



SUBMISSION NO. 5
The Maritime Union Of Australia
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4 February 2011

The Hon Kelvin Thompson MP
Chair Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Chair

**Re: MUA Submission - Joint Standing Committee on Treaties – Inquiry into ILO
Maritime Labour Convention**

I am pleased to provide a submission from the Maritime Union of Australia (MUA) regarding the JSCOT Inquiry into the ILO Maritime Labour Convention.

I look forward to the opportunity to participate in public hearings and to being advised on the report of the Committee.

Yours sincerely

Paddy Crumlin
National Secretary



MARITIME UNION OF AUSTRALIA (MUA)

**SUBMISSION TO PARLIAMENTARY JOINT
STANDING COMMITTEE ON TREATIES
(JSCOT)**

**INQUIRY INTO ILO THE MARITIME LABOUR
CONVENTION (MLC)**

4 February 2011

1. Introduction

- 1.1 The Maritime Union of Australia (MUA) represents over 11,000 workers in the shipping, offshore oil and gas, stevedoring, port services and diving sectors of the Australian maritime industry.
- 1.2 Members of the MUA work in a range of occupations across all facets of the maritime sector including on coastal cargo vessels (dry bulk cargo, liquid bulk cargo, refrigerated cargo, project cargo, container cargo, general cargo) as well as salvage vessels, passenger vessels, towage vessels, ferries, cruise ships and dredges as well as in stevedoring and ports. In the offshore oil and gas industry, MUA members work in a variety of occupations on vessels which support offshore oil and gas exploration e.g. seismic vessels; in offshore oil and gas construction projects including pipe-layers, cable-layers, rock-dumpers, dredges, accommodation vessels, support vessels; and during offshore oil and gas production, on drilling rigs, Floating Production Storage and Offtake tankers (FPSOs), FSOs and support vessels.
- 1.3 MUA members work on vessels engaged in international freight transportation such as iron ore, bauxite and LING.
- 1.4 The MUA is an affiliate of the International Transport Workers Federation (ITF) which represents 781 unions covering over 4,600,000 transport workers in 155 countries. It is one of several Global Union Federations allied with the International Trade Union Confederation (ITUC). The National Secretary of the MUA, Paddy Crumlin is also International President of the ITF.

2. Background

- 2.1 The MUA welcomes the opportunity to make a submission to the JSCOT Inquiry into the ILO MLC.
- 2.2 The MUA, and National Secretary Paddy Crumlin in particular, played a lead and pioneering role in getting the Convention approved in February 2006. The union had devoted some five years of effort to that point, at times against the strong opposition of the then Howard Government, where on many occasions in the difficult committee negotiations, there was no Australian Government representation.
- 2.3 Since then, Paddy Crumlin has been an ITF Workers Representative at several ILO Tripartite Experts meetings.
- 2.4 The coming into force of the Convention will represent a major watershed in international shipping, and will have profound implications for the regulation of shipping and of seafarers across the globe.
- 2.5 It will also be an important feature of the revitalisation of Australian shipping being progressed by the Australian Government following a Parliamentary Inquiry into Australian shipping policy and regulation and a subsequent policy commitment during the 2010 Federal election which was followed by the release of a Government Discussion Paper entitled Reforming Australia's Shipping on 1 December 2010.

3. Comments on the National Interest Analysis (NIA)

- 3.1 We are fully supportive of Government efforts to ensure the Convention is ratified by Australia as soon as possible. There are several reasons why expeditious ratification is important:
- 3.1.1 First and foremost, it will enable Australia to commence implementation, irrespective of the status of the Convention internationally, and as a result will indicate Australian commitment to improve labour standards in the domestic and international spheres and promote decent work for seafarers.
 - 3.1.2 Second, it will provide a practical demonstration of Australian commitment to the Convention that will help consolidate Australian standing in the ILO, which was diminished during the period of the Howard Government, and which has had to be rebuilt under the Rudd and Gillard Governments.
 - 3.1.3 Third, it will show regional leadership consistent with the Australian Government's partnership with the ILO in promoting decent work in the Pacific region and Australia's regional development and regional security strategy.
 - 3.1.4 Fourth, ratification of the Convention is an important adjunct to reform of the Australian shipping industry, and other maritime reforms commenced by the Government, which aims to improve the competitiveness of Australian shipping, both domestically and internationally. Just as the Convention aims to lift the standards of international shipping, thus reducing the competitive gap between the quality end of the shipping industry and the substandard end of the industry, the reform of Australian shipping also aims to reduce the competitive gap between domestic and international shipping, this improving competitiveness in the domestic and international freight markets, and providing incentives for investment in Australian shipping. The Government and COAG commitment to move to a single national regulator for maritime safety, along with the reform of seafarer qualification and licensing pathways will complement the implementation of the Convention in Australia.

Reasons for Australia to take the proposed Treaty action - Regional leadership

- 3.2 We wish to support and encourage the Australian Government to use its commitment to ratification as part of its strategic engagement around labour standards in the Asia Pacific region.
- 3.3 We note that in April 2010 the former DPM Julia Gillard, and then Employment Participation Minister Mark Arbib, announced that the Australian Government Partnership Agreement with the ILO had been signed at the ILO in Washington.
- 3.4 The Partnership Agreement (to run over 5 years 2010 to 2015) provides \$15 million funding (from the Australian Government) in the first two years, aimed at supporting economic and employment growth, increasing labour standards

and improving living conditions by supporting quality jobs, throughout the region. The Government announcement advised that the Agreement will fund, inter alia, a Pacific growth and employment plan.

- 3.5 Arising from that plan is the Pacific Growth and Employment Project, which is a joint initiative by the ACCI and the ACTU. The objectives of the project include economic sustainability and local employment growth, including the related issues of skills, infrastructure and regulation.
- 3.6 The key initiative arising from the Pacific Growth and Employment Project has been the Pacific Growth and Employment Executive Dialogue held in Sydney on 27 August 2010. The purpose of the Dialogue was to identify potential initiatives which will ensure sustainable growth for companies involved in transport in the Pacific, along with growth in employment opportunities for local people in the Pacific Islands. The transport industry, including cruise lines in the shipping industry, has been selected as the pilot for the first stage of the Pacific Growth and Employment Project.. Agreement between unions and employers was reached to move forward in a cooperative way. The Convention will be help underpin the basis for the shipping component of the project.

Implementation

- 3.7 We strongly encourage Australian Governments to commence implementation of the Convention upon ratification, even if the Convention is not in force and not legally binding, internationally, at that time.
- 3.8 By issuing valid documentation and commencing a process of Port State Control inspection, Australia will be signalling to the global shipping industry its determination to fully implement and comply with the provisions of the Convention. Any early implementation will also provide useful advice on any teething issues that might arise, enabling resolution before full implementation globally.

Costs

- 3.9 The union is concerned that the NIA downplays the compliance and enforcement role of the national regulator, AMSA, and that there is no critical analysis of the actual costs of performing the compliance and enforcement functions necessary to effectively implement the Convention.
- 3.10 The NIA does not appear to have factored in establishment costs or promotion costs, nor fully appreciated the training costs that will be necessary to implement the Convention upon ratification.
- 3.11 It is our assessment that the Convention cannot be implemented with AMSAs existing inspectorial staffing levels, yet there is no mention of any additional staffing resource requirements.
- 3.12 The NIA makes no mention of any additional levy or increase in current levies that will be necessary to provide the resources to effectively implement the Convention.

3.13 Furthermore, the NIA appears to have neglected the Governments shipping and maritime reform program, which will result in additional ships falling under AMSAs compliance and enforcement responsibility, as a result of:

3.13.1 Firstly, establishment of AMSA as the sole national regulator of all commercial vessels under the single national jurisdiction; and

3.13.2 Secondly, the very real prospect of a considerable number of ships registering under the Australian International Register as proposed by the Government as part of shipping reform. These ships will require application of the Convention as part of AMSAs Flag State Control inspection regime.

3.14 We urge the Committee to fully explore AMSAs compliance and enforcement capability, and resourcing to undertake that capability, aimed at ensuring there is rigorous implementation of the Convention, both Flag State and Port State Control functions.

4. Comments of Annexure 3 of the NIA (Key Obligations of the MLC Regulations and Code)

4.1 The union notes that Title 5 (Compliance and enforcement) requires the regulator to establish, in relation to its Flag State inspection regime, a process for receiving and responding to complaints or requests for information.

4.2 At this point in time the social partners have not been provided with advice on the process which AMSA and/or jurisdictional regulators plan to implement to deal with complaints and requests for information, and this is not addressed in the NIA or RIS.

4.3 We think that is a major omission, particularly given that the NIA and RIS both indicate that the primary indicator of compliance will be a paper based assessment, relying on the existence and validity of the Maritime Labour Certificate and Declaration of Maritime Labour Compliance.

4.4 The paper based compliance process will be heavily reliant on complaints and requests for information as triggers to an actual inspection, and an actual inspection will be required to determine genuine compliance.

4.5 Furthermore, we advocate the extension of the complaints and requests for information process to Port State Control functions as well. We believe this will be necessary to complement the work of the ITF Inspectorial regime, which is the main compliance and enforcement mechanism for labour standards in international shipping at present. The ITF process and the regulator processes will need to work in harmony if the Convention is to be fully implemented and if disputation regarding its application is to be minimised.

5. Comments on the Regulatory Impact Statement (RIS)

Part 2: Objectives of the MLC

- 5.1 The union notes and agrees with the summary of the objectives of the MLC set out in Part 2 of the RIS. The summary is indicative of just how comprehensive and pioneering the MLC is, and demonstrates what can be achieved through international institutions like the ILO. It is a strong reinforcement of the significance of tripartism in labour relations.
- 5.2 We are therefore disappointed that the Australian Government has not adequately reflected these objectives in proposed amendments to the *Navigation Act 1912* (Navigation Act) as set out in an exposure draft Navigation Amendment Bill 2011.
- 5.3 We believe at the very least that the Navigation Act should be amended by inclusion of a new Subsection 2, Objects, which inter alia reflects the objectives as set out in Para 28 of the RIS and in particular restates the rights of seafarers as set out in the Convention and which underpins its very existence and rationale.
- 5.4 We urge the Committee to recommend that the Government make such an amendment to the Navigation Act.

Part 4: Impact on Australia's trade and competitiveness

- 5.6 Further to our comments on competitiveness at Para 3.1.4 above we submit that the ability of Australia to attract foreign investment to the Australian shipping industry through the development of the Government's proposed Australian International Shipping Register will require investors to be satisfied that Australia has ratified the Convention and is rigorously enforcing its provisions.
- 5.7 Ratification and compliance/enforcement will be a key quality assurance test for foreign investment.

Part 4: Impact on Australia's leadership role in the Asia Pacific region

- 5.8 Further to our comments at Paras 3.2 to 3.6 above, we fully concur with and support the arguments for ratification based on Australia's current regional leadership as reflected through AusAID funding programs in the region and through participation in the Indian Ocean (IO) and Asia Pacific (Tokyo) MOUs.
- 5.9 These are critical elements that underpin the role of shipping in Australia's trade with Asia and Australia's contribution to security in mineral, energy and food supply for Asian economies.

Part 5: Impact analysis of Australia's ratification of the MLC

- 5.10 The union does not agree with the statement at Para 47 that the impact of ratification will be minimal. Australia has the fifth largest shipping task in the world, and with the projected increase in resource exports, this will increase. This means that there are an increasing number of foreign flagged ships visiting Australia involved in international trade, covering bulk commodities, break bulk such as vehicles and mining equipment and containers.

- 5.11 If Australia is to play a leadership role in implementation and in the rigour of that implementation, and given the increasing role of shipping in Australia's trade, we believe the impact of ratification will be substantial.
- 5.12 It is in this context that we urge the Committee to satisfy itself that AMSA has the resourcing levels and expertise to fully implement the Convention in fulfilling the Objectives as set out in Para 28.

Title 2: Conditions of employment - manning

- 5.13 We note that at Para 59 there is an implication that the States and NT will retain responsibility for manning committees under the single national jurisdiction. However, the Commonwealth has been unable to confirm, in response to a specific request by the union, that the State and NT manning committees will be retained.
- 5.14 We urge the Committee to ensure the Commonwealth clarifies this important function relating to labour standards, particularly given the proposed changes to the National Standard for Commercial Vessels being proposed by the National Marine Safety Committee which is yet to be considered by Workplace Relations Ministers Council.
- 5.15 The manning requirements on non SOLAS vessels covered by the MLC will be an important complement to AMSAs issuing of Minimum Safe Manning Documents in accordance with the IMO Guidelines, and will become increasingly important once an Australian International Register is established as proposed by the Australian Government.

Title 2: Conditions of employment – workers' compensation and OHS

- 5.16 We are concerned that the Commonwealth, at Para 64, is citing as evidence of compliance the application of the Seafarers Rehabilitation and Compensation Act 1992 and Occupational Health and Safety (Maritime Industry) Act 1993 when the process of maritime reform will delink the application of both those Acts, and no alternative application has yet been advised to the social partners.
- 5.17 It may well be that the rights of certain seafarers are diminished as a result of a change in the scope of application of these Acts.
- 5.18 Furthermore, the Australian Government is yet to repeal and replace a Ministerial Direction issued under the Howard Government that has enable exemptions for significant numbers of Australian seafarers on Flag State ships to have their workers' compensation entitlements severely diminished.
- 5.19 We urge the Committee to ensure that the Australian Government clarify its intentions on application of the Seafarers and OHS (MI) Acts and confirm that it intends to repeal and replace the Ministerial Direction impacting on Section 20A exemptions under the Seafarers Act.

Title 5: Compliance and enforcement

- 5.20 We note with some concern that while ships of 200-500 GT not engaged in international voyages are not required to have MLC mandated certification, the RIS does not provide for an alternative compliance regime for those ships.
- 5.21 We urge the Committee to ensure that AMSA provides details of the compliance regime it intends putting in place for such ships.

Australian flagged vessels – role of Recognised Organisations (ROs)

- 5.22 We urge the Committee to recommend that the authorisation process and authorisation and audit process for ROs be published for purposes of transparency.