



**Australian Shipowners Association**

15 February 2011

Kevin Bodel  
Inquiry Secretary  
Joint Standing Committee on Treaties  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Mr Bodel

**Submission to the Joint Standing Committee on Treaties Inquiry into the Maritime Labour Convention 2006 and Resolution MEPC.186(59) amending the Protocol of 1978 Relating to the International Convention on the Prevention of Pollution from Ships 1973**

Thank you for the invitation for the Australian Shipowners Association (ASA) to participate in the Committee's inquiries into the *Maritime Labour Convention 2006* (MLC) and amendments to the international Convention on the Prevention of Pollution from Ships 73/78 (MARPOL).

*Maritime Labour Convention*

As one of the Government's social partners in matters involving the International Labour Organisation (ILO), ASA has been closely monitoring the progress of the MLC and has a representative present at the ILO's International Labour Conference in Geneva in February 2006, which adopted the MLC. Since that adoption, ASA has worked closely with government departments and written to State and Federal Ministers expressing support for the MLC and encouraging ratification by Australia.

The stated purpose of the MLC is to:

- lay down, in its Articles and Regulations, a firm set of rights and principals relating to the living and working conditions of seafarers on board ships;
- to allow, through the Code, a considerable degree of flexibility in the way Member States implement those rights and principals; and
- to ensure that the rights and principles are complied with and enforced by ILO member states.

ASA believes that MLC and in particular Australia's ratification will:

- provide additional levels of protection to a potentially vulnerable workforce;

- benefit quality shipowners by addressing some of the areas of competitive disadvantage that exist in the shipping industry by levelling the playing field of international standards of employment; and
- assist in providing certainty and assurance to charterers and other stakeholders that basic social standards can be assessed and enforced.

ASA has examined copies of the National Interest Analysis (NIA) and the Regulatory Impact Statement (RIS) regarding the MLC for the purposes of this submission, as well as giving consideration to the text of the MLC from a shipowner's perspective. We have previously provided feedback to the Department of Education, Employment and Workplace Relations (DEEWR) on some aspects of the MLC that particularly affect Australian shipowners.

This submission will replicate some of the feedback that has already been provided to appropriate government departments, although ASA acknowledges that in relative terms the impact on Australian shipowners will be fairly minimal as Australia has already implemented many requirements of the MLC through its domestic legislation. However, we make the following comments:

#### Definitions:

We note that Flag State administrations have some flexibility in how the definitions in the MLC are to be reflected in legislation, and we look forward to working with regulators to ensure that definitions in domestic legalisation reflect the intentions of the MLC.

#### Title 1 – Minimum Requirements for Seafarers to Work on a Ship

ASA notices that the RIS indicates that Australia considers itself to be largely compliant with Title 1 of the MLC. ASA agrees that Australia is largely compliant with its obligations under Title 1 but is interested as to what is meant by “the technical amendment to the Marine Orders as governments do not operate seafarer recruitment and placement services, but these are operated by a small number of private agencies whose primary purpose is the recruitment and placement of seafarers” which is set out at paragraph 57 of the RIS.

DEEWR prepared a Law and Practice Report, referred to in the NIA and RIS, which identifies the obligation to ensure that employees receive their award and legislative entitlements, rests with the employer, and not a recruitment agency. ASA would query whether there is practical ability to enforce such regulations against an employer who is based overseas. ASA queries whether this regulation was intended to be more broadly applied (i.e. to crew management agencies who provide labour and do not necessarily employ seafarers themselves) than the Commonwealth's interpretation would suggest.

#### Title 2 – Conditions of Employment

The comments under Title 2 of the RIS reflect that there are some compliance gaps with respect to crew coverage, in particular with regard to hours of work and rest and payment of compensation for foundering of a vessel, and we look forward to receiving further advice from the Commonwealth on this.

### Title 3 – Accommodation, Recreational Facilities, Food and Catering.

These provisions apply to ships constructed on or after the date the MLC comes into force. The MLC requires (amongst other things) each seafarer to be provided with an individual sleeping room (on certain types of vessels). This could, potentially, adversely impact on the ability of vessel operators to provide cadets/trainees with appropriate sea time to gain their qualifications. The Government has indicated that it intends trainees and cadets to fall under the definition of “seafarer” for MLC purpose. We understand that further consideration is being given to the concern identified around training berths, although there is the ability under the MLC for the Flag State to exempt some vessels from the accommodation requirements.

In addition, we note that it is the Government’s intention to amend the *Navigation Act 1912* (Cth) (see paragraph 84 of RIS) to impose an obligation to provide food to seafarers free of charge. This paragraph also contends that this will simply codify existing industry practice. While it may be the case that many seafarers are provided with meals on board vessels, there are taxation implications that accompany this (for example, fringe benefit tax obligations). ASA submits that the Government must ensure that any amendments will not result in taxation consequences that have the potential to adversely financially impact both the employer and the seafarer. ASA considers that the Government needs to provide clarification on this issue.

### Title 4 - Health Protection, Medical Care, Welfare and Social Security Protection

The ASA agrees that legislation currently in place largely complies with the MLC obligations contained in this Title, save for the mandatory requirement to make essential dental care available to seafarers.

### Title 5 – Compliance and Enforcement

The Commonwealth has indicated that AMSA will delegate many MLC flag State requirements to Classification Societies and in fact, according to paragraph number 94 of the RIS, the statutory certification and survey process has already been delegated to 8 Classification Societies.

ASA has heard of serious concerns raised by other national shipowner associations worldwide on the understanding exhibited by many Classification Societies regarding the MLC. Classification Societies are used to dealing with IMO conventions and there are serious concerns regarding their ability to understand the MLC adequately. ASA shares these concerns and will seek clarification from AMSA about the capability of the Classification Societies that AMSA intends to or has already delegated some responsibilities to. We also note the additional extra cost for inspections is anticipated to be approximately \$7500 for a ship in each five year inspection cycle. Whilst the RIS stated that added requirements in relation to compliance will not result in substantial increases in costs for Australian ship-owners, any increases are still an imposition on a rapidly diminishing fleet which are already burdened with operating costs well in excess of international norms.

*Resolution MEPC. 186(59) amending the Protocol of 1978 Relating to the International Convention on the Prevention of Pollution from Ships 1973*

ASA members are aware of the amendments to MARPOL 73/78 regarding ship to ship transfers of oil and have no concerns with the implementation of amendments.

Indeed many companies already include the requirements of the recent amendments to MARPOL in their company operating policies.

Should you have any queries in relation to the comments made in this submission on the MLC, please do not hesitate to contact Sarah Cerche on 03 96476005 or at [sarah.cerche@asa.com.au](mailto:sarah.cerche@asa.com.au). Alternatively, if your queries relate to the amendments to MARPOL 73/78, please contact Angela Gillham on 03 9647 6003 or [angela.gillham@asa.com.au](mailto:angela.gillham@asa.com.au).

Kind regards,

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Australian Shipowners Association