:	International Labour Organization
IMO:	International Maritime Organization
MLC:	Maritime Labour Convention
Navigation Act:	<i>Navigation Act 1912</i>
VTS:	Vessel traffic services

NAVIGATION AMENDMENT BILL 2011

NOTES ON CLAUSES

Clause 1: Short Title

Clause 1 is a formal provision specifying the title of the proposed Act.

Clause 2: Commencement

The table in clause 2 sets out when the provisions contained in the Bill will commence. Each provision of the Bill specified in column 1 of the table commences on the day specified in column 2 of the table.

Clauses 1 to 3 will commence on the date that the proposed Act receives Royal Assent.

Item 1 in the table in subclause 2(1) provides that Part 1 of Schedule 1 commences on a single day to be fixed by Proclamation. A Proclamation must not specify a day prior to the day on which the MLC comes into force for Australia. However, if Part 1 of Schedule 1 does not commence within six months from the day on which the MLC comes into force for Australia, it will commence on the day after the end of that period. If Part 1 of Schedule 1 commences in this way, the Minister must announce by notice in the *Gazette* the day on which Part 1 of Schedule 1 commences.

Item 1 in the table also provides that a notice by the Minister is not a legislative instrument. This provision is merely declaratory of the law and is included to assist readers of the proposed Act.

The MLC will come into force generally 12 months after the date on which there have been registered ratifications by at least 30 ILO Members with a total share in the world gross tonnage of ships of 33 per cent. As at 11 May 2011, there were 12 registered ratifications with more than a 48 per cent share in the world gross tonnage of ships. The second condition for coming into force has therefore already been met. It is not known when the first condition for coming into force will be met.

If Australia is one of the original 30 countries whose ratifications are registered, then the MLC will come into force for Australia at the same time as it comes into force generally. Otherwise, the MLC will come into force for Australia 12 months after the registration of Australia's instrument of ratification.

It is intended that Part 1 of Schedule 1 of the Bill will be proclaimed to commence at the same time as the MLC comes into force for Australia.

Item 2 in the table provides that Part 2 of Schedule 1 commences on the day that the proposed Act receives Royal Assent.

Clause 3: Schedules

Clause 3 is a standard clause which provides that the Schedules to the Bill will amend the Acts set out in those Schedules in accordance with the provisions set out in each Schedule.

Schedule 1 – Amendments

Part 1 – Amendments relating to the Maritime Labour Convention

Item 1 replaces the definition of *agreement* in subsection 6(1) of the Navigation Act to ensure that, as well as picking up agreements between the master (as a representative of the owner) and seamen on board a ship, the definition picks up agreements between the owner of a ship and the seamen on board the ship (that is, the underlying contracts of employment).

Item 2 inserts a definition of *Maritime Labour Convention* into subsection 6(1) of the Navigation Act.

Item 3 inserts a definition of *Maritime Labour Convention ship* into subsection 6(1) of the Navigation Act. To be a Maritime Labour Convention ship, a ship must be a ship of a kind to which the MLC applies (therefore, for example, not a fishing boat) and it must be registered, or be entitled to be registered, in a country to which the MLC applies.

Item 4:

- (a) substitutes the heading of Division 8 of Part II of the Navigation Act to more accurately reflect the content of Division 8 following the changes made by this Bill;
- (b) adds a heading for a new Subdivision A to read "Employment agreements";
- (c) adds a new section 45A relating to employment agreements; and
- (d) adds a heading for new Subdivision B which includes the existing sections 46 to 59B as amended by this Bill.

New section 45A, together with revised section 46 (item 5), gives effect to the requirement in Standard A2.1 of the MLC that all crew members are required to have an employment agreement. *Employment agreement* is defined widely for purposes of the new section. It means any agreement or combination of agreements dealing with terms and conditions of employment and includes a contract of employment, articles of agreement and an enterprise agreement under the *Fair Work Act 2009*.

The master and the owner of a ship will each commit an offence, with a maximum penalty of 20 penalty units, if the master takes the ship to sea without there being employment agreements complying with the new section in force in relation to the master and all seamen on board the ship. An employment agreement that complies with regulations made for the purposes of new subsection 45A(3) will comply with new section 45A.

The offence is directed at the owner and the master of a ship. It is well established in shipping law that offence provisions should apply collectively to the master and the owner. There is precedent in both State and Commonwealth legislation as well as in international law. Such persons have shared responsibility and both can be expected to be fully aware of the requirements of the legislation (and of the MLC) and, in particular, the requirement for employment agreements to be in force for all crew members, including the master, before a ship goes to sea. While the master has immediate responsibility for the ship, he or she is subject to the direction of the shipowner. Shared liability is consistent with offence provisions in other parts of the Navigation Act and in other maritime legislation such as the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Item 5 replaces section 46 of the Navigation Act to ensure that provisions relating to articles of agreement comply with the requirements of the MLC. The master and the owner of a ship will each commit an offence, with a maximum penalty of 20 penalty units, if an agreement complying with the revised section is not in force for each seaman on board the ship. Shared liability between the master and the owner is appropriate for the same reasons as given in the previous paragraph.

An agreement will comply with revised section 46 if:

- it is in accordance with any regulations relating to the form or content of the agreement made under new subsection 46(3);
- it is signed first by the shipowner or the shipowner's representative and then by the seaman; and
- it is dated as at the time the agreement is signed by the shipowner or the shipowner's representative if the agreement is entered into when the seaman is first engaged, or otherwise it is dated as at the time the agreement is signed by the seaman.

An agreement may include any additional provisions that have been agreed between the seaman and the shipowner or a representative of the owner but any such additional provisions must be lawful and not be inconsistent with the revised section 46.

Item 6 is an application provision to provide that the revised section 46 applies only in relation to ships taken to sea on or after the commencement of the amendments. The existing section 46 will continue to apply to ships taken to sea before the commencement of the amendments.

Item 7 amends subsection 50(1) of the Navigation Act consequential upon the insertion of the revised section 46 into the Navigation Act. Section 50 relates to the period of agreements. Subsection 50(1) currently refers to agreements under section 46. The revised section 46 requires agreements to comply with that section. Subsection 50(1) is therefore being amended to refer to agreements that comply with section 46.

Item 8 replaces existing section 53 of the Navigation Act. The existing section requires a copy of the articles of agreement (other than the section of the articles of agreement containing the names and signatures of, or particulars relating to, the master and other crew members of the ship) to be posted up in a part of the ship to which all seamen have access. The revised section serves a similar purpose by requiring information about conditions of employment to be made available to the master and seamen on board a ship. Regulations to be made under the revised section will provide flexibility in how that information is to be made available. While not excluding other means of providing the information, there is a specific power to allow the regulations to provide that the information may be provided in electronic form.

The owner of a ship will be guilty of an offence with a maximum penalty of 5 penalty units if information in accordance with the regulations is not made available. Strict liability applies to one of the elements of the offence, namely that the owner is subject to a requirement under regulations made for purposes of new subsection 53(1) to provide the information. It is appropriate that strict liability apply to this element of the offence as it will be obvious to the owner of a ship if the owner is required to provide information. A defence of honest and reasonable mistake of fact will be available in relation to this element of the offence. Applying strict liability to this element of the offence is consistent with other offences of this nature. For a prosecution to be successful, it will be necessary for the prosecution to prove the other two elements of the offence, namely:

- the owner, or a representative of the owner, has engaged in conduct; and
- the conduct resulted in a contravention of the requirement to provide information in relation to conditions of employment.

Item 9 replaces existing section 61 of the Navigation Act so that it conforms with modern drafting style. The effect of the section is unchanged. If a seaman is discharged from a ship, the master must give the seaman a written discharge and return to the seaman any previous discharges of the seaman in the possession of the master.

A penalty of 10 penalty units applies to a breach of the requirements of the revised section 61. This is the same level of penalty as applies to the existing section 61.

Item 10 replaces the existing subsections 62A(1) and (2) of the Navigation Act with a new subsection 62A(1) to reflect the requirements of paragraph 5 of Standard A2.1 of the MLC. The revised subsection 62A(1) requires that a master must give a seaman at last seven days notice of his or her discharge at a port outside Australia if the seaman has not consented to being discharged at that particular port.

A penalty of 10 penalty units applies to a breach of the requirements of the revised subsection 62A(1). This is the same level of penalty as applies to the existing subsection 62A(1).

Item 11 is an application provision relating to the amendments to sections 61 and 62A. The amendments made to those sections will apply only to notices of intention to discharge a seaman made on or after the commencement of the amendments. Section 61 and 62A continue to apply to such notices of discharge made before the commencement of the amendments as if the amendments had not been made.

Item 12 repeals the existing heading to Division 10 of Part II ("Seamen's wages") of the Navigation Act and replaces it with "Wages". This is because Division 10, as amended, makes provision in relation to the wages of masters as well as to the wages of seamen.

Item 13 repeals the existing sections 70 to 73 of the Navigation Act which relate to the payment of wages and replaces those sections with a new section 70 which provides for the making of regulations relating to the payment of wages.

The regulations may make provision for or in relation to:

- the frequency and the method of the payment of wages;
- deductions that may be made from wages;
- pay slips, including information to be included in a pay slip relating to exchange rates;
- the payment of all or part of the wages of a master or seamen to a person other than the master or seaman; and
- any charges that may be imposed if part or all of wages is paid to a person other than the master or seaman. In order to comply with the requirements of paragraph 5 of Standard A2.2 of the MLC, such charges must be "reasonable".

New subsection 70(3) makes it clear that the regulations must not provide for the quantum or amount of wages payable to masters and seamen. The amount or quantum of wages will be set out in a relevant enterprise agreement.

Items 14-16 and 20 repeal sections of the Navigation Act that are either redundant or are covered by the Fair Work Act.

Items 17-19 amend subsection 85(1), paragraph 85(4)(a) and subsection 85(5) of the Navigation Act to change references to the "wreck or loss" of a ship to "wreck, foundering or loss" of a ship. This is to conform with the terminology used in the MLC.

Item 21 is an application provision applying to the amendments or repeals made by items 13 to 20. Sections 70 and 85 of the Navigation Act will continue to apply in relation to wages earned before the commencement of the amendments as if the amendments had not been made.

The sections that have been repealed will continue to apply in relation to wages earned before the commencement of the amendments as if they had not been repealed.

Item 22 inserts new section 115 into the Navigation Act to require that provisions provided to the seamen and master of a ship shall be free. This requirement reflects the requirement of paragraph 2 of Regulation 3.2 of the MLC and the current common practice of providing free provisions on Australian ships.

Item 23 amends section 117 of the Navigation Act which requires a ship to carry provisions adequate for the voyage being undertaken. To reflect the requirements of regulation 2 of Standard A3.2 of the MLC, section 17 is amended to require that, in determining if food is of suitable quality, quantity, nutritive value and variety, the master must have regard to the cultural and religious backgrounds of the crew.

Items 24 to 33 amend a number of provisions within the Navigation Act to extend the current requirement for the owner of a ship to meet the expenses of medical care to also meet the costs of essential dental care. This reflects the requirement of paragraph 1 of Standard A4.1 of the MLC.

Items 34 to 37 amend section 134 of the Navigation Act. Section 134 currently provides for the making of regulations to give effect to the Medical Examination (Seafarers) Convention 1946. That Convention is one of a number of ILO Conventions that will be superseded by the MLC. References in section 134 to the Medical Examination (Seafarers) Convention 1946 are being replaced with references to Regulation 1.2 of the MLC which requires that the master and seamen working on a ship be certified as being medically fit to perform their duties.

Items 38 to 40 amend section 136 of the Navigation Act to replace references to the Accommodation of Crews Convention (Revised) 1949 and the Accommodation of Crews (Supplementary Provisions) Convention 1970 (which will be superseded by the MLC) with references to Regulation 3.1 of the MLC. Regulation 3.1 requires that "decent accommodations and recreational facilities" be provided on ships. The amendments will provide for the making of regulations relating to accommodation and recreational facilities.

Item 41 repeals section 138 of the Navigation Act which provides for the consideration by the Marine Council of plans for accommodation or the alteration of accommodation on a ship. This role is now performed by classification societies and section 138 is therefore redundant. Classification societies establish and maintain technical standards for the construction and operation of ships. They also validate that construction is in accordance with those standards and carry out regular surveys of ships to ensure compliance with the standards.

Item 42 repeals section 172A of the Navigation Act. Currently, if a seaman's agreement under section 46 includes provisions relating to a code of conduct and a master has made an entry in an official log book in relation to an occurrence under a code of conduct, the master is required by section 172A to report the making of that entry in the log book to AMSA.

As there is no provision for agreements made in accordance with the MLC to refer to codes of conduct, section 172A will be redundant when the MLC comes into force for Australia.

Item 43 amends subsection 187(2) of the Navigation Act to ensure that provisions of Part IV of the Navigation Act, as amended by this Bill, in relation to the MLC apply to all ships and that the application of those provisions is not restricted by section 2, the general application section of the Navigation Act.

Items 44 and 46 amend subsection 187(3) of the Navigation Act to insert references to the MLC into that subsection. Subsection 187(3) is a "roll-back" provision. The effect of the amendments (in combination with the amendment made by item 45) is that provisions of Part IV of the Navigation Act relating to the MLC will not apply to ships referred to in paragraphs 2(1)(a), (b), (ba), (c) and (d) of the Navigation Act to the extent that a law of a State or the Northern Territory gives effect to the MLC in relation to such ships. Those ships are as follows:

- trading ships proceeding on a voyage other than an overseas voyage or an interstate voyage;
- Australian fishing vessels proceeding on a voyage other than an overseas voyage;
- inland waterways vessels;
- pleasure craft; and
- (as a result of the amendment made by item 45), fishing fleet support vessels proceeding on a voyage other than an overseas voyage.

Items 45 and 48 amend subsections 187(3) and 187AA(2), respectively, of the Navigation Act to include a reference to paragraph 2(1)(ba) of the Navigation Act in each of those subsections. The effect is to include a reference in each subsection to fishing fleet support vessels proceeding on a voyage other than an overseas voyage. These amendments correct an oversight which occurred at the time paragraph 2(1)(ba) was inserted into section 2 of the Navigation Act.

Items 47 and 49 to 52 amend section 187AA of the Navigation Act to allow a declaration of maritime labour compliance and a maritime labour certificate to be issued under new sections 206XB and 206XC, respectively, in respect of ships referred to in paragraphs 2(1)(a), (b), (ba), (c) and (d) of the Navigation Act and to which the Navigation Act does not otherwise apply. A declaration and certificate would be issued in these circumstances following application by the owner of the ship to AMSA and after subsequent inspection to verify that a ship complies with the requirements of the MLC.

Item 53 inserts a new definition of *interim maritime labour certificate* into subsection 187A(1) of the Navigation Act. Interim maritime labour certificates will be able to be issued under regulations made under new section 206XE, to be inserted into the Navigation Act by item 70.

Item 54 inserts a new definition of *declaration of maritime labour compliance* into subsection 187A(1) of the Navigation Act. A declaration will be able to be issued under new section 206XB, to be inserted into the Navigation Act by item 70.

Item 55 amends the definition of *international voyage* in subsection 187A(1) of the Navigation Act by the insertion of a new paragraph (aa) to provide that *international voyage* has a specific meaning for purposes of the new Division 2D, to be inserted into Part IV of the Navigation Act by item 70. The amendment to the definition reflects the requirement of paragraph 1 of Regulation 5.1.3 of the MLC that applies requirements relating to declarations of maritime labour compliance and maritime labour certificates to ships of:

- "(a) 500 gross tonnage or over, engaged in international voyages; and
- (b) 500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country".

Item 56 amends paragraph (b) of the definition of *international voyage* in subsection 187A(1) of the Navigation Act consequential upon the insertion of paragraph (aa) into the definition by item 55.

Item 57 inserts a new definition of *maritime labour certificate* into subsection 187A(1) of the Navigation Act. A certificate will be able to be issued under new section 206XC, to be inserted into the Navigation Act by item 70.

Item 58 inserts the word "or" at the end of each of paragraphs 190(a), (b) and (c) of the Navigation Act. These are simply drafting amendments to reflect modern drafting style and do not affect the meaning.

Item 59 amends section 190 of the Navigation Act to allow AMSA to appoint, as surveyors, persons who are skilled with regard to assessing the living and working conditions on board ships. This will allow for the appointment as surveyors of persons who are able to inspect ships to determine if they comply with the requirements of the MLC.

Items 60 to 62 amend section 190AA of the Navigation Act to empower surveyors appointed by AMSA under section 190 to go on board a ship at any reasonable time and to inspect the ship to ascertain whether the ship complies with the provisions of the Navigation Act and regulations and orders relating to living and working conditions of the seamen and master on the ship and to require the production of any certificates or declarations relating to those conditions issued in respect of the ship.

Item 63 adds new subsection 190A(1AA) to the Navigation Act to provide that, if the living and working conditions on board a ship in respect of which a maritime labour certificate or an interim maritime labour certificate has been issued change so that they do not comply with the requirements of the Navigation Act, then written notice of the change must be given to AMSA as soon as practicable.

Item 64 amends paragraph 190A(1A)(a) of the Navigation Act to add a reference to new subsection 190A(1AA). The effect of this amendment will be that failure to give notice as required under new subsection 190A(1AA) will result in the master and the owner of the ship each being guilty of a strict liability offence with a maximum penalty of 10 penalty units in respect of each day during which notice is not given.

The offence is directed at the owner and the master of a ship. It is well established in shipping law that offence provisions should apply collectively to the master and the owner. There is precedent in both State and Commonwealth legislation as well as in international law. Such persons have shared responsibility and both can be expected to be fully aware of the requirements of the legislation (and of the MLC) and, in particular, the requirement to notify AMSA of changes to the living and working conditions of the ship. While the master has immediate responsibility for the ship, he or she is subject to the direction of the shipowner. Shared liability is consistent with offence provisions in other parts of the Navigation Act and in other maritime legislation such as the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

It is appropriate that strict liability apply to this offence as it will be easy for the master or owner to show if he or she has given the required notice to AMSA. Further, strict liability will discourage careless non-compliance as well as intentional or reckless breaches of the requirement to give written notice to AMSA of changes to living and working conditions on board a ship. A defence of honest and reasonable mistake of fact will be available in relation to this offence. Applying strict liability to this offence is consistent with other offences of this nature.

Item 65 inserts new subsection 190(2A) into the Navigation Act to allow AMSA to cancel a maritime labour certificate issued under new section 206XC or an interim maritime labour certificate issued under regulations made under new section 206XE in respect of a ship if AMSA believes that any of the following apply:

- a report referred to in paragraph 206XC(1)(c) or (2)(c) which indicates that the ship complies with the requirements of the Navigation Act in relation to the living and working conditions on board the ship has been fraudulently or erroneously made or obtained;
- the maritime labour certificate or interim maritime labour certificate was issued upon false or misleading information; or
- since the certificate or interim certificate was issued, the living and working conditions on board the ship have changed so that they do not comply with the requirements of the Navigation Act.

In addition, if AMSA considers that, since the maritime labour certificate or interim maritime labour certificate was issued in respect of a ship, the living and working conditions on board the ship have been changed so that they do not comply with the requirements of the Navigation Act, AMSA may detain the ship until it is satisfied that those conditions comply with the requirements of the Navigation Act.

Items 66 and 67 amend subsections 190A(3) and (4), respectively, of the Navigation Act consequential upon the insertion of new subsection 190A(2A) by item 65.

Item 68 inserts a new section 191AA into the Navigation Act to provide that the regulations may give effect to the MLC. In accordance with subsection 425(1AA), AMSA may, by legislative instrument, make orders to give effect to the MLC (except for the imposition of penalties). Further, the regulations can apply to ships to which the MLC does not otherwise apply by reason of the particulars of the ship or class of the ship or of the voyage or class of voyages in respect of which the ship is engaged. Regulations and orders giving effect to the MLC will not apply to the extent that a law of a State or the Northern Territory gives effect to the MLC in relation to ships referred to in paragraph 2(1)(a), (b), (ba), (c) or (d) of the Navigation Act.

Item 69 amends subsection 191A(1) of the Navigation Act to provide that, if there is provision for a discretion in the MLC, then, in making regulations relating to the matter concerned, the Governor-General may make such provision in the exercise of that discretion as he or she thinks proper.

Item 70 inserts a new Division 2D into Part IV of the Navigation Act. The new Division, which is entitled "Declarations of maritime labour compliance and maritime labour certificates", includes new sections 206XA to 206XI.

New section 206XA applies to Australian registered ships with a gross tonnage of 500 or more and which are engaged on international voyages. Such a ship is required to have on board a maritime labour certificate, an interim maritime labour certificate or a certificate of exemption issued under new section 206XH exempting the ship from all requirements of the Navigation Act (which includes regulations and orders made under the Act) relating to living and working conditions on board the ship.

If such a ship is taken or permitted to be taken to sea without a required certificate on board, the owner and the master will each be guilty of an offence with a maximum penalty of imprisonment for four years.

The offence is directed at the owner and the master of a ship. It is well established in shipping law that offence provisions should apply collectively to the master and the owner. There is precedent in both State and Commonwealth legislation as well as in international law. Such persons have shared responsibility and both can be expected to be fully aware of the requirements of the legislation (and of the MLC) and, in particular, the requirement to comply with conditions set out in a certificate of exemption. While the master has immediate responsibility for the ship, he or she is subject to the direction of the shipowner. Shared liability is consistent with offence provisions in other parts of the Navigation Act and in other maritime legislation such as the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Failure to have a relevant certificate on board is an indication that the ship does not comply with the required working and living conditions. It is potentially a very serious occupational health and safety issue and can lead, for example, to officers who are responsible for the navigation of a ship working while fatigued, a potential cause of a major accident and consequent loss of life of, or injury to, crew members. The grounding of the *Shen Neng I* on the Great Barrier Reef in April 2010 was apparently the result of the fatigue of the Chief Mate. The final report into this incident by the Australian Transport Safety Bureau indicated that the Chief Mate had only 2½ hours of broken sleep in the previous 38½ hours.

Accidents can also result in serious environmental damage and pollution of the marine environment resulting from the spill of oil or other hazardous and noxious substances, or damage from a ship's anti-fouling paint being scraped off, as was the case following the grounding of the *Bunga Teratai Satu* in the Great Barrier Reef in May 2001.

The maximum penalty of 4 years imprisonment is consistent with penalties for similar offences in other sections of the Navigation Act including sections 206S and 206T which provide for a maximum penalty of 4 years imprisonment for taking a passenger ship and a cargo ship, respectively, to sea without required certificates.

New section 206XB provides for the issue of declarations of maritime labour compliance by AMSA and by a survey authority¹ in respect of ships registered in Australia.

Subsection 206XB(1) provides for the following steps before AMSA can issue a declaration of maritime labour compliance:

- Parts I and II of the declaration have been completed by AMSA and the shipowner respectively;
- a surveyor (appointed under section 190 as amended by item 59) has inspected the ship;
- AMSA has received a report of the inspection; and
- AMSA is satisfied that the measures set out in Part II of the declaration comply with the requirements of the Navigation Act (which includes regulations and orders under the Act) relating to compliance with requirements set out in Part I of the declaration.

Subsection 206XB(2) provides for the following steps before a survey authority can issue a declaration of maritime labour compliance:

- Parts I and II of the declaration have been completed by AMSA or the survey authority and the shipowner respectively;
- the ship has been inspected by or on behalf of the survey authority;
- the survey authority has received a report of the inspection; and
- the survey authority is satisfied that the measures set out in Part II of the declaration comply with the requirements of the Navigation Act (which includes regulations and orders under the Act) relating to compliance with requirements set out in Part I of the declaration.

A declaration of maritime labour compliance is required to be in the prescribed form. The prescribed form will follow the model set out in Appendix A5-II of the MLC.

New subsection 206XB(4), which advises that a declaration of maritime labour compliance issued under new section 206XB is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*, is merely declaratory of the law. It is included to assist readers of the Navigation Act, as amended by this Bill.

New section 206XC provides for the issue of maritime labour certificates by AMSA and by a survey authority in respect of ships registered in Australia.

Subsection 206XC(1) provides for the following steps before AMSA can issue a maritime labour certificate:

- a declaration of maritime labour compliance is in force in respect of the ship;
- a surveyor (appointed under section 190 as amended by item 59) has inspected the ship;
- AMSA has received a report of the inspection; and
- AMSA is satisfied that the ship complies with the requirements of the Navigation Act (which includes regulations and orders under the Act) relating to living and working conditions on board the ship (other than any conditions in respect of which AMSA has exempted the ship).

¹ Subsection 6(1) of the Navigation Act defines *survey authority* to mean "a corporation or association for the survey of shipping, approved by the Authority [ie, AMSA], in writing, for the purposes of this definition".

Subsection 206XC(2) provides for the following steps before a survey authority can issue a maritime labour certificate:

- a declaration of maritime labour compliance is in force in respect of the ship;
- the ship has been inspected by or on behalf of the survey authority;
- the survey authority has received a report of the inspection; and
- the survey authority is satisfied that the ship complies with the requirements of the Navigation Act (which includes regulations and orders under the Act) relating to living and working conditions on board the ship (other than any conditions in respect of which AMSA has exempted the ship).

A maritime labour certificate is required to be in the prescribed form. The prescribed form will follow the model set out in Appendix A5-II of the MLC.

New subsection 206XC(4), which advises that a maritime labour certificate issued under new section 206XC is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*, is merely declaratory of the law. It is included to assist readers of the Navigation Act, as amended by this Bill.

New section 206XD provides that a maritime labour certificate remains in force for the period specified in the certificate. That period must not exceed the period prescribed in the regulations.

New section 206XE provides that the regulations may make provision for and in relation to interim maritime labour certificates. The matters that those regulations may provide for include the issuing and duration of interim maritime labour certificates.

Interim maritime labour certificates are likely to be issued only to new ships on delivery, when a ship changes its country of registration, or when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner. In accordance with paragraph 6 of Standard A5.1.3 of the MLC, an interim maritime labour certificate may be issued for a period of up to six months.

New section 206XF lists circumstances when a maritime labour certificate or an interim maritime labour certificate ceases to be in force. These are:

- the ship in respect of which the certificate was issued ceases to be registered in Australia;
- there is a change in ownership of the ship;
- in circumstances referred to in new subsection 190A(3) (inserted by item 66); and
- in circumstances prescribed in the regulations.

New section 206XG requires the master of a ship to ensure that a copy of a declaration of maritime labour compliance and a maritime labour certificate or an interim maritime labour certificate in respect of the ship is posted up in a part of the ship to which all crew members have access and that copies are available for examination on request by any person on board the ship.

New section 206XH provides that the regulations may provide for the granting by AMSA of exemptions from the requirements of the Navigation Act (which includes regulations and orders under the Act) that relate to working and living conditions on board the ship. AMSA may issue a certificate of exemption specifying the requirements in respect of which the ship is exempt and any associated conditions. If the owner or master of a ship is not satisfied with the conditions, if any, attached to a certificate of exemption, the master or owner may, in accordance with section 377D of the Navigation Act, apply to the Administrative Appeals Tribunal (AAT) for a review of the conditions.

If conditions set out in a certificate of exemption are not complied with, the master and owner each commit an offence with a maximum penalty of imprisonment for four years.

The offence is directed at the owner and the master of a ship. It is well established in shipping law that offence provisions should apply collectively to the master and the owner. There is precedent in both State and Commonwealth legislation as well as in international law. Such persons have shared responsibility and both can be expected to be fully aware of the requirements of the legislation (and of the MLC) and, in particular, the requirement to comply with conditions set out in a certificate of exemption. While the master has immediate responsibility for the ship, he or she is subject to the direction of the shipowner. Shared liability is consistent with offence provisions in other parts of the Navigation Act and in other maritime legislation such as the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Failure to comply with the conditions of an exemption is potentially a very serious occupational health and safety issue and can lead, for example, to officers who are responsible for the navigation of a ship working while fatigued, a potential cause of a major accident and consequent loss of life of, or injury to, crew members. The grounding of the *Shen Neng I* on the Great Barrier Reef in April 2010 was apparently the result of the fatigue of the Chief Mate. The final report into this incident by the Australian Transport Safety Bureau indicated that the Chief Mate had only 2½ hours of broken sleep in the previous 38½ hours.

Accidents can also result in serious environmental damage and pollution of the marine environment resulting from the spill of oil or other hazardous and noxious substances, or damage from a ship's anti-fouling paint being scraped off, as was the case following the grounding of the *Bunga Teratai Satu* in the Great Barrier Reef in May 2001.

Due to the serious nature of the offences as described above, the maximum penalty of four years imprisonment is appropriate. This penalty is consistent with existing penalties for similar offences for failure to comply with conditions of exemptions in sections 188, 206H and 221 of the Navigation Act.

New section 206XI applies when an Australian registered ship with a gross tonnage of 500 or more seeks clearance from a Customs officer to depart from an Australian port on an international voyage. The Customs officer may require the production of the maritime labour certificate or interim maritime labour certificate that applies to the ship or a certificate of exemption that exempts the ship from all the requirements of the Navigation Act (including regulations and orders made under the Act). If neither certificate is produced as required, the Customs officer may refuse to grant clearance and the ship may be detained until a certificate is produced.

Item 71 amends subsection 207A(1) of the Navigation Act to provide that, if a ship is of a kind to which the MLC applies or is capable of applying, the ship will be considered to be substandard if it does not comply with the MLC. A ship that is considered to be substandard may be detained under existing subsection 210.

Item 72 amends subsection 290(1) of the Navigation Act consequential upon revised section 46. Section 290 refers to the rate of wages to be paid to seamen not engaged in Australia. Subsection 290(1) currently refers to agreements under section 46. The revised section 46 requires agreements to comply with that section. Subsection 290(1) is therefore being amended to refer to agreements that comply with section 46.

Item 73 repeals paragraph 377C(d) of the Navigation Act consequential upon the replacement of section 46 by a revised section (item 5). Paragraph 377C(d) provides that an application may be made to the AAT for the review of a decision under existing subsection 46(2A) which provides for the approval by AMSA of certain agreements between the master of a ship and AMSA. As there is no provision in the revised section 46 for the approval of agreements by AMSA, paragraph 377C(d) is redundant.

Item 74 amends section 377D of the Navigation Act consequential upon the addition to that section of a new subsection (2) by item 75.

Item 75 adds a new subsection (2) to section 377D of the Navigation Act. Existing section 377D provides for AAT review of various decisions under Part IV of the Navigation Act, including decisions relating to certificates. This will include the review of decisions relating to maritime labour certificates which may be issued under proposed new section 206XC.

The effect of new subsection 377D(2) is that the AAT may also review decisions relating to declarations of maritime labour compliance issued under proposed new section 206XB.

Item 76 amends subsection 397(2) of the Navigation Act to ensure that section 19B of the *Crimes Act 1914* does not apply where notice of changes to a ship or to the working and living conditions on board the ship has not been given as required by section 190A. The effect is that the master or owner of a ship who has been charged with an offence under section 190A cannot be discharged without proceeding to conviction or the charge cannot be dismissed because the court is satisfied, in respect of the charge, that the charge is proved, but is of the opinion, having regard to:

- the character, antecedents, age, health or mental condition of the person;
- the extent (if any) to which the offence is of a trivial nature; or
- the extent (if any) to which the offence was committed under extenuating circumstances;

that it is inexpedient to inflict any punishment, or to inflict any punishment other than a nominal punishment, or that it is expedient to release the offender on probation.

Item 77 repeals and substitutes subsection 410(1) of the Navigation Act. Existing subsection 410(1) requires ships to which Part II of the Navigation Act applies to keep a copy of the Navigation Act on board the ship. New subsection 410(1) extends this requirement to require that a copy of the MLC be available on any such ships to which the MLC applies.

Item 78 repeals subsection 424(5A) of the Navigation Act consequential upon the replacement of section 46 by a revised section (item 5). Subsection 424(5A) provides that the Marine Council may investigate any matter referred to it in accordance with a provision of an agreement under section 46 relating to a code of conduct. As there is no provision for agreements made in accordance with the MLC to refer to codes of conduct, subsection 424(5A) will be redundant when the MLC enters into force for Australia.

Item 79 inserts new paragraphs (ea) and (eb) into subsection 425(1) of the Navigation Act to allow for the making of regulations for and in relation to, respectively, the training and qualifications of masters and seamen, and maximum working hours for masters and seamen.

The current regulation-making power relating to training and qualification and minimum hours of rest do not apply to all crew members. The addition of paragraphs (ea) and (eb) will remove this anomaly.

Part 2 – Amendments relating to vessel traffic services

Item 80 amends the definition of *vessel traffic service* in subsection 411(3) of the Navigation Act. Section 411 provides that the master of a ship is not relieved from responsibility for the conduct and navigation of the ship merely because the ship is subject to vessel traffic management arrangements. Vessel traffic management arrangements are measures that affect a ship's navigation implemented under a vessel traffic service by a person not on board the ship.

The term *vessel traffic service* is currently defined, in part, to mean a navigational service implemented in accordance with guidelines for vessel traffic services adopted by the International Maritime Organization (IMO) on 27 November 1997. In order that vessel traffic services can be implemented in accordance with up-to-date guidelines, the definition is amended to refer to the guidelines adopted by IMO on 27 November 1997, and as amended from time to time.

Item 81 inserts new paragraph (dc) into subsection 425(1) of the Navigation Act to allow for the making of regulations for and in relation to vessel traffic services. The making of regulations under this new provision will facilitate the development of vessel traffic services in environmentally sensitive areas such as the Great Barrier Reef.