

## **Infrastructure and Communications Committee**

### **Submission from the Department of Infrastructure and Transport on the Navigation Amendment Bill 2011**

The Navigation Amendment Bill 2011 (the Bill) amends the *Navigation Act 1912* (Navigation Act) to:

- ensure that the Navigation Act is consistent with the International Labour Organization (ILO) Maritime Labour Convention (MLC) in Australia; and
- make some minor amendments relating to vessel tracking services<sup>1</sup>.

The purpose of this submission is to provide background information about how the MLC was developed and adopted by the ILO and to outline the extensive consultation process with all stakeholders that has taken place in Australia since the adoption of the MLC in 2006 to ensure that ratification of the MLC can be achieved and is in Australia's best interest.

This submission also addresses the concerns raised in the dissenting JSCOT report.

The following information is provided in support of the MLC aspects of the Bill:

#### The Maritime Labour Convention

The MLC is an international global maritime priority, setting minimum requirements for seafarers to work on a ship including conditions of employment, hours of work and rest, accommodation, recreational facilities, food and catering, occupational health and safety protection, medical care, welfare and social security protection.

Though the vast majority of Australian seafarers already benefit from terms and conditions of employment that exceed the minimum standards outlined in the MLC, the ratification of the MLC will benefit both seafarers and shipowners by ensuring that there is a level playing field across the global maritime industry.

The MLC will ensure that best practice shipowners do not face unfair competition from ships providing substandard conditions. It attempts to achieve this through the equal treatment of ships in the enforcement of international standards.

#### Background to the MLC

The MLC was adopted by the 94<sup>th</sup> (Maritime) Session of the International Labour Conference on 23 February 2006 with support from all parties<sup>2</sup>, that is, government, employer and employee representatives. The Conference which adopted the MLC was attended by 1,135 representatives from 106 countries. Most delegations included government, employer and employee representatives, reflecting the tripartite nature of ILO negotiations.

The MLC consolidates 68 ILO maritime instruments adopted since 1920 and replaces them with a single coherent instrument that ensures contemporary and enforceable standards in the

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<sup>1</sup> Vessel tracking services (VTS) are used to monitor the positions of ships. Amendments contained in the Bill are intended to facilitate the extension of the existing VTS in the Great Barrier Reef to the southern part of the Great Barrier Reef which will take effect from 1 July 2011.

<sup>2</sup> The result of the vote was: 314 votes in favour, 0 against, with 4 abstentions. See: <http://www.ilo.org/public/english/standards/realm/ilc/ilc94/pr-17.pdf>

international maritime sector. In developing the MLC, the ILO has created a global framework on international maritime labour issues. The MLC is designed as a fourth pillar of international maritime law, along with three other major instruments: the International Convention for the Safety of Life at Sea; the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers; and the International Convention for the Prevention of Pollution from Ships. All three of these instruments are in force in Australia. The MLC, as the fourth pillar, will further promote quality shipping and safety at sea and is expected to achieve a similar level of near-universal ratification as these three instruments.

All Australian delegates (two government, one employer and one worker) voted in support of the adoption of the MLC.<sup>3</sup>

The MLC will come into force internationally 12 months after it is ratified by 30 ILO member countries, representing a total share of at least 33 per cent of world gross shipping tonnage. To date, 12 countries<sup>4</sup> have ratified the MLC, accounting for approximately 48% of world shipping tonnage. As such, the tonnage requirement has been met, but the MLC must be ratified by 18 more countries before it comes into force.

It is not possible to know exactly when this second requirement will be met; however, the ILO remains optimistic that the requisite threshold number of countries to ratify the MLC will be achieved in 2011, which would mean that the MLC would enter into force sometime in 2012.

It is important that Australia is among the first 30 countries in the world to ratify the MLC, to provide Australia's shipowners and seafarers not only with certainty but to re-position Australia as a best-practice shipping nation.

#### Implications for Australia of ratifying the MLC

The implications of Australia ratifying the MLC were outlined in a National Interest Analysis (NIA) and comprehensive Regulation Impact Statement (RIS) (assessed as compliant with the requirements set out by the Office of Best Practice Regulation) both of which were tabled in the Australian Parliament on 24 November 2010. The NIA and the RIS are attached.

It is important to note that, from a regulatory perspective, **there will be a greater burden on Australian shipowners whose ships travel to ports outside Australia if Australia does not ratify the MLC** before it comes into force in international law.

The MLC requires countries that have ratified the MLC to apply the terms of the MLC to all foreign ships coming into their ports. This is because the MLC contains a "no more favourable treatment" clause which means that all ships entering ports in such countries are required to comply with the MLC, irrespective of whether or not their flag State has ratified the MLC.

Documentation to verify that a ship complies with the MLC can be issued only by the ship's flag State and only if the MLC has entered into force for that State. Such documentation will usually be accepted as *prima facie* evidence that a ship complies with the MLC and the ship is unlikely to be inspected to check compliance.

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<sup>3</sup> The Government was represented by Mr Scott Evans (Assistant Secretary A/g, International Relations, DEEWR) and Mr Mick Kinley (General Manager, Maritime Operations, AMSA). The Employers were represented by Ms Teresa Hatch (Director, Maritime Operations, ASA). The Workers were represented by Mr. Paddy Crumlin (National Secretary, MUA).

<sup>4</sup> Bahamas, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Liberia, Marshall Islands, Norway, Panama, Saint Vincent and the Grenadines, Spain, and Switzerland.

However, if the MLC comes into force internationally before it comes into force for Australia, then Australian ships entering foreign ports will potentially be detained for inspection, regardless of our undisputed high standards. If Australia is not able to issue the requisite certification to Australian flagged ships, then inspection by the receiving port will likely be the only means for the receiving port to ensure that a ship complies with the MLC.

The avoidable delays caused by Australia not being able to issue the requisite documentation to Australian ships entering foreign ports will make it more difficult for Australian shipowners to be competitive against owners whose ships are registered in ratifying countries who will be free from the prospect of such inspections.

Timely ratification of the MLC is therefore critical for Australia to ensure that Australian ships will not be subject to competitive disadvantage relative to those ratifying countries that will have a streamlined certification system in place.

It is also important to note that there is no regulatory impediment to ratifying the MLC because Australia is already substantially compliant with the MLC due to existing maritime, workplace relations, occupational health and safety and compulsory education legislation. The current Bill confers no additional rights on the International Transport Workers Federation (ITF) or any of the Australian maritime unions.

#### Legislative change required to enable Australian ratification of the MLC

Passage of the Bill is a necessary precursor to Australian ratification of the MLC. The amendments to the Navigation Act contained in the Bill do not go beyond the terms of the MLC. Those amendments:

- 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.

The MLC will be implemented as part of AMSA's flag and port State control regimes. Following the passage of the Bill, AMSA will amend several Parts of Marine Orders to give effect to its terms.

#### Consultation

##### *With states and territories*

There has been consultation with state and territory governments on the MLC at both the Ministerial and officials level. States and territories were provided with the opportunity in 2004 to comment on the draft text and to provide information for inclusion in the briefing for the Australian delegation to the ILO Preparatory Technical Maritime Conference to consider the draft text for a consolidated MLC.

States and territories were also provided with the opportunity in 2005 to comment on the draft text of the MLC and to provide information for inclusion in the briefing for the Australian delegation to the 94<sup>th</sup> (Maritime) Session of the International Labour Conference (which was the meeting at which the MLC was adopted).

The status of Australia's compliance with the MLC and prospects for ratification has been regularly considered at the Annual Meetings of Commonwealth, state and territory officials responsible for ILO matters. Specifically, the MLC was discussed at meetings held in August 2005, April 2006, July 2007, September 2008, September 2009 and October 2010. The MLC has further been discussed by senior workplace relations and occupational health and safety representative from every Australian jurisdiction on 23 November 2009, 26 February 2010 and 30 April 2010 and 4 March 2011. Furthermore, the Commonwealth has also convened teleconferences on the MLC with ILO Technical Officers in each state and territory in February 2010, May 2010, June 2010 and July 2010, January 2011, April 2011 and May 2011.

On 22 December 2008, the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, wrote to her state and territory counterparts seeking their views by 30 June 2009 on ratification of the MLC. Law and practice reports were also sought from the state and territory governments.

The MLC was also discussed at the Workplace Relations Ministers' Council (WRMC) on 3 April 2009, where Members agreed that consideration of ratifying the MLC would be pursued as a priority, subject to the resolution of any compliance issues. Further discussion on the MLC took place at the WRMC meetings of 25 September and 11 December 2009.

The MLC was discussed at Australian Transport Council meetings on 25 August 2009 and 5 March 2010. Ministers indicated their support for Australian ratification of the MLC.

Briefing on the MLC was provided to the Standing Committee on Treaties on 17 November 2009.

Officials from the Department of Education, Employment and Workplace Relations and AMSA have attended inter-agency meetings of every state government as well as the Northern Territory Government to assist in undertaking a thorough assessment of compliance gaps with the MLC. The dates on which these meetings were convened are listed below.

- New South Wales Government, on 11 February 2010
- Tasmanian Government, on 17 March 2010
- Victorian Government, on 18 March 2010
- Queensland Government, on 19 March 2010
- Northern Territory Government, on 22 March 2010
- Western Australian Government, on 8 April 2010
- South Australian Government, on 9 April 2010

All state and territory governments have provided in-principle support to ratify the MLC, and provided law and practice reports demonstrating compliance with the MLC

#### *With maritime organisations*

On 22 December 2008, the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, wrote to the Maritime Union of Australia (MUA), the Australian Shipowners Association (ASA), the Australian Chamber of Commerce and Industry (ACCI),

the Australian Council of Trade Unions (ACTU) and the Australian Industry Group (Ai Group) seeking their views on ratification of the MLC by 30 June 2009.

The MUA wrote to the Minister for Employment and Workplace Relations on 19 February 2008 seeking ratification of the MLC by August 2008. The MUA wrote again to the Minister on 17 August 2009 confirming its support for ratification.

The ASA wrote to the Minister for Employment and Workplace Relations on 13 August 2009 strongly urging the Australian Government to ratify the MLC.

The Department of Education, Employment and Workplace Relations has held meetings with the MUA and ASA to progress consideration of Australia's ratification and implementation of the MLC. These meetings were convened on 23 July 2009, 11 May 2010 and 17 August 2010.

The ACTU, ACCI and Ai Group have advised their support for ratification of the MLC through the International Labour Affairs Committee (ILAC) of the National Workplace Relations Consultative Council. Discussion at the ILAC meetings on 3 March and 31 October 2008, 2 March and 23 October 2009, 1 March and 1 November 2010 have focussed on the progress of the ratification process and resolution of compliance issues.

#### *On the exposure draft of the Navigation Amendment Bill 2011*

An exposure draft of the Navigation Amendment Bill 2011 was circulated to the following stakeholders for comment early in 2011 and no significant concerns were raised:

- Australian Shipowners Association
- Shipping Australia Limited
- Maritime Union of Australia
- Australian Institute of Marine and Power Engineers
- Australian Maritime Officers Union
- State/NT Australian Maritime Group members
- ILO technical officers in each state and territory government.

#### Response to the dissenting JSCOT Report

Report 116 of the Joint Standing Committee on Treaties (JSCOT) reported on the MLC and three other ILO treaties. The Committee majority recommended that "binding treaty action be taken" in respect of all four treaties. The Report also contained a Coalition Members and Senators dissenting report. The Department response to the issues concerning the MLC is as follows:

- i. There has been minimal time for JSCOT members to review the report regarding the treaties*

We note that the above issue was raised in the context of three ILO treaties in JSCOT Report 116, including the MLC. The MLC together with the National Interest Analysis and Regulation Impact Statement were tabled in Parliament on 24 November 2010 for JSCOT consideration and JSCOT held the hearing for four ILO treaties on 21 March 2011. Questions on the MLC were taken and answered at the hearing.

*ii. Greater opportunity ought to be given for scrutiny by the relevant state governments*

State and territory governments have been in ongoing and regular dialogue with the Commonwealth about the MLC since 2004. As at 2 June 2011, all State and Territory governments have provided in-principle support to ratify the MLC, and provided law and practice reports demonstrating compliance with the MLC.

*iii. Greater opportunity ought to be given to employer groups*

Australia's most representative shipowner association – the Australian Shipowners Association (ASA) – was involved in the drafting of the MLC through its participation in ILO Maritime Sessions of the International Labour Conference from 2001 to 2006. ASA, as the Australian employer delegate to the International (Maritime) Conference in 2006 that adopted the MLC, voted in support of its adoption.

ASA has worked closely with the Australian Government as one of its key stakeholders to resolve implementation issues related to the MLC.

The ASA remains a champion of the MLC and Australian ratification, having urged Australia to ratify the MLC first in 2006, and again in 2009. On 18 June 2010, the ASA also wrote to the Queensland and Western Australian governments strongly urging them to support the ratification of the MLC to facilitate universal support in every Australian jurisdiction in favour of ratifying the MLC.

*iv. ASA is seriously concerned about their ability to properly train cadets, and it would be premature to recommend binding treaty action be taken until a dialogue with the ASA has been successfully completed.*

In a submission to JSCOT, the ASA did raise some concerns about the costs of training of cadets. It is acknowledged that this is a legitimate concern.

The concern arises from the requirement of the MLC that each seafarer is to be provided with an individual sleeping room. Currently, cadets usually share sleeping accommodation with one other seafarer. As suggested in the ASA submission, a requirement for individual sleeping accommodation "could, potentially, adversely impact on the ability of vessel operators to provide cadets/trainees with appropriate sea time to gain their qualifications".

AMSA is currently preparing amendments to Marine Orders which will implement many of the details of the MLC. In the course of this exercise, AMSA will consider if there is scope in drafting the amendments to allow for the sharing of sleeping accommodation by cadets.

AMSA will also consider the possible use of the general exemption power in the Navigation Act so that the requirement for individual sleeping accommodation does not apply to cadets. Section 421 of the Navigation Act allows AMSA to exempt a ship or class of ships or a person or class of persons from specified provisions of the Act.

**National Interest Analysis [2010] ATNIA 58**

**with attachment on consultation**

**International Labour Organization Convention No. 186: Maritime Labour Convention,  
done at Geneva on 7 February 2006**

**[2010] ATNIF 44**

**Regulation Impact Statement**

**NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY****SUMMARY PAGE****International Labour Organization Convention No. 186: Maritime Labour Convention,  
done at Geneva on 7 February 2006****[2010] ATNIF 44****Nature and Timing of Proposed Treaty Action**

1. The proposed treaty action is ratification of International Labour Organization (ILO) *Maritime Labour Convention, 2006* (No. 186) (the Convention).
2. The Convention was adopted by the 94th (Maritime) Session of the International Labour Conference on 7 February 2006. Article VIII of the Convention provides that it will enter into force 12 months after the date on which instruments of ratification have been registered by at least 30 ILO Members with a total share in the world gross tonnage of ships of 33 per cent. The tonnage requirement has been met (see paragraph 16) and, as at 14 September 2010, 10 ILO member states have ratified the Convention (see [Annexure 1](#)). In 2009, the European Union (EU) Council of Ministers directed EU members to ratify the Convention by the end of 2010. The ILO believes that the further 20 ratifications needed for entry into force are likely to be received by the end of 2010, resulting in the Convention entering into force by December 2011.
3. It is proposed that the Convention be ratified as soon as possible by Australia. It is not possible to make 'reservations' with respect to ILO Conventions. As the ILO is a body in which governments and organisations of employers and workers are voting members, it is considered that making 'reservations' or 'declarations' would undermine the tripartite efforts that have gone into the development of those Conventions and therefore the ILO precludes them from being made.
4. The Convention provides for a period of 12 months to elapse between the date of registration of a State's instrument of ratification and the entry into force of the Convention for that State. The International Labour Office has advised that in an ideal situation, States should be in a position to issue valid documentation to its ships immediately following ratification. Therefore, Australia may not have to wait 12 months after ratification to issue the required documentation necessary to certify Australian-flagged ships as compliant with the Convention so that they are not at risk of detention in overseas ports. It would also enable the Australian Maritime Safety Authority (AMSA) to inspect foreign-flagged ships against the provisions of the Convention. This is currently being explored in consultation with the Australian Government Solicitor and the Office of International Law.

**Overview and National Interest Summary**

5. The Convention sets minimum requirements for seafarers to work on ships. Ratification will ensure decent working and living conditions for seafarers on foreign-flagged ships entering Australian ports and on Australian ships.
6. Failure to ratify the Convention may have significant implications for Australian ships trading internationally. Article VIII of the Convention provides that it is binding only upon ILO Members that ratify the Convention. However, even if Australia does not ratify the Convention, once it enters into force, its terms will be applied to Australian ships entering the ports of States that have ratified it. Should Australia not ratify the Convention, Australian-flagged vessels will not be carrying the necessary documentation to show prima facie compliance with the Convention and may be subject to detention in foreign ports. Additionally, failure to ratify the Convention would also diminish Australia's status as a leading port State and would make it difficult for Australia to assist developing nations in our region to become compliant with the Convention.



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

7. Australian ratification will ensure decent working and living conditions for seafarers on foreign-flagged ships entering Australian ports and on Australian ships. Australian-flagged ships will consequently be protected from unfair competition from foreign ships on which crews have substandard living and working conditions.

8. Article V of the Convention provides that ships must not be placed at a disadvantage because their flag State has ratified this Convention and other flag States have not. In this way, the Convention seeks to create a level playing field by removing incentives to operate ships with poorly qualified crew and who are not afforded decent living and working conditions.

9. The practical implication of Article V is that once the Convention comes into force generally, Australian-flagged ships entering a port of a foreign State which has ratified the Convention - regardless of whether or not Australia ratifies the Convention - will be treated in the same way and will be required to conform to the same standards, as the ships of States that have ratified.

10. The effect of Article V could increase costs for Australian ship owners trading internationally if Australia does not ratify the Convention. Regulation 5.1.3 of the Convention requires ships of 500 gross tons or over to hold a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance. Unless Australia ratifies the Convention and puts in place compliance measures, Australia will lack the authority to inspect and certify these ships. The likely consequence would be additional costs to Australian shipowners, who would be subject to enforcement measures in other countries due to incapacity to provide certification of Australian compliance. Also, the additional costs could encourage Australian shipowners to flag their ships off-shore, in turn affecting seafarers and other workers in the industry, as more Australian-based jobs are lost and those who choose to stay in the industry compete for fewer jobs. Another possible consequence is that Australian shipowners may be forced to pass increased costs onto consumers, diminishing the commercial competitiveness of the Australian shipping industry as it will not be able to compete with ships flagged under a State that has ratified the Convention.

11. Additionally, failing to ratify the Convention would diminish Australia's status as a leading port State and would make it difficult for Australia to assist developing nations in our region to become compliant with the Convention.

12. A key strategic objective of Australia's engagement with the ILO is to provide policy leadership within the Asia-Pacific region in promoting labour standards. Ratification by Australia would encourage other Asia-Pacific countries to consider the merits of applying and enforcing international maritime labour standards.

13. Australia has been a member of the ILO since 1919 and has ratified 59 out of the ILO's 188 Conventions. Forty-seven of these Conventions remain in force for Australia.

## **Obligations**

14. The Convention consolidates 37 separate ILO maritime labour conventions adopted since 1920 and replaces them with a single, coherent instrument. Of the 37, Australia has ratified 13 (see [Annexure 2](#)).

15. The Convention is the most complex and lengthy ILO Convention in history. It is designed to reflect the demands on shipping in a globalised world and has three purposes: (a) to lay down, in its Articles and Regulations, a firm set of rights and principles; (b) to allow, through the Code, a considerable degree of flexibility in the way Members implement those rights and principles; and (c) to ensure that the rights and principles are properly complied with and enforced by Member States.

16. The Convention comprises three different but related parts: the Articles, the Regulations and the Code. The Articles and Regulations set out core rights and principles, while the Code provides the details for their implementation. The Regulations and the Code are organised into general areas under five Titles:

- Title 1: Minimum requirements for seafarers to work on a ship
- Title 2: Conditions of employment
- Title 3: Accommodation, recreational facilities, food and catering
- Title 4: Health protection, medical care, welfare and social security protection
- Title 5: Compliance and enforcement

17. The obligations prescribed by each of these Titles are described in greater detail at [Annexure 3](#).

18. Article II of the Convention limits the scope and application of the Convention to particular ships. The Convention applies to all ships other than:

- ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters (Article II(1)(i));
- ships which navigate exclusively in areas where port regulations apply (Article II(1)(i));
- ships engaged in fishing or in similar pursuits (Article II(4));
- ships of traditional build such as dhows and junks (Article II(4));
- warships or naval auxiliaries (Article II(4)); and
- ships not ordinarily engaged in commercial activities (Article II(4)).

19. Article II(6) allows the competent authority of a Member State to exclude ships of less than 200 gross tonnage not engaged in international voyages from the obligations of the Convention. The Australian Government intends to exclude relevant ships in this way. This would mean that in Australia, the Convention would cover ships of 200 gross tons or over regardless of whether they are making international voyages or not. Similarly, ships less than 200 gross tons engaged in international voyages will be covered by the Convention.

20. On this basis, it is estimated that the Convention would apply to around 100 ships in Australia.<sup>1</sup> While these ships represent only a small proportion of total Australian shipping, they are critical to Australia's international and domestic trade and commerce.

21. Under Article 22 of the ILO Constitution, member States that have ratified an ILO Convention or Protocol must submit a report on the implementation of the Convention to the ILO Committee of Experts on the Application of Conventions and Recommendations on a two- or five-yearly basis. Only the eight key Conventions as defined under the ILO *1998 Declaration on the Fundamental Principles and Rights at Work* must be reported against on a two-yearly basis. The Convention is not one of these instruments. Australia will be required to report against the Convention on a five yearly basis should the Convention be ratified. The first report would be due on 1 September in the first 12 months immediately following the Convention coming into force for Australia.

## **Implementation**

22. Australian law and practice largely complies with the Convention, which means that ratification will have a low regulatory impact on the Australian shipping industry and on Australia's current port State control processes. The AMSA will have responsibility for exercising Australia's flag and port State responsibilities under the Convention and is the competent authority to certify Australian ships and inspect ships against the Convention.

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<sup>1</sup> Source: National Maritime Safety Committee, National Data Set, October 2009

23. The implementation of the Convention is shared between the Commonwealth, State and Territory governments. It is also regulated by a range of legislation in all jurisdictions in areas such as maritime, occupational health and safety, workplace relations and compulsory education laws.

24. All jurisdictions have completed, or are close to completing, a comprehensive assessment of relevant legislation and practice. To date, only minor technical amendments will be required in order to comply with the Convention. In some jurisdictions (for example, Tasmania), no legislative amendments will be required.

25. At the Commonwealth level, minor technical amendments to the *Navigation Act 1912* (Navigation Act) and Marine Orders (delegated legislation made under the Navigation Act) will be required. This will include an extended port State control system for the inspection and certification of maritime labour conditions on board ships with a gross tonnage of 500 tons and over on international voyages. These amendments are being progressed and are intended to be in place in the first half of 2011.

26. Marine surveyors from AMSA routinely inspect foreign ships at *Australian ports* to ensure that those ships comply with relevant safety and environmental protection standards. These inspections will be extended to include inspections to ensure compliance with the Convention. For ships that are registered in a ratifying State, this will generally mean checking to see if the ship is carrying a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance issued by its flag State. Ships may be required to undergo a full inspection in relation to the Convention as a whole if they are found not to have the certificates.

27. The Convention provides for a period of 12 months to elapse between the date of registration of a State's instrument of ratification and the entry into force of the Convention for that State. The International Labour Office has advised at Australia's request that "a Member would, and, indeed, ideally, should be in a position to issue valid documentation to its ships following ratification even if the Convention is not yet legally binding (in force) for the country concerned. The 12 month period following ratification is to allow Members, which may need the time, to complete the process of national implementation before they are held accountable under international law and under the ILO supervisory system for their obligations under the Convention". This could mean that Australia may not have to wait 12 months after ratification to be able to fulfil its obligations under the Convention, including issuing the required documentation and enabling AMSA to inspect foreign-flagged ships against the provisions of the Convention when they enter Australian ports.

28. Under the 1998 *Labour Ministers' Council Resolution for a Framework Concerning Cooperation on ILO Matters*, the Commonwealth Government will not normally ratify an ILO Convention or Protocol unless compliance has been established in all jurisdictions and the relevant governments have provided individual formal agreement to ratification.

29. As of 2 February 2010, all state and territory governments with the exception of Western Australia have provided in-principle support for ratification of the Convention. The Commonwealth Government expects to receive formal advice on compliance with the Convention from each jurisdiction by the end of 2010.

### **Costs**

30. There are no significant costs associated with the ratification of the Convention as Australia already substantially complies with the provisions of the Convention.

31. There will be some minor costs incurred in drafting minor technical amendments to existing legislation.

32. There will be some costs associated with training the AMSA marine surveyors and costs associated with foreign-flagged ship inspections required for compliance with port State obligations

under the Convention. However, this will not result in significant costs to Australia as such costs will be fully recovered by way of the quarterly levy currently imposed on ships entering Australian ports. Where ships are found to be non-compliant with the requirements of the Convention further inspections to verify rectification will be cost recovered from the ship.

33. A system of regular inspections, monitoring and other control measures will be established in accordance with the Convention.

34. There will be an additional charge by recognised organisations (which already carry out a number of functions relating to Australia-flagged ships on behalf of AMSA) to cover inspection of ships to determine if they comply with the Convention. While the actual charge will vary from one recognised organisation to another, indications are that it could be up to \$7,500 per ship in each five year inspection cycle. It is estimated that this would impact on 35 Australian registered ships.

### **Regulation Impact Statement**

35. A Regulation Impact Statement is attached (ID 1139).

### **Future Treaty Action**

36. Article XIV provides that future amendments to the Convention may be adopted by the annual General Conference of the ILO in the framework of Article 19 of the Constitution of the ILO and its rules and procedures for the adoption of Conventions. Amendments to the Code may also be adopted following a proposal by the Director-General of the ILO, the government of an ILO member State, the group of Shipowner representatives or the group of Seafarer representatives, in accordance with the procedures in Article XV. Proposals to amend existing labour standards occur very rarely.

37. Any proposal to take binding treaty action in respect of an instrument arising out of a revision of the Convention would be subject to Australia's treaty-making procedures, including tabling and consideration by the Joint Standing Committee on Treaties.

### **Withdrawal or denunciation**

38. Article IX permits denunciation by a ratifying Member State within a one-year period following ten years after the Convention comes into force. A denunciation shall not take effect until one year after the date on which it is registered.

39. If the Convention is not denounced within that period, the Convention remains in force for that Member State for another ten years. The ten-yearly interval for denunciation of an ILO Convention is a standard period and is included in all ILO Conventions.

40. Action to denounce the Convention would be subject to Australia's treaty-making procedures.

### **Contact details**

International Labour and Research Branch  
Workplace Relations Policy Group  
Department of Education, Employment and Workplace Relations

**ATTACHMENT ON CONSULTATION**

**International Labour Organization Convention No. 186: Maritime Labour Convention,  
done at Geneva on 7 February 2006  
[2010] ATNIF 44**

**CONSULTATION**

Consultation with States and Territories

41. There has been consultation with State and Territory governments on this Convention at both the Ministerial and officials levels.
42. States and Territories were provided with the opportunity in 2004 to comment on the draft text and to provide information for inclusion in the briefing for the Australian delegation to the ILO Preparatory Technical Maritime Conference (PTMC) to consider the draft text for a consolidated maritime labour Convention.
43. States and Territories were also provided with the opportunity in 2005 to comment on the draft text of the Convention and to provide information for inclusion in the briefing for the Australian delegation to the 94th (Maritime) Session of the International Labour Conference (which was the meeting at which the Convention was adopted).
44. The status of Australia's compliance with the Convention and prospects for ratification have been regularly considered at annual meetings of Commonwealth, State and Territory officials responsible for ILO matters. Specifically, the Convention was discussed at meetings held in August 2005, April 2006, July 2007, September 2008 and September 2009. The Convention has further been discussed at the High Level Officials' Group on 23 November 2009, 26 February 2010 and 30 April 2010. Furthermore, the Commonwealth has also convened discussions on the Convention with ILO Technical Officers in each State and Territory in February 2010, May 2010, June 2010 and July 2010.
45. On 22 December 2008, the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, wrote to her State and Territory counterparts seeking their views on ratification of the Convention by 30 June 2009. Law and practice reports were sought from the State and Territory governments.
46. The Convention was also discussed at the Workplace Relations Ministers' Council (WRMC) on 3 April 2009, where Members agreed that consideration of ratifying the Convention will be pursued as a priority, subject to resolution of any compliance issues. Further discussion on the Convention took place at the WRMC meetings of 25 September and 11 December 2009.
47. Briefing on the Convention was provided to the Standing Committee on Treaties on 17 November 2009.
48. Officials from the Department of Education, Employment and Workplace Relations and the Australian Maritime Safety Authority have attended inter-agency meetings of every State government as well as the Northern Territory Government to assist in undertaking a thorough assessment of compliance gaps with the Convention. The dates on which these meetings were convened are listed below.
- New South Wales Government, on 11 February 2010
  - Tasmanian Government, on 17 March 2010
  - Victorian Government, on 18 March 2010

- Queensland Government, on 19 March 2010
- Northern Territory Government, on 22 March 2010
- Western Australian Government, on 8 April 2010
- South Australian Government, on 9 April 2010

49. As at 2 February 2010 all State and Territory Governments with the exception of Western Australia have provided in-principle support to ratify the Convention, subject to the resolution of all compliance issues. The dates on which this advice was provided is also listed below.

- New South Wales - 2 February 2010
- Victoria - 21 September 2009
- Queensland - 18 December 2009
- South Australia - 29 July 2009
- Tasmania - 9 June 2009
- Northern Territory - 21 December 2009

50. On 10 July 2009, the Australian Capital Territory Government Solicitor advised that the Convention does not apply within the territorial area of the Australian Capital Territory.

51. On 11 December 2009, the Hon Troy Buswell MLA, the then Western Australian (WA) Minister for Commerce, wrote to the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, advising that the WA Government could not support ratification before compliance is achieved in its jurisdiction. Minister Buswell further advised that it was Western Australia's intent to continue with steps to achieve full compliance and could only advise of their views on ratification at that time.

52. On 11 June 2010, the Hon Simon O'Brien MLC, WA Minister for Transport, wrote to Minister Gillard, advising that no significant marine safety compliance issues had been identified in Western Australia. Further to this letter, the WA Minister for Commerce, the Hon Bill Marmion MLA, wrote to Minister Gillard on 16 June to advise that they were still not at the stage of seeking advice from the State Solicitor's Office and were therefore unable to advise as to whether it would meet the deadline for putting in place compliance measures by the end of 2010. Minister Marmion further advised that it was WA's intention to take the necessary steps to achieve compliance before supporting ratification of the Convention.

#### Other consultation

53. On 22 December 2008, the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, wrote to the Maritime Union of Australia (MUA), the Australian Shipowners Association (ASA), the Australian Chamber of Commerce and Industry (ACCI), the Australian Council of Trade Unions (ACTU) and the Australian Industry Group (Ai Group) seeking their views on ratification of the Convention by 30 June 2009.

54. The MUA wrote to the Minister for Employment and Workplace Relations on 19 February 2008 seeking ratification the Convention by August 2008. The MUA wrote again to the Minister on 17 August 2009 confirming its support for ratification.

55. The ASA wrote to the Minister for Employment and Workplace Relations on 13 August 2009 strongly urging the Australian Government to ratify the Convention.

56. The Department of Education, Employment and Workplace Relations has held meetings with the MUA and ASA to progress consideration of Australia's ratification and implementation of the Convention. These meetings were convened on 23 July 2009, 11 May 2010 and 17 August 2010.

57. The ACTU, ACCI and Ai Group have advised of their support for ratification of the Convention through the International Labour Affairs Committee (ILAC) of the National Workplace Relations Consultative Council. Discussion at the ILAC meetings on 3 March and 31 October 2008, 2 March and 23 October 2009 and 1 March 2010 have focussed on the progress of the ratification process and resolution of compliance issues.

**CURRENT STATUS LIST**  
**as at November 2010**

**RATIFYING COUNTRIES AND DATE OF RATIFICATION**

Bahamas	11:02:2008
Bosnia and Herzegovina	18:01:2010
Bulgaria	12:04:2010
Canada	15:06:2010
Croatia	12:02:2010
Liberia	07:06:2006
Marshall Islands	25:09:2007
Norway	10:02:2009
Panama	06:02:2009
Spain	04:02:2010



## **CONVENTIONS RATIFIED BY AUSTRALIA THAT ARE REVISED BY THE MARITIME LABOUR CONVENTION**

The Maritime Labour Convention was adopted by the 94th (Maritime) Session of the International Labour Conference (the Maritime Conference) on 7 February 2006. It consolidates 37 separate ILO maritime labour conventions adopted since 1920 and replaces them with a single, coherent instrument. Of these, Australia has ratified 13. Nine of these ratifications are still in force – they are briefly described below. Ratified Conventions that are no longer in force are also listed below.

A full copy of each Convention is online at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

### **1. Repatriation of Seafarers (Revised), 1987 (No. 166)**

Convention 166 specifies the circumstances under which seafarers are to be entitled to repatriation and requires that national laws or regulations or collective agreements prescribe the maximum periods of service on board following which a seafarer is entitled to repatriation.

### **2. Accommodation of Crews (Supplementary Provisions), 1970 (No. 133)**

Convention 133 applies to all sea-going ships engaged in the transport of passengers or cargo, or employed for any other commercial purpose, as defined by national laws or regulations. The requirements for crew accommodation include provisions for sleeping rooms, mess rooms and recreation facilities.

### **3. Accommodation to Crews (Revised), 1949 (No. 92)**

Convention 92 applies to every sea-going mechanically propelled vessel engaged in the transport of cargo or passengers for the purpose of trade and registered in a territory for which Convention 92 is in force. It does not apply to vessels of less than 500 tons.

### **4. Medical Examination (Seafarers), 1946 (No. 73)**

Convention 73 provides that no seafarers shall be employed on a sea-going vessel unless they produce a certificate attesting to their fitness for work at sea, signed by a medical practitioner or, in the case of sight testing, by an authorised person. Convention 73 does not apply to vessels of less than 200 gross registered tons or to fishing vessels.

### **5. Certification of Ships' Cooks, 1946 (No. 69)**

Convention 69 provides that every ship's cook must hold a certificate of qualification which may not be granted unless they have reached a prescribed minimum age, served at sea for a minimum period decided by the competent authority and passed an examination as prescribed.

### **6. Minimum Age (Sea) (Revised), 1936 (No. 58)**

Convention 58 provides that persons under the age of 15 years of age shall not be employed on vessels, other than vessels upon which only members of the same family are employed. National laws or regulations may provide for the issue of a certificate permitting children not less than 14 years of age to be employed in cases where the appropriate authority is satisfied that such employment will be beneficial to the child. Convention 58 does not apply to fishing vessels.

**7. Seamen's Articles of Agreement, 1926 (No. 22)**

Convention 22 provides that articles of agreement shall be signed by the shipowner or its representative and by seafarers under conditions which ensure adequate supervision.

**8. Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)**

Convention 16 provides that employment of young persons of less than 18 years of age on any vessel, other than vessels in which only members of the same family are employed, shall be conditional upon the production of a medical certificate attesting to fitness for work.

**9. Unemployment Indemnity (Shipwreck), 1920 (No. 8)**

Convention 8 ensures that seafarers who become unemployed as a result of the loss of certain types of vessels are paid an indemnity for the period of unemployment by the owner of the vessel of the person who contracted them for employment (limited to two months' wages).

**Ratified Conventions that are no longer in force or did not come into force are:**

Placing of Seamen Convention, 1920 (No. 9)

Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)

Hours of Work and Manning (Sea) Convention, 1936 (No. 57)

Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)

## **KEY OBLIGATIONS OF THE MLC REGULATIONS AND CODE**

### *Title 1: Minimum requirements for seafarers to work on a ship*

The purpose of Title 1 is to ensure that:

- no under-age persons work on a ship;
- all seafarers shall hold medical certificates attesting that they are medically fit to perform their duties at sea;
- seafarers are trained or qualified to carry out their duties on board ship; and
- seafarers have access to an efficient well regulated seafarers recruitment and placement system

### *Title 2: Conditions of employment*

The purpose of Title 2 is to ensure that seafarers:

- are employed under written, legally enforceable employment agreements that contain prescribed details and particulars;
- are paid for their services in accordance with their employment agreements;
- have regulated hours of work and hours of rest;
- have adequate annual and shore leave entitlements;
- are able to return home at no cost to themselves in prescribed circumstances;
- are compensated for injury, loss or unemployment when a ship is lost or has foundered; and
- work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship.

Title 2 also promotes career and skill development and employment opportunities for seafarers.

### *Title 3: Accommodation, recreational facilities, food and catering*

The purpose of Title 3 is to ensure that seafarers:

- have decent accommodation and recreational facilities on board; and
- have access to good quality food and drinking water provided under regulated hygienic conditions.

### *Title 4: Health protection, medical care, welfare and social security protection*

The purpose of Title 4 is to ensure that seafarers:

- have prompt access to adequate medical care on board ship and ashore;
- have the right to material assistance from shipowners for the financial consequences of sickness, injury or death while they are serving under an employment agreement
- are provided with occupational health and safety protection
- have access to shore-based welfare facilities where they exist
- have access to social security protection

### *Title 5: Compliance and enforcement*

The purpose of Title 5 is to:

- ensure that each Member implements its responsibilities under the MLC with respect to ships that fly its flag;
- enable each Member to implement its responsibilities under the MLC regarding international cooperation in the implementation and enforcement of MLC standards on foreign ships; and

- ensure that each Member implements its responsibilities under the MLC pertaining to seafarers' recruitment and placement and the social protection of seafarers.

### **Flag State inspection system responsibilities**

The flag State is required to establish an effective system for inspection and certification of maritime labour conditions on ships that fly its flag (Regulation 5.1, paragraph 2). This involves a wide range of matters including:

- drawing up the Maritime Labour Certificate and Declaration of Maritime Labour Compliance required by the Convention;
- providing a sufficient number of qualified inspectors (training and competence) to conduct inspections at least once every three years;
- developing rules or regulations providing for inspectors' powers, status and independence;
- guidelines regarding inspectors' tasks and confidentiality;
- identification (credentials) for inspectors;
- reporting responsibilities;
- delegation of some aspect of the inspection system to Recognised Organisations (if a Recognised Organisation is used);
- establishing a process for receiving and responding to complaints or requests for information.

### **Port State inspection and monitoring responsibilities**

Every foreign ship calling in the port of a Member State in the normal course of its business or for operational reasons may be subject to inspection. The main aspect of the obligation to have effective port State inspection and monitoring systems (Regulation 5.2.1, paragraph 4) is the need to ensure that the port State has an adequate number of qualified officers trained to carry out port State control under the MLC. As Member States are required to accept maritime labour certificates and declarations of maritime labour compliance, port inspections will in most cases be limited to a review of the certificate and declaration (Article 5.2.1 paragraph 2). More detailed inspections may be carried out if the certificates and declarations are not in order, there are clear or reasonable grounds to suspect infringements of the Convention on the ship, or where there has been a complaint about conditions on the ship (Standard A5.2.1 paragraph 1).

## **Maritime Labour Convention Regulation Impact Statement**

1. This Regulation Impact Statement (RIS) has been prepared by the Commonwealth Department of Education, Employment and Workplace Relations, in association with the Commonwealth Department of Infrastructure and Transport, and the Australian Maritime Safety Authority.
2. This document analyses the regulatory implications of Australian ratification of the International Labour Organization (ILO) *Maritime Labour Convention, 2006* (No. 186)<sup>1</sup> (the MLC).

### **Part 1 Background**

#### *The Development of the MLC*

3. The MLC is the most complex and lengthy ILO Convention in history. It is designed to reflect the demands on shipping in an increasingly globalised world and has three underlying purposes:
  - (a) to lay down, in its Articles and Regulations, a firm set of rights and principles relating to the living and working conditions of seafarers on board ships;
  - (b) to allow, through the Code, a considerable degree of flexibility in the way Members implement those rights and principles; and
  - (c) to ensure that the rights and principles are properly complied with and enforced by ILO member States.
4. The decision by the ILO to create this major new maritime labour Convention was the result of a joint resolution in 2001 by the international seafarers' and shipowners' organisations<sup>2</sup>, later supported by governments. The resolution stated that the shipping industry is "the world's first genuinely global industry" which "requires an international regulatory response of an appropriate kind – global standards applicable to the entire industry".<sup>3</sup>
5. The industry called on the ILO to develop "an instrument which brings together into a consolidated text as much of the existing body of ILO instruments as it proves possible to achieve" as a matter of priority "in order to improve the relevance of those standards to the needs of all the stakeholders of the maritime sector".<sup>4</sup>
6. It was felt that the very large number of existing maritime ILO Conventions, many of which are very detailed, made it difficult for governments to ratify and to enforce all of the standards. Many of the standards were out of date and did not reflect contemporary working and living conditions on board ships. In addition, there was a need to develop a more effective enforcement and compliance system that would help to eliminate substandard ships and that would work within the well-established international system for enforcement of the international standards

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<sup>1</sup> Text available at: <http://www.ilo.org/ilolex/english/convdisp1.htm>

<sup>2</sup> The seafarer's group was represented by the International Transport Workers' Federation and the shipowner's group was represented by the International Shipping Federation's. For the list of those attending the session see ILO: Final report, Joint Maritime Commission, 29th Session, Geneva, 22-26 January 2001, Appendix 1. Available at:

<http://www.ilo.org/public/english/dialogue/sector/techmeet/jmc01/jmcf.htm>

<sup>3</sup> ILO: Final report, Joint Maritime Commission, 29th Session, Geneva, 22-26 January 2001, Appendix 2. Available at:

<http://www.ilo.org/public/english/dialogue/sector/techmeet/jmc01/jmcf.htm>

<sup>4</sup> Ibid

for ship safety and security and environmental protection that have been adopted by the International Maritime Organisation (IMO).

7. Importantly, the MLC is seen by the ILO as a new tool to create a level playing field for best practice ship owners so that they do not face unfair competition from ships providing substandard conditions. It attempts to achieve this through the equal treatment of ships in the enforcement of international standards which is set out in Article V of the MLC. This requires ratifying member States to implement their responsibilities under the Convention by ensuring that ships flying the flag of non-ratifying countries do not receive more favourable treatment than the ships of ratifying States. The effect is to essentially require ratifying countries to apply the standards of the MLC to all foreign vessels arriving in their ports, regardless of whether or not the ship is flagged in a country that has ratified the MLC.

8. The MLC was adopted by the 94th (Maritime) Session of the International Labour Conference on 23 February 2006 with 314 votes in favour and no objections.

9. The MLC consolidates 37 existing ILO maritime labour Conventions and 31 related Recommendations adopted since 1920 and replaces them with a single, coherent instrument (see Attachment 1). Of the 37 Conventions, Australia has ratified 14 (see Attachment 2)<sup>5</sup>.

10. The MLC is expressly designed to be consistent with the existing arrangements in the maritime sector for ship inspections (by flag<sup>6</sup> and port<sup>7</sup> States) in connection with an earlier maritime labour Convention – the *Merchant Shipping (Minimum Standards) Convention, 1976* (No. 147) – and the major ship safety and security and pollution protection Conventions developed by the IMO.<sup>8</sup> It also seeks to take account of the arrangements currently in place under the various regional Memoranda of Understanding (MOU) or Agreements on port State control.

### *Structure of the MLC*

11. The MLC comprises three different but related parts: the Articles, the Regulations and the Code.

12. The Articles and Regulations set out the core rights and principles and the basic obligations of member States that ratify the MLC. The Articles and Regulations can only be changed by the annual International Labour Conference in the framework of Article 19 of the Constitution of the ILO (see Article XIV of the MLC).

13. The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines).

14. The Code can be amended through the simplified procedure set out in Article XV of the MLC which enables changes to come into effect for ratifying countries within three to four years from when they are proposed. Article XIII of the MLC provides for the establishment by the ILO of a Special Tripartite Committee (STC) to “keep the work of this Convention under

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<sup>5</sup> Recommendations are non-binding and are not open to ratification.

<sup>6</sup> The rights and responsibilities of flag States are affirmed in the United Nations Convention on the Law of the Sea, 1982, and provide for a State to grant nationality to ships, to fix the conditions for the grant of its nationality, to register ships in its territory, and for those ships to fly its flag (Article 91).

<sup>7</sup> Port State Control (PSC) is the inspection of foreign ships in other national ports by PSC officers (inspectors) for the purpose of verifying that the competency of the crew onboard, the condition of a ship and its equipment comply with the requirements of international conventions and that the ship is manned and operated in compliance with applicable international law.

<sup>8</sup> See Regulation 5.2.1, paragraph 3; International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS); and the International Convention for the Prevention of Pollution from Ships, 1973, and the Protocol 1978 (MARPOL 73/78).

continuous review”. The STC will be able to propose amendments to the MLC Code which, if approved by the ILO’s annual International Labour Conference, will be adopted unless at least 40 per cent of ratifying States representing 40 per cent of gross tonnage express disagreement<sup>9</sup>.

15. A ratifying Member will not be bound by an amendment to the Code entering into effect in accordance with Article XV of the Convention if it expresses formal disagreement within a period of normally two years (Article XV(7)).

16. The Article XV amendments process is based on procedures that are already well established in the IMO. The accelerated acceptance procedure under Article XV follows the IMO procedures especially with respect to the submission of amendments to member States and their entry into effect. The main difference relates to the adoption of amendments. In respect of the MLC, unlike under the IMO procedures, non-ratifying Members play a role and amendments have to be approved by the International Labour Conference, open to all ILO Members.

17. Since the Code relates to detailed implementation, amendments to it must remain within the general scope of the Articles and Regulations.

18. The Regulations and the Code are organised into general areas under five Titles:
- Title 1: Minimum requirements for seafarers to work on a ship;
  - Title 2: Conditions of employment;
  - Title 3: Accommodation, recreational facilities, food and catering;
  - Title 4: Health protection, medical care, welfare and social security protection; and
  - Title 5: Compliance and enforcement.

### *Key elements of the MLC*

#### *Title 1: Minimum requirements for seafarers to work on a ship*

19. The purpose of Title 1 is to ensure that:
- no under-age persons work on a ship;
  - all seafarers are medically fit to perform their duties at sea;
  - seafarers are trained or qualified to carry out their duties on board ship; and
  - seafarers have access to an efficient well regulated seafarers recruitment and placement system.

20. Provisions of Title 1 reflect the modernisation of ILO Conventions that Australia has ratified including the *Medical Examination (Seafarers), 1946* (No. 73), the *Minimum Age (Sea) (Revised), 1936* (No. 58), and the *Medical Examination of Young Persons (Sea) Convention, 1921* (No. 16).

#### *Title 2: Conditions of employment*

21. The purpose of Title 2 is to ensure that seafarers:
- have a fair employment agreement;
  - are paid for their services;
  - have regulated hours of work and hours of rest;
  - have adequate leave;
  - are able to return home;
  - are compensated when a ship is lost or has foundered; and

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<sup>9</sup> Article XV, paragraph 7

- work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship.

Title 2 also promotes career and skill development and employment opportunities for seafarers.

22. Provisions of Title 2 reflect the modernisation of ILO Conventions that Australia has ratified including the *Repatriation of Seafarers (Revised)*, 1987 (No. 166), the *Seamen's Articles of Agreement*, 1926 (No. 22) and the *Unemployment Indemnity (Shipwreck)*, 1920 (No. 8)

*Title 3: Accommodation, recreational facilities, food and catering*

23. The purpose of Title 3 is to ensure that seafarers:

- have decent accommodation and recreational facilities on board; and
- have access to good quality food and drinking water provided under regulated hygienic conditions.

24. Provisions of Title 3 reflect the modernisation of ILO Conventions that Australia has ratified including the *Accommodation of Crews (Supplementary Provisions)*, 1970 (No. 133), the *Accommodation to Crews (Revised)*, 1949 (No. 92), and the *Certification of Ships' Cooks*, 1946 (No. 69).

*Title 4: Health protection, medical care, welfare and social security protection*

25. The purpose of Title 4 is to protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore.

*Title 5: Compliance and enforcement*

26. The purpose of Title 5 is to:

- ensure that each member implements its responsibilities under the MLC with respect to ships that fly its flag;
- enable each member to implement its responsibilities under the MLC regarding international cooperation in the implementation and enforcement of MLC standards on foreign ships; and
- ensure that each member implements its responsibilities under the MLC pertaining to seafarers' recruitment and placement and the social protection of seafarers.



## **Part 2 The objectives of the MLC**

27. The MLC is intended to ensure decent working conditions for all seafarers. The MLC sets minimum requirements for seafarers to work on a ship and contains provisions on a wide range of matters, including employment conditions, accommodation, health protection and social security. It also establishes mechanisms to ensure ratifying members comply with and implement the MLC.

28. The ILO, in developing the MLC, has created a global reference on maritime labour issues. It is the intention of the ILO and the international community that the MLC:

- complements the *International Convention for the Safety of Life at Sea, 1974*<sup>10</sup> (SOLAS), *International Convention on Standards of Training, Certification and Watchkeeping 78/95*<sup>11</sup> (STCW 78/95), the *International Convention for the Prevention of Pollution from Ships, 1973*<sup>12</sup> (MARPOL 73/78) in promoting quality shipping and safety at sea, and is expected to achieve a similar level of near universal ratification;
- establishes a comprehensive set of basic maritime labour principles and rights that applies to all ships including those of non-ratifying Members;
- creates a strong enforcement regime, backed by a certification system;
- enables verification of compliance with basic minimum employment and social requirements;
- improves working and living conditions for seafarers;
- supports and promotes a more secure and responsible maritime workforce;
- supports and promotes a more socially responsible shipping industry;
- improves management-worker dialogue at all levels;
- ensures seafarers are better informed of their rights and remedies;
- improves supervision of labour standards at all levels: the ship, the company, the flag state, the port state, and the ILO;
- supports and promotes global and uniform compliance and verification;
- modernises maritime labour conditions; and
- positively impacts on seafarer and ship safety and the protection of the environment.

29. Ratification of the MLC by Australia will promote these desired objectives of the ILO through its effective implementation of international maritime labour standards.

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<sup>10</sup> SOLAS was adopted by the IMO on 1 November 1974 and entered into on 25 May 1980. Australia acceded to SOLAS on 17 August 1983, with entry into force for Australia on 17 November 1983.

<sup>11</sup> STCW was adopted by the IMO on 7 July 1978 and entered into force on 28 April 1984. Australia ratified the STCW on 7 November 1984.

<sup>12</sup> The Convention was adopted by the IMO on 2 November 1973. The Protocol of 1978 relating to 1973 Convention was adopted by the IMO on 17 February 1978. As the 1973 MARPOL Convention had not yet entered into force, the 1978 MARPOL Protocol absorbed the parent Convention. The combined instrument, MARPOL 73/78, entered into force on 2 October 1983. Australia ratified MARPOL73/78 on 14 October 1987 with entry into force for Australia 1 July 1988.

### **Part 3 The case for Australia's ratification of the MLC**

30. The MLC, which was adopted by the ILO in 2006, will come into force at international law 12 months after the date on which there have been registered ratifications by at least 30 ILO members States with a total share in the world gross tonnage of ships of 33 per cent. If Australia fails to ratify the MLC by the time it comes into force at international law, there will be an immediate economic impact on Australian-flagged vessels trading overseas and Australia's reputation as a leading port State, and generally as a country which respects and promotes decent work for all, will be tarnished.

31. The MLC has been ratified by ten member States<sup>13</sup> representing over 50 per cent of the world fleet by gross tonnage. This means that the tonnage requirement for entry into force has already been met. The European Union (EU) Council of Ministers has adopted December 2010 as the deadline for EU States to ratify. This strongly suggests the second requirement for entry into force will be met at the end of 2010, with the MLC coming into effect 12 months later.

32. Ratification of the MLC will represent a strong demonstration of Australia's support for the ILO's fundamental objective of securing decent work for all workers. The MLC is designed to protect the world's 1.2 million or more seafarers, and addresses the evolving realities and needs of an industry that handles 90 per cent of international trade. It sets out a seafarers' "bill of rights" and is intended to be the "fourth pillar" in the international shipping regulation complementing major maritime Conventions of the International Maritime Organization (IMO) on environmental protection and ship safety and security. The importance of the Convention for Australia is clearly evident from the fact that Australia's reliance on shipping for international imports and exports represents nearly 10 per cent of world seaborne trade by mass – the fifth largest shipping task in the world – and over 99 per cent of Australia's international exports and imports are carried by sea.

33. Australian ratification will ensure decent working and living conditions for seafarers on foreign-flagged ships entering Australian ports and on Australian ships. Australian-flagged ships will consequently be protected from unfair competition from foreign ships on which crews have substandard living and working conditions. They will also benefit from a system of certification, avoiding or reducing the likelihood of lengthy delays related to inspections for compliance with the Convention in foreign ports.

34. Australian law and practice generally already complies with the MLC, which means that ratification will have a low regulatory impact on the Australian shipping industry and on our current port State control processes. To ensure full compliance, minor amendments may be required to the relevant legislation of the states and the Northern Territory as it applies to ships within their jurisdiction that will fall within the scope of the MLC (noting however that at this stage that some jurisdictions (for example Tasmania) advise that no legislative amendments are required within their jurisdictions). All jurisdictions have been asked to progress necessary amendments by the end of 2010, which is the timeframe that the Commonwealth Government is also working towards. The only Commonwealth Act that requires amendment to ensure compliance with the MLC is the *Navigation Act 1912* (Navigation Act). Please see Part 8 for discussion of implementation and review.

35. It is critical for Australia to ratify the MLC by the time it comes into force at international law. This is because (as noted in Part 1) the MLC requires ratifying countries to apply the terms of the MLC to all foreign ships coming into their ports. If Australia fails to ratify the MLC,

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<sup>13</sup> Bahamas, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Liberia, the Marshall Islands, Norway, Panama and Spain

Australian-flagged vessels risk detention and inspection in foreign ports, jeopardising the economic viability of this already vulnerable industry sector. For example, even without the imposition of the MLC, in 2009 eight Australian ships were subject to 12 port State control inspections in China (3), New Zealand (3), Japan (1), Philippines (1), South Korea (2) and Papua New Guinea (2).<sup>14</sup> These countries are all members of the ILO and so are eligible to ratify the MLC.<sup>15</sup> This means that should Australia not ratify the MLC before it comes into force at international law, there is a risk that Australian-flagged vessels will be detained in foreign ports and be inspected in line with the MLC. Please see Part 4 for a discussion of this outcome.

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<sup>14</sup> AMSA, 2009, Port State Control: 2009 Report, Australia, pages 2, [http://www.amsa.gov.au/Shipping\\_Safety/Port\\_State\\_Control/documents/PSCReport09.pdf](http://www.amsa.gov.au/Shipping_Safety/Port_State_Control/documents/PSCReport09.pdf)  
<sup>15</sup> See ILOLEX Database of International Labour Standards: Member States of the ILO. Available at: <http://www.ilo.org/ilolex/english/mstataese.htm>

#### **Part 4 The alternatives to Australia's ratification of the MLC**

36. There are two options before the Australian Government: (i) to ratify the MLC; or (ii) not to ratify the MLC. However, for the purposes of this RIS, the only viable option available to the Australian Government in order to achieve the objectives of the MLC (outlined in Part 3 above) is ratification.

37. Below is a summary of the expected consequences should Australia fail to ratify the MLC by the time it comes into force at international law.

##### *Impact on Australia's trade and competitiveness*

38. Article V of the MLC contains the principle of no more favourable treatment. This principle provides that ships must not be placed at a disadvantage because their flag State has ratified this MLC. In this way, the MLC seeks to create a level playing field by removing the financial incentives to operate ships with poorly qualified crew who are not afforded decent living and working conditions. This is consistent with Australia's desire to be internationally competitive not through providing low wages and poor working conditions, but through having a skilled and productive workforce.

39. The practical implication of Article V is that once the MLC comes into force generally, Australian ships entering a port of a foreign country which has ratified the MLC – regardless of whether or not Australia ratifies the Convention – will be treated in the same way, and will be required to conform to the same standards, as the ships of States that have ratified.

40. The effect of Article V may be to impose significant cost increases on the owners of Australian ships trading internationally if Australia does not ratify the Convention. This is because Australian flagged ships would not be carrying the necessary documentation to show *prima facie* evidence of compliance with the MLC. Specifically, Regulation 5.1.3 of the MLC requires ships of 500 gross tonnage or over to hold a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance, both of which must be issued by the competent Government agency. Unless Australia ratifies the MLC and puts into place compliance measures, Australia will lack the authority to inspect and certify these ships.

41. As a result, Australian-flagged ships may be subject to inspection in any country that has ratified the MLC. They may be detained until an inspection is carried out and be subject to further detention if the inspection indicates they do not meet the minimum standards of the Convention. Also, the additional costs arising from the risk of inspection and detention in foreign ports could encourage Australian shipowners to flag their ships off-shore with a country that has ratified the MLC, in turn affecting seafarers and other workers in the industry, as more Australian-based jobs are lost and those who choose to stay in the industry compete for fewer jobs. Another possible consequence is that Australian shipowners may be forced to pass increased costs onto consumers, diminishing the commercial competitiveness of the Australian shipping industry as it will not be able to compete with ships flagged under a State that has ratified the MLC.

##### *Impact on Australia's leadership role in the Asia-Pacific region*

42. Australia is a well respected port State in the international maritime community and is very committed to, and takes great pride in, its leadership role in the Asia-Pacific region. Failing to ratify the MLC would diminish our leadership in this respect and make it difficult for Australia

to encourage and support developing nations in our region to become compliant with the MLC, for whom failure to do so will have significant negative economic impacts.

43. The Australian Government supports the Australian Maritime College, through funding from the Australian Agency for International Development, to provide MLC training targeted at developing countries in our region, including Indonesia, Vietnam, Timor Leste and Vanuatu. The ability to continue to encourage these nations to comply with the MLC will be significantly diminished if Australia does not ratify and comply with the MLC itself.

44. Additionally, failure to ratify the MLC would impact Australia's participation in regional port State MOUs. Australia is a signatory and active member of both the Indian Ocean Memorandum of Understanding on Port State Control<sup>16</sup> (IOMOU) and Asia Pacific Memorandum of Understanding on Port State Control<sup>17</sup> (Tokyo MOU).

45. The Tokyo MOU was concluded in December 1993 and commenced on 1 April 1994. It is the agreement of 19 Maritime Authorities of Asia-Pacific nations to establish and maintain an effective system of port State control with a view to ensuring that, without discrimination, foreign merchant ships calling at a port of its member Maritime Authority, or anchored off such a port, comply with the standards laid down in the relevant instruments as defined in section 2 (Section 1.3). Section 2 of the Tokyo MOU requires member Maritime Authorities to apply relevant international shipping standards listed at section 2.1. Similar to Article V of the MLC, section 2.5 of the Tokyo MOU provides that in applying a relevant international instrument for the purpose of port State control, the Maritime Authorities will ensure that no more favourable treatment is given to ships entitled to fly the flag of a non-party to that instrument.

46. To maintain its position within the Tokyo MOU, Australia must ratify and implement the MLC. It is our understanding that Section 2.1 of the Tokyo MOU will be amended to reference the MLC as a relevant instrument on which regional Port State Control is based once it comes into force at international law. This will affect the Maritime Authorities of: Australia, Canada, Chile, China, Fiji, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, Papua New Guinea, the Philippines, the Russian Federation, Singapore, Thailand, Vanuatu and Vietnam. Ratification of the MLC will also be a condition of entry for new States to join the Tokyo MOU.

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<sup>16</sup> Detailed information on the activities of the IOMOU is available at: [www.iomou.org](http://www.iomou.org)

<sup>17</sup> Detailed information on the activities of the Tokyo MOU at: [www.tokyo-mou.org](http://www.tokyo-mou.org)

## **Part 5 Impact analysis of Australia's ratification of the Maritime Labour Convention**

47. The impact of ratification of the MLC by Australia is expected to be minimal. This is due to a number of reasons including: the fact that the MLC will cover a very small proportion of the total number of ships registered in Australia; law and practice in all Australian jurisdictions is already substantially compliant with the requirements of the MLC; and the obligation to inspect foreign-flagged vessels in Australian ports will be simpler under the MLC than under current arrangements.

### *Ships to which the MLC will apply in Australia*

48. Article II of the MLC limits the scope and application of the Convention to particular ships. The MLC applies to all ships other than:

- ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters (Article II(1)(i));
- ships which navigate exclusively in areas where port regulations apply (Article II(1)(i));
- ships engaged in fishing or in similar pursuits (Article II(4));
- ships of traditional build such as dhows and junks (Article II(4));
- warships or naval auxiliaries (Article II(4)); and
- ships not ordinarily engaged in commercial activities (Article II(4)).

49. Article II(6) also allows the competent authority (in this case, the Australian Government) to exclude ships of less than 200 gross tonnage not engaged in international voyages. The Australian Government intends to rely on this exemption and has consulted the Maritime Union of Australia and the Australian Shipowners' Association on this issue. This would mean that in Australia, the MLC would cover ships of 200 gross tons or over regardless of whether they are making international voyages or not. Similarly, ships less than 200 gross tons engaged in international voyages will be covered by the MLC.

50. The Commonwealth Government current estimates that approximately 100<sup>18</sup> Australian-registered ships would be covered by the MLC in Australia. While these ships represent only a small proportion of total Australian shipping, these vessels are critical to Australia's international and domestic trade and commerce.

### *Australia is already substantially compliant with the MLC*

51. As discussed at Part 1, Australia has ratified 14 of the 37 Conventions the MLC has replaced (see [Attachment 1](#) for full list). Under Article 22 of the ILO Constitution, Australia is obliged to report against its compliance with ratified Conventions every five years. During the last request to report against these Conventions, Australia was not subject to comment by the ILO.

52. The implementation of the Convention is shared between the Commonwealth, state and territory governments through a range of legislation in areas such as maritime, occupational health and safety, workplace relations and compulsory education laws.

53. All jurisdictions, including the Commonwealth, have determined that a combination of law and practice in their jurisdiction substantially complies with the MLC. At the state and territory level, Victoria is currently the only jurisdiction that has indicated that it will be developing technical amendment legislation to its *Marine Act 1988* in order for it to comply in full with the MLC. Further, some states, for example, South Australia, have advised that they plan to develop

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<sup>18</sup> Source: National Maritime Safety Committee, National Data Set, 2010

guidelines and guidance notes based on the obligations set by the MLC to ensure full compliance. The Commonwealth expects to receive full reports on compliance with the MLC from each jurisdiction by the end of 2010.

54. At the Commonwealth level, minor technical amendments have been identified to the Navigation Act and Marine Orders (delegated legislation made under the Navigation Act) which are being progressed and are intended to be in place in the first half of 2011 (please see [Attachment 3](#) for a list of the proposed amendments). Additionally, an extended port State control system for the inspection and certification of maritime labour conditions on board vessels with a gross tonnage of 500 and over on international voyages is being developed to meet the requirements of Title 5.

55. The fact that law and practice in Australia is already substantially compliant with the MLC makes the impact of ratification of the MLC minimal. In view of the current level of compliance, governments and industry stakeholders will not be required to make significant changes to their current practices in order to implement the MLC. To illustrate, a brief overview of current compliance in Australia is provided below.

*Title 1: Minimum requirements for seafarers to work on a ship*

56. Title 1 sets out minimum standards with respect to: minimum age of employment; a requirement that seafarers hold a valid medical certificate attesting that they are medically fit to perform their duties; and ensuring that seafarers have access to well-regulated recruitment and place services.

57. It is considered that current law and practice is largely compliant with Title 1. State and the Northern Territory governments are primarily responsible for the regulation of the minimum age of admission to employment, which is met by the requirement in compulsory education legislation that children attend school until they are 16 or 17 years of age. Further, the current requirement in all jurisdictions to ensure seafarers are certified as medically fit complies with Regulation 1.2. All jurisdictions currently require seafarers to hold certificate of competency in order to work on a MLC-covered vessel, which is required under Regulation 1.3 of the MLC. Finally, Regulation 1.4 will require technical amendment to Marine Orders as governments do not operate seafarer recruitment and placement services, but there are a small number of private agencies operating in Australia whose primary purpose is the recruitment and placement of seafarers.

*Title 2: Conditions of employment*

58. Title 2 sets out detailed conditions of employment for seafarers in the areas of: employment agreements; wages; hours of work and rest; paid annual leave; repatriation; compensation for the loss or foundering of a ship; manning levels; and promoting skill development and career opportunities for seafarers.

59. State and the Northern Territory governments are responsible for regulating limited aspects of the working conditions of seafarers aboard MLC-covered vessels (for example, manning levels) and the provision of workers compensation and rehabilitation benefits to seafarers and their dependants where a seafarer has injured him or herself or contracted a disease in the course of his/her employment and where they are onboard commercial ships.

60. The Commonwealth's jurisdiction is used to regulate aspects of the employment of seafarers in three areas:

- workplace relations with respect to all private sector employees (except for Western Australia, where coverage is primarily limited to constitutional corporations) which has been achieved by State governments referring powers for private sector workplace relations (achieved via the *Fair Work Act 2009* and the *Fair Work Regulations 2009*);
- the working conditions aboard ships on overseas or inter-state voyages (regulated via the Navigation Act and Marine Orders); and
- requirements for employers' provision of workers compensation and rehabilitation benefits to seafarers and their dependants where a seafarer has injured him or herself or contracted a disease in the course of his/her employment and where they are onboard commercial ships/vessels that undertake international and interstate voyages (regulated via the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) and *Occupational Health and Safety (Maritime Industry) Act 1993*).

61. In addition, on 1 January 2010 the modern Seagoing Industry Award and the Maritime Offshore Oil and Gas Award commenced with respect to non-permit domestic vessels. These awards have been made under the *Fair Work Act 2009* (Fair Work Act) and cover employers and their employees engaged in the seagoing and maritime offshore oil and gas industries. The Commonwealth Government considers that the scope of coverage of the Seagoing Industry Award and Maritime Offshore Oil and Gas Award are sufficient (when considered together with the definition of a 'seafarer' and the nature of vessels covered by the MLC) to cover all Australian seafarers for the purposes of the MLC.

62. In relation to private sector seafarers, the Seagoing Industry Award and Maritime Offshore Oil and Gas Award apply to 'national system' employers and their employees engaged in the seagoing industry and the maritime offshore oil and gas industry respectively (unless they fall within one of the award coverage exclusions). These awards operate within the geographical 'reach' of the Fair Work Act, which applies to:

- an Australian ship (that is, a ship that has Australian nationality under the Ships Registration Act, 1981), wherever located in the world, including in Australian waters (that is, in the territorial sea, the exclusive economic zone (EEZ) and the waters above the continental shelf);
- any ship, wherever located, that is operated or chartered by an Australian employer (including a trading corporation) and that uses Australia as a base;
- any fixed platform (e.g. an offshore oil and gas rig) in Australian waters, and any ship in Australian waters that operates from an Australian port and services, supplies or operates in connection with such a platform;
- any ship that is majority Australian-crewed and located in Australian waters; and
- generally speaking, any ship located in Australian waters that is engaged in the coasting trade operating under a license, continuous voyage permit or single voyage permit (SVP) issued under the Navigation Act (depending on conditions such as date of issue and number of SVPs).

63. The Navigation Act also includes a range of provisions which specifically regulate the employment of seafarers. The Navigation Act applies to ships that are proceeding on an overseas or inter-state voyage. It includes a range of detailed provisions regulating seafarer employment. These are all contained within Part II of the Navigation Act as well as in Marine Order 53.



64. Finally, the Seafarers Act establishes a workers' compensation and rehabilitation scheme for seafarers injured in the course of their employment on prescribed ships engaged in interstate, intra-territorial and overseas trade or commerce (the 'Seacare jurisdiction'). A prescribed ship is a ship to which Part II of the Navigation Act applies. This includes certain ships registered in Australia, ships otherwise registered and engaged in the coasting trade, or ships of which the majority of the crew are Australian residents and which are operated by an entity with its principal place of business in Australia. The Seafarers Act does not apply to Government ships.

65. The Commonwealth Government considers that current law and practice is largely consistent with the requirements in Title 2. Minor compliance gaps relating to seafarer employment agreements, hours of work and the payment of wages for compensation due to the loss or foundering of a vessel will be addressed through future amendments to the Navigation Act. Initial advice received from most state and territory governments is that they are fully compliant with Title 2. The Western Australian Government has yet to provide advice against Title 2, but officials currently consider that there are good prospects for full compliance within that jurisdiction with seafarer employment entitlements.

66. Both the Seagoing Industry Award 2010 and the Maritime Offshore Oil and Gas Award 2010 have detailed provisions relating to hours of work and rest periods for seafarers. Future regulations made under the amended Navigation Act will be consistent with these awards and will therefore have no impact.

*Title 3: Accommodation, recreational facilities, food and catering*

67. Title 3 provides detailed standards that require states to ensure that ship owners provide: decent accommodation and recreational facilities, as well as free, decent and safe food and drinking water. Regulation of the matters contained with Title 3 is shared between Commonwealth, state and the Northern Territory jurisdictions. No jurisdictions have indicated that they have compliance gaps with respect to the requirements of Title 3. At the Commonwealth level, the requirements are met through the Navigation Act and Marine Orders that prescribe the accommodation requirements of commercial vessels. Current requirements are consistent with Regulation 3.1. Similar legislation exists in states and the Northern Territory.<sup>19</sup>

68. Regulation 3.1, paragraph 2, provides that the requirements in the Code that relate to ship construction and equipment apply only to ships constructed on or after the date when the MLC comes into force for the flag State.

69. For ships constructed before the MLC comes into force at international law, the requirements of Regulation 3.1 relating to ship construction and equipment that are set out in the *Accommodation of Crews Convention (Revised), 1949* (No. 92), and the *Accommodation of Crews (Supplementary Provisions) Convention, 1970* (No. 133), will continue to apply to the extent that they were applicable under the law or practice of the member State.

70. Regulation 3.1 can be implemented flexibly. Standard A3.1, paragraphs 20 and 21, permits flag States, in specified circumstances, to exempt ships of less than 200 gross tonnage from some requirements in the Standard relating to accommodation and recreational facilities. Standard A3.1 also has specific provisions whereby the requirements can be modified for passenger and special purposes ships. In addition, ships less than 3,000 gross tonnage may be exempted from some requirements.

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<sup>19</sup> See: Uniform Shipping Laws Code, Part 6 and National Standard for Commercial Vessels, Part C Section 1.

71. Once the MLC comes into force for Australia, Regulation 3.1 will require new arrangements which update provisions currently giving effect to Conventions 92 and 133 in Australia, relating to the design and construction of new ships that are covered by the MLC in Australia. These are outlined at paragraphs 72 – 81.

72. MLC Standard A3.1(6)(a) requires the following new arrangement:

- The clear headroom in all crew accommodation where full and free movement is necessary will increase to 203 centimetres from 190 – 198 centimetres<sup>20</sup>;

Updating Convention 133, Article 10, where the current arrangements provide:

- **Provision 1 of Appendix 2 of Marine Orders Part 14 (Accommodation):** The clear headroom in all crew accommodation where full and free movement is necessary must be at least 1.98 metres;<sup>21</sup>
- **Provision 3.1.1 of Appendix 1 of Marine Orders Part 14 (Accommodation):** The clear headroom in sleeping rooms must be at least 1.90 metres.<sup>22</sup>

73. MLC Standard A3.1(6)(d) requires the following new arrangement:

- In passenger ships, and in special ships constructed in compliance with the IMO Code of Safety for Special Purpose Ships, 1983, sleeping rooms may be located below the load line on condition that satisfactory arrangements are made for lighting and ventilation but must not be located immediately beneath working alleyways;

Updating Convention 92, Article 10, where the current arrangement provides:

- **Provision 7 of Marine Orders Part 14 (Accommodation):** Accommodation and sanitary arrangements must be provided for passengers on board a passenger ship in accordance with Part II of Sub-section E of Section 5 of the Uniform Shipping Laws Code<sup>23</sup>.

74. MLC Standard A3.1(6)(e) requires the following the new arrangement:

- Bulkheads separating a part of the crew accommodation (other than a recreation deck space) will now also be separated from drying rooms and communal sanitary areas;

Updating Convention 92, Article 6, where the current arrangement provides:

- **Provision 1.5.1 of Appendix 1 of Marine Orders Part 14 (Accommodation):** Bulkheads separating a part of the crew accommodation (other than a recreation deck space) from a space used as:
  - (a) a permanent coal bunker;
  - (b) an oil fuel bunker;
  - (c) a cargo or machinery space;

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<sup>20</sup> Note: the Australian Government “may permit some limited reduction in headroom in any space, or part of any space, in such accommodation where it is satisfied that such reduction: (i) is reasonable; and (ii) will not result in discomfort to the seafarers.” See: Standard A3.1(6)(a).

<sup>21</sup> Note: Where reasonable and practicable ships of less than 1,000 gross tonnage should apply the standards set out in Appendix 2. See: [http://www.amsa.gov.au/shipping\\_safety/marine\\_orders/Documents/MO14%20issue1%20compilation%201.pdf](http://www.amsa.gov.au/shipping_safety/marine_orders/Documents/MO14%20issue1%20compilation%201.pdf)

<sup>22</sup> Note: Where reasonable and practicable ships of less than 500 gross tonnage should apply the standards set out in Appendix 1. See: [http://www.amsa.gov.au/shipping\\_safety/marine\\_orders/Documents/MO14%20issue1%20compilation%201.pdf](http://www.amsa.gov.au/shipping_safety/marine_orders/Documents/MO14%20issue1%20compilation%201.pdf)

<sup>23</sup> See: [http://www.nmsc.gov.au/media/pages\\_media\\_files/files/uslc-section5-sub-sectionE.pdf](http://www.nmsc.gov.au/media/pages_media_files/files/uslc-section5-sub-sectionE.pdf)

- (d) a lamp room or paint room;
  - (e) a store room not forming part of the crew accommodation (other than a dry provision store room);
  - (f) a chain locker; or
  - (g) a cofferdam
- must be so constructed as to be gastight and, where necessary to protect the crew accommodation, watertight.

75. MLC Standard A3.1(7)(b) requires the following new arrangement:

- A separate radio room or centralised machinery control room, not ventilated by a mechanical ventilation system, will be fitted with an electric fan<sup>24</sup>;

Updating Convention 92, Article 7, where the current arrangement provides:

- **Provision 2.4.6 of Appendix 1 of Marine Orders Part 14 (Accommodation):** A sleeping room, mess room, recreation room, office, galley or pantry, not ventilated by a mechanical ventilation system must be fitted with an electric fan.

76. MLC Standard A3.1(7)(c) requires that following new arrangement:

- All sanitary spaces will have ventilation to the open air, independently of any other part of the accommodation;

Updating Convention 92, Article 13, where the current arrangement provides:

- **Provision 2.4.1 of Appendix 1 of Marine Orders 14 (Accommodation):** Every enclosed space forming part of the crew accommodation of a ship, being a space not ventilated by a mechanical ventilation system, must be provided with a natural system of inlet and exhaust ventilation.

77. MLC Standard A3.1(9)(a) requires the following new arrangement:

- In ships other than passenger ships, an individual sleeping room shall be provided for each seafarer; in the case of ships of less than 3,000 gross tonnage or special purpose ships, exemptions from this requirement may be granted by the competent authority after consultation with the shipowners' and seafarers' organizations concerned;

Updating Convention 133, Article 5, where the current arrangement provides:

- **Provision 3.1.2 of Appendix 1 of Marine Orders Part 14 (Accommodation):** A separate sleeping room must be provided for the master and each officer and, where reasonable and practicable, having regard to the age of the ship and the purpose for which it is used or intended to be used, for each person over the age of 18 years.

78. MLC Standard A3.1(9)(f) requires the following new arrangement:

- The minimum floor area that will be provided for each person in a sleeping room in a ship *other* than (i) a passenger ship, (ii) a special purpose ship; or (iii) less than 3,000 gross tonnage<sup>25</sup>; is:

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<sup>24</sup> Except ships "regularly engaged in trade where temperature climactic conditions do not require this". See: Standard A3.1(7)(b).

- 5.5 square metres where a ship is 800 gross tonnage or more but less than 10,000 gross tonnage; and
- 7 square metres in ships of 10,000 gross tonnage or over;

Updating Convention 133, Article 5, where the current arrangement provides:

- **Provision 3.1.4 of Appendix 1 of Marine Orders Part 14 (Accommodation):** The minimum floor area that must be provided for each person in a sleeping room is:
  - (a) in the case of a ship of less than 400 gross tonnage, 4.20 square metres;
  - (b) in the case of a ship of 400 gross tonnage or more but less than 800 gross tonnage, 5.11 square metres; and
  - (c) in any other case, 6.05 square metres.

79. MLC Standard A3.1(9)(k) requires the following new arrangement:

- On ships *other than* passenger ships and special purpose ships, the requirement for the minimum floor area of the sleeping room of an officer without a separate sitting room or day room will be reduced from 7.55 square metres to 7.5 metres for ships less than 3000 gross tonnage. There are new arrangements for larger ships to provide that the floor area per person will not be less than:
  - 8.5 square metres in ships of 3,000 gross tonnage or over but less than 10,000 gross tonnage;
  - 10 square metres in ships of 10,000 gross tonnage or over;

Updating Convention 133, Article 5, where the current arrangement provides:

- **Provision 3.1.5 of Appendix 1 of Marine Orders Part 14 (Accommodation):** Where a separate sitting room or day room is not appropriated for the exclusive use of an officer, the minimum floor area of the sleeping room of that officer is to be 7.55 square metres.

80. MLC Standard A3.1(11)(c) requires the following new arrangement:

- One water closet will now be provided for every six, not every eight, persons for whom separate sanitary accommodation has not been provided; and

Updating Convention 92, Article 13, where the current arrangement provides:

- **Provision 6.1.4 of Appendix 1 of Marine Orders Part 14 (Accommodation):** One water closet must be provided for every 8 persons for whom separate sanitary accommodation has not been provided and where the total number of those persons is not divisible by 8 without remainder, and the remainder exceeds 3, an additional water closet must be provided.

81. MLC Standard A3.1(15) requires the following new arrangement:

- In a ship of 3,000 gross tonnage or more separate offices or a common ship's office for use by deck and engine departments will be provided.

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<sup>25</sup> Note: the Australian Government "may allow a reduced floor area" in order to provide single berth sleeping rooms on ships of less than 3,000 gross tonnage, passenger ships and special purpose ships. See: Standard A3.1(9)(g) of the MLC.

Updating Convention 92, Article 15, where the current arrangement provides:

- **Provision 5.1 of Appendix 1 of Marine Orders Part 14 (Accommodation):** In a ship of 2,500 gross tonnage or more, suitable office space must be provided, which must not be combined with a day-room.

82. It is important to note that the MLC applies only to the commercial ship building sector and not to other categories of shipbuilding, i.e. it does not apply to defence related ship building or commercial repair and maintenance. The National Marine Safety Committee<sup>26</sup> (NMSC) estimates that 3 newly constructed commercial vessels may be affected by the domestic application of Regulation 3.1 of the MLC from 2011-2012.

83. Given the very small number of affected vessels and the scope for exemptions outlined in paragraph 70, it is expected that the likely impact of these provisions on the costs of building new ships would be negligible. It is for shipbuilders to evaluate these costs, if any, against the potential costs of non-compliance with the MLC, including the inability to sell new ships internationally once the MLC becomes very widely ratified. At this point in time, and after consultation with stakeholders representing the interests of state and territory governments, maritime unions, shipowners associations and naval architects, speculative quantification of the increase in the cost of building a ship to MLC specifications, including flow-on effects such as changes to the hardware of the ship, is not possible.

84. In relation to Regulation 3.2, the Navigation Act, the Seagoing Industry Award, and the Maritime Offshore Oil and Gas Award combine to comply with the requirement to provide seafarers with decent and safe food and drinking water. The Navigation Act will be amended to impose an obligation on shipowners to provide food to seafarers free of charge. As this will simply codify existing industry practice, it will have no impact. The obligation in occupational health and safety legislation that employers provide their employees with a safe working environment also meets the requirements of Regulation 3.2.

#### *Title 4: Health protection, medical care, welfare and social security protection*

85. Title 4 sets out standards with respect to ensuring that seafarers have access to: adequate and prompt medical assistance including essential dental care; assistance to compensate them for the consequences of injury, sickness or death whilst working on board a vessel; a safe and hygienic working environment; shore-based welfare facilities; and social security protection.

86. The Commonwealth, state and Northern Territory governments give effect to Title 4 through a variety of occupational health and safety and compensation and rehabilitation legislation. At the Commonwealth level, the Navigation Act and Marine Orders set prescriptive standards relating to the health, safety and welfare of seafarers that meet the requirements of the MLC.

87. The Navigation Act will be amended to ensure that seafarers have access to essential dental care. This is expected to have an insignificant impact as cases where essential dental care is not accessible is rare. While not required, currently shipowners generally provide access to essential dental care in the same manner as they provide access to medical care.

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<sup>26</sup> The NMSC is an Intergovernmental Committee established and formalised by an Intergovernmental Agreement signed on 7 November 1997 by the Prime Minister, State Premiers and the Chief Minister of the Northern Territory. Its functions will be handed over to AMSA late 2010-early 2011.

*Title 5: Compliance and enforcement*

88. Title 5 requires that a system of regular inspections, monitoring and other control measures be established to ensure the implementation of the MLC with respect to ships that ‘fly the flag’ of the member, as well as foreign flagged vessels. Changes to current Commonwealth legislation and port and flag State inspections will be required in order to give effect to the obligations under Title 5.

89. In particular, ships are required to carry and maintain a Maritime Labour Certificate certifying that the working and living conditions of seafarers on the ship have been inspected and that they conform to the MLC. Further, ships must carry and maintain a Declaration of Maritime Labour Compliance. The Declaration of Maritime Labour Compliance has two parts. Part I is prepared by the flag State and refers to the relevant national requirements that are to be certified as having been complied with. Part II is prepared by the shipowner and outlines the measures that the shipowner has put in place to ensure ongoing compliance on the ship with the flag State requirements.

90. Regulation 5.1.3(1) of the MLC states that the provision and inspection of Maritime Labour Certificates and Declarations of Maritime Labour Compliance are mandatory only for ships over 500 gross tonnage engaged in international voyages. Owners of ships of 200 – 500 gross tonnage not engaged in international voyages do not require MLC mandated certification; however they may voluntarily request a Maritime Labour Certificate and Declaration of Maritime Labour Compliance (and associated inspections). In addition, Paragraph 19 of the *Guidelines for flag State inspections under the MLC*<sup>27</sup> provides that for ships that do not have to be certified (for example, ships 200-500 gross tonnage not engaged on international voyages), the flag State must still verify compliance for all the same requirements as a certified ship.

91. These certification and inspection requirements are the aspects of the MLC that will have greatest impact on Australia once it has been ratified. Importantly, the Commonwealth (which is primarily responsible for implementing Title 5) is substantially compliant with the requirements of Title 5 other than those specific to the MLC, these being:

- providing for inspection reports against the MLC;
- issuing Maritime Labour Certificates and Declarations of Maritime Labour Compliance; and
- the requirement for vessels to carry a copy of the MLC.

92. Technical amendments will be made to the Navigation Act and Marine Orders to address these compliance gaps.

*Inspections under Title 5*

93. In relation to those vessels considered to be covered by the MLC, AMSA has an established system of flag State and port State inspections that is compliant with the MLC. As a result, implementation of Title 5 of the MLC is not expected to significantly increase AMSA’s inspection workload or associated costs.

*Australian-flagged vessels*

94. As a flag State authority, AMSA holds the responsibility for ensuring that Australian ships comply with both international Convention requirements and with any specific national

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<sup>27</sup> Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_101788.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_101788.pdf)

requirements. AMSA has delegated the statutory survey and certification processes to eight Classification Societies through agreements made in accordance with the IMO Assembly Resolution A.739 (18).<sup>28</sup>

95. In relation to Australian-flagged vessels that will be covered by the MLC, AMSA will be responsible for inspecting vessels and issuing Maritime Labour Certificates and Declarations of Maritime Labour Compliance to ships on a five-yearly basis. It will also be required to carry out inspections on these vessels between the second and third anniversary dates of the certificate. Further, it must also conduct inspections on ships of 200 – 500 gross tonnage not engaged on international voyages. However, there is no requirement to issue them with a Maritime Labour Certificate and Declaration of Maritime Labour Compliance should the shipowner not request one.

96. Under the MLC, public institutions or other organisations, recognised as competent and independent, may be authorised, in accordance with the MLC by a flag State to carry out inspections or to issue certificates or do both on its behalf. They are called "recognized organizations" (ROs) for the purposes of the MLC.

97. The MLC sets out the role of ROs and the requirements for flag States that may wish to appoint public institutions or other organisations to carry out inspections required by the MLC in accordance with normal practice. When an RO is appointed, the flag State (or its competent authority) needs to specify the scope of the role of ROs with respect to verification of national requirements.

98. The flag State should also have in place an oversight system for ROs that it has authorised. This system should include procedures for communicating with the RO and provision of information on any national measures that differ from the MLC. AMSA already complies with this requirement in that it has delegated the survey of Australian-flagged ships to classification societies (as ROs) and AMSA audits those ROs.

99. AMSA is currently looking at options for delegating to ROs its MLC flag State responsibilities with respect to ships over 500 gross tonnage engaged in international voyages, that is those vessels that require a Declaration of Maritime Labour Compliance and a Maritime Labour Certificate under the MLC (see above).

100. Under its established inspection regime, AMSA Marine Surveyors are already required to conduct regular inspections on Australian-flagged vessels. Table 1 identifies the number of ships that will require MLC certification in Australia and compares this with the number of Australian-flagged vessels that were inspected in 2009. It is shown that in 2009, AMSA Marine Surveyors conducted 90 inspections on 59 Australian-flagged vessels, around one third the number of ships it would need to inspect post MLC ratification.<sup>29</sup> While this is a substantial increase in the number of ships requiring inspection, it is unlikely to create significant regulatory or financial impacts for the reasons outlined below.

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<sup>28</sup> AMSA has an agreement with each of the following recognised Classification Societies (which are members of the International Association of Classification Societies), governing the provision of survey and certification services for vessels registered in Australia: American Bureau of Shipping; Bureau Veritas; China Classification Society; Det Norske Veritas; Germanischer Lloyd; Korean Register of Shipping; Lloyd's Register; and RINA Services S.p.A.

<sup>29</sup> AMSA, 2009, Port State Control: 2009 Report, Australia, pages 1, [http://www.amsa.gov.au/Shipping\\_Safety/Port\\_State\\_Control/documents/PSCReport09.pdf](http://www.amsa.gov.au/Shipping_Safety/Port_State_Control/documents/PSCReport09.pdf)

Table 1. Australian-flagged ships inspected by Australian authorities

<b>Number of ships requiring MLC inspection</b>	<b>Number of ships inspected (2009)</b>
184	59 (90 inspections)

101. Firstly, ships to which the MLC applies but which will not require a Maritime Labour Certificate or a Declaration of Maritime Labour Compliance may not be required to undergo a separate inspection to determine their compliance with the MLC. Rather, inspections to determine MLC compliance could be undertaken at the same time as they are inspected to verify their compliance with national marine safety standards. However, whilst unlikely, should a separate inspection be required, the cost of undertaking the inspection would not be greater than that imposed on ships that do require this documentation.

102. Secondly, for ships requiring a Declaration of Maritime Labour Compliance and a Maritime Labour Certificate, there will be an additional charge by ROs (which already carry out a number of functions relating to Australia-flagged ships on behalf of AMSA) to cover the time spent in inspecting ships to determine if they comply with the MLC. While the actual charge will vary from one RO to another, indications are that it could be up to \$7,500 per ship in each five year inspection cycle. These costs are expected to impact on 35 Australian registered ships requiring a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance.

103. With regard to the duration of the required inspections under the MLC, it is anticipated that initial inspections will require between four and eight hours depending on the size of the vessel concerned. However, many of the requirements under the MLC would not require comprehensive re-inspection other than to ensure facilities and conditions are being maintained. Therefore, there is much scope for harmonisation of MLC intermediate inspections with routine survey and safety management system audits under the current inspection regime. The inclusion of MLC inspections in such audits would result in reductions in the overall duration and cost of such inspections, though these factors cannot be quantified at this time.

104. As a result, it is expected that the added requirement to inspect all Australia-flagged ships in relation to compliance with the MLC will not represent a significant cost or workload increase on AMSA. It will also not result in substantial increases in costs for Australian ship-owners.

#### *Port State control*

105. As a port State authority, AMSA holds the responsibility for inspecting foreign-flagged vessels entering Australian ports for compliance with the MLC.

106. It is expected that once the MLC comes into force for Australia, AMSA's involvement in the port State control of MLC-covered vessels will be reduced as their responsibilities will be predominantly limited to inspection of MLC documentation rather than comprehensive inspections of whole ships. In 2009, AMSA conducted 2,994 inspections in Australian ports on commercial vessels from 53 countries (see Table 2).



Table 2. Number of foreign-flagged ships inspected by Australian authorities in 2009<sup>30</sup>

<b>Flag State</b>	<b>MLC Ratification / ILO Member State</b>	<b>No. of vessels</b>
Antigua and Barbuda	No / Yes	60
Bahamas	Yes / Yes	120
Barbados	No / Yes	3
Belgium	No / Yes	9
Belize	No / Yes	3
Bermuda, UK	No / UK territory <sup>31</sup>	18
Cayman Islands, UK	No / UK territory	16
China	No / Yes	72
Cook Islands	No / Yes	5
Croatia	Yes / Yes	10
Cyprus	No / Yes	96
Denmark	No / Yes	17
Dominica	No / Yes	7
Egypt	No / Yes	4
France	No / Yes	8
Germany	No / Yes	29
Gibraltar, UK	No / UK territory	12
Greece	No / Yes	66
Hong Kong, China	No / No	282
India	No / Yes	29
Indonesia	No / Yes	3
Iran	No / Yes	1
Isle of Man, UK	No / UK territory	39
Italy	No / Yes	41
Japan	No / Yes	41
Korea, Republic of	No / Yes	84
Kuwait	No / Yes	6
Liberia	Yes / Yes	216
Luxembourg	No / Yes	3
Malaysia	No / Yes	8
Malta	No / Yes	104
Marshall Islands	Yes / Yes	115
Mauritius	No / Yes	1
Netherlands Antilles, Netherlands	No / Netherlands territory <sup>32</sup>	4
New Zealand	No / Yes	2
Norway	Yes / Yes	42

<sup>30</sup> Australian Maritime Safety Authority, 2009, Port State Control: 2009 Report, Australia, pages 9-10, [http://www.amsa.gov.au/Shipping\\_Safety/Port\\_State\\_Control/documents/PSCReport09.pdf](http://www.amsa.gov.au/Shipping_Safety/Port_State_Control/documents/PSCReport09.pdf)

<sup>31</sup> Article 35 of the ILO Constitution provides that "Conventions which member States have ratified in accordance with the provisions of this Constitution shall be applied to the non-metropolitan territories for whose international relations they are responsible." ILO Conventions are extended to United Kingdom (UK) territories by the UK and are given effect through legislation in those territories. The Category 1 Group of British Registries currently includes Bermuda, British Virgin Islands (BVI), Cayman Islands, Gibraltar, Isle of Man and the UK. As a category 1 Register, territories can register vessels of any size and type provided that they meet international standards. Therefore, it is our understanding that once the United Kingdom has ratified the MLC, it will be applicable to the Category 1 Group of British Registries through Article 35 of the ILO Constitution.

<sup>32</sup> It is our understanding that once the Netherlands has ratified the MLC, it will be applicable to the Netherlands Antilles as a non-metropolitan territory of the Netherlands in accordance with Article 35 of the ILO Constitution.

<b>Flag State</b>	<b>MLC Ratification / ILO Member State</b>	<b>No. of vessels</b>
Panama	Yes / Yes	940
Papua New Guinea	No / Yes	16
Philippines	No / Yes	47
Portugal	No / Yes	1
Russian Federation	No / Yes	4
Saint Vincent and the Grenadines	No / Yes	6
Samoa	No / Yes	1
Singapore	No / Yes	213
Sweden	No / Yes	11
Switzerland	No / Yes	9
Taiwan, China	No / Yes	17
Thailand	No / Yes	25
Tonga	No / Yes	9
Turkey	No / Yes	12
United Kingdom	No / Yes	35
Vanuatu	No / Yes	26
Vietnam	No / Yes	10
<b>Total:</b>	No / Yes	<b>2994</b>

107. The MLC is expected to simplify the inspection of foreign ships once it comes into force. This is because under Regulation 5.2.1(2) of the MLC, each Member must accept the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance as *prima facie* evidence of compliance with the requirements of the MLC. Accordingly, AMSA's responsibilities for the inspection of foreign-flagged vessels will in most cases be limited to:

- i) a review of the Maritime Labour Certificate and Declaration of Maritime Labour Compliance;
- ii) inspection of vessels that have not been issued with a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance; and
- iii) inspection of vessels where the Maritime Labour Certification and Declaration of Maritime Labour Compliance appear to be falsely maintained, or incomplete, where a contravention of the MLC is obvious, there are reasonable grounds to believe the ship has changed flag to avoid compliance with the MLC, or a complaint about non-compliance with the MLC has been made.

108. This would notably reduce labour and financial costs of the current port-state compliance regime where inspections are carried out on a more frequent basis and involve a more comprehensive process. Additionally, the vast majority of inspections were carried out with respect to vessels flagged in countries who have either signed, or who are likely to sign the MLC. Of those vessels AMSA inspected in 2009, 1443 inspections (or 48 per cent of total inspections) were performed on vessels whose flag State has already ratified the MLC. Furthermore, an additional 17 per cent of vessels flagged in either EU member States or their territories (noting in this context that EU members have been issued a directive to ratify the MLC by the end of 2010). Finally, it is important to note that all countries whose flagged vessels were inspected by AMSA in 2009 are ILO members (or territories of ILO members), and it is reasonably expected that as seafaring nations, many of these countries may seek to ratify the MLC.

109. While it is of course possible that ships flying the flag of a State that has not ratified the MLC will (post Australia's ratification of the Convention) enter Australia's waters, it is not possible at present to anticipate the frequency with which, and the associated costs, AMSA will detain and inspect such vessels.

110. There will be some costs associated with training the AMSA marine surveyors and marginal costs associated with the actual inspection of foreign ships for compliance. However, this will not result in any costs to Australia as such costs will be fully recovered by way of the quarterly levy currently imposed on ships entering Australian ports. It is, however, expected that AMSA's involvement in the port State control regime for MLC-covered ships will reduce once each new ILO Member States ratifies the MLC.

#### *Other impacts*

111. Under Article 22 of the ILO Constitution, member States that have ratified an ILO Convention or Protocol must submit a report on the implementation of the Convention to the ILO Committee of Experts on the Application of Conventions and Recommendations on a two- or five-yearly basis. Only the eight key Conventions as defined under the *ILO 1998 Declaration on the Fundamental Principles and Rights at Work* must be reported against on a two-yearly basis. The MLC is not one of these instruments and Australia will be required to report against the MLC on a five-yearly basis should the MLC be ratified. The first report would be due on 1 September in the first 12 months immediately following the MLC coming into force for Australia. Each report builds on the previous reports and generally includes: data relating to the MLC (for example, number of inspections carried out, number of Declarations issued etc); and updates to regulatory frameworks. These reports are prepared by government and the cost of doing so will be minimal, as Australia already reports on ILO maritime Conventions (see Attachment 1).

## **Part 6 Consultation with states and territories and Australia's social partners to the ILO**

### *Consultation with states and territories*

112. There has been consultation with state and territory governments on the MLC at both the Ministerial and official level.

113. States and territories were provided with the opportunity in 2004 to comment on the draft text and to provide information for inclusion in the briefing for the Australian delegation to the ILO Preparatory Technical Maritime Conference to consider the draft text for a consolidated maritime labour Convention.

114. States and territories were also provided with the opportunity in 2005 to comment on the draft text of the MLC and to provide information for inclusion in the briefing for the Australian delegation to the 94th (Maritime) Session of the International Labour Conference (which was the meeting at which the MLC was adopted).

115. The status of Australia's compliance with the MLC and prospects for ratification have been regularly considered at annual meetings of Commonwealth, state and territory officials responsible for ILO matters. Specifically, the MLC was discussed at meetings held in August 2005, April 2006, July 2007, September 2008 and September 2009. The MLC has further been discussed at the High Level Officials' Group on 23 November 2009, 26 February 2010 and 30 April 2010. Furthermore, the Commonwealth has also convened discussions on the MLC with ILO Technical Officers in each state and territory in February 2010, May 2010, June 2010 and July 2010.

116. On 22 December 2008, the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, wrote to her state and territory counterparts seeking their views on ratification of the MLC by 30 June 2009. Law and practice reports were also sought from the state and territory governments.

117. The MLC was also discussed at the Workplace Relations Ministers' Council (WRMC) on 3 April 2009, where Members agreed that consideration of ratifying the MLC will be pursued as a priority, subject to resolution of any compliance issues. Further discussion on the MLC took place at the WRMC meetings of 25 September and 11 December 2009.

118. Briefing on the MLC was provided to the Standing Committee on Treaties on 17 November 2009.

119. Officials from the Department of Education, Employment and Workplace Relations and AMSA have attended inter-agency meetings of every state government as well as the Northern Territory Government to assist in undertaking a thorough assessment of compliance gaps with the MLC. The dates on which these meetings were convened are listed below.

- New South Wales Government, on 11 February 2010
- Tasmanian Government, on 17 March 2010
- Victorian Government, on 18 March 2010
- Queensland Government, on 19 March 2010
- Northern Territory Government, on 22 March 2010
- Western Australian Government, on 8 April 2010
- South Australian Government, on 9 April 2010

120. As at 2 February 2010 all State and Territory governments with the exception of Western Australia have provided in-principle support to ratify the MLC, subject to the resolution of all compliance issues. The dates on which this advice was provided is also listed below.

- New South Wales – 2 February 2010
- Victoria – 21 September 2009
- Queensland – 18 December 2009
- South Australia – 29 July 2009
- Tasmania – 9 June 2009
- Northern Territory – 21 December 2009

121. On 10 July 2009, the Australian Capital Territory Government Solicitor advised that the MLC did not apply within the territorial area of the Australian Capital Territory.

122. On 11 December 2009, the Hon Troy Buswell MLA, the then Western Australian (WA) Minister for Commerce, wrote to the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, advising that the WA Government could not support ratification before compliance was achieved in its jurisdiction. Minister Buswell further advised that it was Western Australia's intent to continue with steps to achieve full compliance and only advise of their views on ratification at that time.

123. On 11 June 2010, the Hon Simon O'Brien MLC, WA Minister for Transport, wrote to Minister Gillard, advising that no significant marine safety compliance issues had been identified in Western Australia. Further to this letter, the WA Minister for Commerce, the Hon Bill Marmion MLA, wrote to Minister Gillard on 16 June 2010 to advise that they were still not at the stage of seeking advice from the State Solicitor's Office and were therefore unable to advise as to whether WA would meet the deadline for putting in place compliance measures by the end of 2010. Minister Marmion further advised that it was WA's intention to take the necessary steps to achieve compliance before supporting ratification of the Convention.

#### *Consultation with social partners*

124. On 22 December 2008, the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, wrote to the Maritime Union of Australia (MUA), the Australian Shipowners Association (ASA), the Australian Chamber of Commerce and Industry (ACCI), the Australian Council of Trade Unions (ACTU) and the Australian Industry Group (Ai Group) seeking their views on ratification of the MLC by 30 June 2009.

125. The MUA wrote to the Minister for Employment and Workplace Relations on 19 February 2008 seeking ratification of the MLC by August 2008. The MUA wrote again to the Minister on 17 August 2009 confirming its support for ratification.

126. The ASA wrote to the Minister for Employment and Workplace Relations on 13 August 2009 strongly urging the Australian Government to ratify the MLC.

127. The Department of Education, Employment and Workplace Relations has held meetings with the MUA and ASA to progress consideration of Australia's ratification and implementation of the MLC. These meetings were convened on 23 July 2009, 11 May 2010 and 17 August 2010.

128. The ACTU, ACCI and Ai Group have advised their support for ratification of the MLC through the International Labour Affairs Committee (ILAC) of the National Workplace Relations Consultative Council. Discussion at the ILAC meetings on 3 March and 31 October 2008, 2 March and 23 October 2009, 1 March and 1 November 2010 have focussed on the progress of the ratification process and resolution of compliance issues.

*Consultation with relevant Commonwealth Ministers*

129. On 20 April 2010, the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, the Hon Julia Gillard MP wrote to the Attorney-General, the Hon Robert McClelland MP, the then Minister for Foreign Affairs, the Hon Stephen Smith MP, and the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Anthony Albanese MP, seeking their in-principle agreement for ratification of the MLC.

130. The Attorney-General, the Hon Robert McClelland MP, wrote to the Minister for Employment and Workplace Relations on 3 May 2010 supporting the proposal to proceed with necessary legislative amendments in order to ensure that Australia is in a position to ratify the MLC by the time it comes into force internationally.

131. The Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Anthony Albanese MP, wrote to the Minister for Employment and Workplace Relations on 4 May 2010 providing his in-principle support for Australian ratification of the MLC.

132. The Minister for Foreign Affairs, the Hon Stephen Smith MP, wrote to the Minister for Employment and Workplace Relations on 14 May 2010 providing his in-principle support for Australian ratification of the MLC.

## **Part 7 Conclusion & Recommendation**

133. The cost and regulatory impact of ratification will be minimal given that current Australian law and practice already substantially complies with the MLC.

134. Australian ratification will ensure decent working and living conditions for seafarers on foreign-flagged ships entering Australian ports and on Australian ships. Australian-flagged ships will consequently be protected from unfair competition from foreign ships on which crews have substandard living and working conditions. They will also benefit from a system of certification, avoiding or reducing the likelihood of lengthy delays related to inspections for compliance with the Convention in foreign ports.

135. Ratification will also reinforce Australia's reputation as a respected port State in the international maritime community and allow Australia to take a leadership role in encouraging and supporting developing nations in our region to become compliant with the MLC. Further, ratification will enhance Australia's credibility within the Tokyo MOU which requires signatories to apply relevant international maritime standards in the carrying out of its port state control regime.

136. If Australia fails to ratify the MLC, the practical implication of Article V is that once the MLC comes into force generally, Australian-flagged ships entering a port of a foreign country which has ratified the MLC will be treated in the same way, and will be required to conform to the same standards, as the ships of States that have ratified the MLC.

137. The practical effect of this may be to impose significant cost increases on the owners of Australian-flagged ships trading internationally if Australia has not ratified the MLC. This is because Australian-flagged ships would not be carrying the necessary documentation to show *prima facie* evidence of compliance with the MLC. As a result Australian-flagged ships may be subject to inspection in any country that has ratified the MLC. They may be detained until an inspection is carried out and be subject to further detention if the inspection indicates they do not meet the minimum standards of the MLC. This will impose additional costs onto Australian shipowners which they may be forced to pass on to consumers, thereby diminishing the commercial competitiveness of the Australian shipping industry as a whole. Further, additional costs associated through not ratifying the MLC could encourage Australian shipowners to flag their ships off-shore, in turn affecting seafarers and other workers in the industry.

138. The Australian Government recommends that it ratify the MLC as soon as compliance has been achieved in every jurisdiction to ensure that Australia is party to the MLC by the time it is expected to come into force at international law at the end of 2011.

## **Part 8 Strategy for implementation and review**

### *Implementation*

139. By ratifying the MLC Australia agrees to be bound by, and implement the requirements of, the Convention. The implementation of the MLC is shared between the Commonwealth, state and territory governments. It is also regulated by a range of legislation in all jurisdictions in areas such as maritime, occupational health and safety, workplace relations and compulsory education laws.

140. States and territories have either completed, or are close to completing a comprehensive assessment of all relevant legislation. To date, only minor technical amendments have been identified in order to comply with the Convention. In some jurisdictions (for example, New South Wales, South Australia and Tasmania), no legislative amendments have been identified.

141. At the Commonwealth level, the need for minor technical amendments has been identified to the Navigation Act and Marine Orders (delegated legislation made under the Navigation Act). This will include an extended port State control system for the inspection and certification of maritime labour conditions on board ships with a gross tonnage of 500 and over on international voyages which is being developed to meet the requirements of Title 5 of the Convention.

142. At the Commonwealth level amendments to the Navigation Act and Marine Orders are being progressed with the aim of being in place in the first half of 2011.

### *Review*

143. Under Article 22 of the ILO Constitution, member States that have ratified an ILO Convention must submit a report on the implementation of the Convention to the ILO Committee of Experts on the Application of Conventions and Recommendations on a two- or five-yearly basis.

144. Only the eight key Conventions as defined under the ILO 1998 Declaration on the Fundamental Principles and Rights at Work must be reported against on a two-yearly basis. The MLC is not one of these instruments, which means that Australia will (should it ratify) report against the MLC on a five yearly basis.

145. Should Australia ratify the Convention, the first report will be submitted on 1 September in the first 12 months immediately following the Convention coming into force for Australia.

### *Future Treaty Action*

126. Article XIV provides that future amendments to the MLC may be adopted by the annual General Conference of the ILO in the framework of Article 19 of the Constitution of the ILO and its rules and procedures for the adoption of Conventions. Amendments to the Code may also be adopted following the procedures in Article XV.

127. Any proposal to take binding treaty-action in respect of an instrument arising out of a revision of the MLC would be subject to Australia's treaty-making procedures, including tabling and consideration by the Joint Standing Committee on Treaties.



**Attachments**

- Attachment 1:** Table listing the Conventions that will be consolidated by the MLC, identifying those already ratified by Australia and the number of ratifications and denunciations each has received by ILO member States.
- Attachment 2:** Conventions ratified by Australia that will be replaced by the MLC
- Attachment 3:** List of proposed amendments to the Navigation Act and Marine Orders

**Attachment 1**

<b>Instrument</b>	<b>Australian ratification</b>	<b>Number of ratifications</b>
Minimum Age (Sea) Convention, 1920 (No. 7)	28:06:1935	Ratified: 4 Denounced: 0
Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)	28:06:1935	Ratified: 60 Denounced: 0
Placing of Seamen Convention, 1920 (No. 9)	03:08:1925	Ratified: 34 Denounced: 7
Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	28:06:1935	Ratified: 82 Denounced: 0
Seamen's Articles of Agreement Convention, 1926 (No. 22)	01:04:1935	Ratified: 60 Denounced: 0
Repatriation of Seamen Convention, 1926 (No. 23)	--	Ratified: 46 Denounced: 1
Officers' Competency Certificates Convention, 1936 (No. 53)	--	Ratified: 37 Denounced: 0
Holidays with Pay (Sea) Convention, 1936 (No. 54)	--	Ratified: 4 Denounced: 2
Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)	--	Ratified: 18 Denounced: 0
Sickness Insurance (Sea) Convention, 1936 (No. 56)	obsolete	Ratified: 19 Denounced: 1
Hours of Work and Manning (Sea) Convention, 1936 (No. 57)	--	Ratified: 1 Denounced: 2
Minimum Age (Sea) Convention (Revised), 1936 (No. 58)	--	Ratified: 17 Denounced: 34
Food and Catering (Ships' Crews) Convention, 1946 (No. 68)	--	Ratified: 25 Denounced: 0
Certification of Ships' Cooks Convention, 1946 (No. 69)	29:08:1995	Ratified: 38 Denounced: 0
Social Security (Seafarers) Convention, 1946 (No. 70)	--	Ratified: 6 Denounced: 1
Paid Vacations (Seafarers) Convention, 1946 (No. 72)	--	Ratified: 1 Denounced: 4
Medical Examination (Seafarers) Convention, 1946 (No. 73)	29:08:1995	Ratified: 46 Denounced: 0
Certification of Able Seamen Convention, 1946 (No. 74)	--	Ratified: 29 Denounced: 0
Accommodation of Crews Convention, 1946 (No. 75)	--	Ratified: 1 Denounced: 4
Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)	--	Ratified: 0 Denounced: 0
Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)	obsolete	Ratified: 18 Denounced: 7
Accommodation of Crews Convention (Revised), 1949 (No. 92)	11:06:1992	Ratified: 47 Denounced: 0
Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)	--	Ratified: 5 Denounced: 0

<b>Instrument</b>	<b>Australian ratification</b>	<b>Number of ratifications</b>
Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)	--	Ratified: 11 Denounced: 4
Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)	11:06:1992	Ratified: 32 Denounced: 0
Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)	--	Ratified: 29 Denounced: 0
Continuity of Employment (Seafarers) Convention, 1976 (No. 145)	--	Ratified: 17 Denounced: 0
Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)	--	Ratified: 17 Denounced: 0
Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)	--	Ratified: 56 Denounced: 0
Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)	--	Ratified: 23 Denounced: 0
Seafarers' Welfare Convention, 1987 (No. 163)	--	Ratified: 17 Denounced: 0
Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)	--	Ratified: 14 Denounced: 0
Social Security (Seafarers) Convention (Revised), 1987 (No. 165)	--	Ratified: 3 Denounced: 0
Repatriation of Seafarers Convention (Revised), 1987 (No. 166)	--	Ratified: 13 Denounced: 0
Labour Inspection (Seafarers) Convention, 1996 (No. 178)	--	Ratified: 15 Denounced: 0
Recruitment and Placement of Seafarers Convention, 1996 (No. 179)	--	Ratified: 10 Denounced: 0
Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)	--	Ratified: 21 Denounced: 0

**Attachment 2**

**Conventions ratified by Australia that are revised by the Maritime Labour Convention**

The Maritime Labour Convention was adopted by the 94th (Maritime) Session of the International Labour Conference (the Maritime Conference) on 7 February 2006. It consolidates 37 separate ILO maritime labour conventions adopted since 1920 and replaces them with a single, coherent instrument. Of these, Australia has ratified 14. Nine of these ratifications are still in force – they are briefly described below. Ratified Conventions that are no longer in force are also listed below.

A full copy of each Convention is online at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

**1. Repatriation of Seafarers (Revised), 1987 (No. 166)**

Convention 166 specifies the circumstances under which seafarers are to be entitled to repatriation and requires that national laws or regulations or collective agreements prescribe the maximum periods of service on board following which a seafarer is entitled to repatriation.

**2. Accommodation of Crews (Supplementary Provisions), 1970 (No. 133)**

Convention 133 applies to all sea-going ships engaged in the transport of passengers or cargo, or employed for any other commercial purpose, as defined by national laws or regulations. The requirements for crew accommodation include provisions for sleeping rooms, mess rooms, and recreation facilities.

**3. Accommodation to Crews (Revised), 1949 (No. 92)**

Convention 92 applies to every sea-going mechanically propelled vessel engaged in the transport of cargo or passengers for the purpose of trade and registered in a territory for which Convention 92 is in force. It does not apply to vessels of less than 500 tons.

**4. Medical Examination (Seafarers), 1946 (No. 73)**

Convention 73 provides that no seafarers shall be employed on a sea-going vessel unless they produce a certificate attesting to their fitness for work at sea, signed by a medical practitioner or, in the case of sight testing, by an authorised person. Convention 73 does not apply to vessels of less than 200 gross registered tons or to fishing vessels.

**5. Certification of Ships' Cooks, 1946 (No. 69)**

Convention 69 provides that every ship's cook must hold a certificate of qualification which may not be granted unless they have reached a prescribed minimum age, served at sea for a minimum period decided by the competent authority, and passed an examination as prescribed.

**6. Minimum Age (Sea) (Revised), 1936 (No. 58)**

Convention 58 provides that persons under the age of 15 years of age shall not be employed on vessels, other than vessels upon which only members of the same family are employed. National laws or regulations may provide for the issue of a certificate permitting children not less than 14 years of age to be employed in cases where the appropriate authority is satisfied that such employment will be beneficial to the child. Convention 58 does not apply to fishing vessels.

**7. Seamen's Articles of Agreement, 1926 (No. 22)**

Convention 22 provides that articles of agreement shall be signed by the shipowner or its representative and by seafarers under conditions which ensure adequate supervision.

**8. Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)**

Convention 16 provides that employment of young persons of less than 18 years of age on any vessel, other than vessels in which only members of the same family are employed, shall be conditional upon the production of a medical certificate attesting to fitness for work.

**9. Unemployment Indemnity (Shipwreck), 1920 (No. 8)**

Convention 8 ensures that seafarers who become unemployed as a result of the loss of certain types of vessels are paid an indemnity for the period of unemployment by the owner of the vessel of the person who contracted them for employment (limited to two months' wages).

**Ratified Conventions that are no longer in force or did not come into force are:**

Placing of Seamen Convention, 1920 (No. 9)

Minimum Age (Trimmmers and Stokers) Convention, 1921 (No. 15)

Hours of Work and Manning (Sea) Convention, 1936 (No. 57)

Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)

**Attachment 3**

**Matters to be covered by amendments to the *Navigation Act 1912* and Marine Orders**

The minor matters that will be addressed by amendments to the *Navigation Act 1912* or Marine Orders are:

- replace references to the ILO Medical Examination (Seafarers) Convention 1946 (No. 73) [which is being made redundant by the MLC] with references to Regulation 1.2 of the MLC;
- insert a provision requiring persons involved in the cooking, preparation and processing of food to have undergone appropriate minimum basic safety training. While such training happens in practice, there is currently no legislative requirement;
- extend to the master the existing requirement that all seafarers (other than the master) must have an employment agreement;
- provide that a seafarer (including the master) should be given the opportunity to examine and seek advice on an agreement before signing it;
- include a provision to allow a seafarer to specify to whom the seafarer's wages are to be paid;
- amend the regulation-making power to ensure that regulations setting maximum working hours and minimum hours of rest can apply to all crew members, not just crew members engaged in watchkeeping duties;
- amend references to loss or wreck of a ship to include foundering;
- delete references to redundant ILO Conventions;
- provide food on a ship be provided free of charge (to reflect current practice);
- amend the provisions relating to the provision of free medical care to also include essential dental care;
- require that the text of the MLC be available to crew members on board ships to which the MLC applies; and
- extend to the master the existing provisions relating to the discharge of seafarers (other than the master).