



AIMPE
SUBMISSION to
JOINT
STANDING COMMITTEE ON TREATIES
regarding
Maritime Labour Convention, 2006
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Introduction

The Australian Institute of Marine and Power Engineers is the registered trade union representing the professional and industrial interests of Marine Engineers in Australia. The AIMPE was founded in 1881 by representatives from several of the then colonies of Australasia.

AIMPE is affiliated with the Australian Council of Trade Unions and the International Transport Workers Federation. Through the ITF, AIMPE has been represented at the ILO in the process of the drafting and negotiation of the Maritime Labour Convention 2006. The ITF has received many reports about the MLC processes from its delegates to the ILO and indeed from Ms Cleopatra Doumbia-Henry, Director, International Labour Standards, ILO.

As a result of our ITF involvement, AIMPE is aware of the concepts of the MLC and the objectives of updating, consolidating and achieving greater enforceability of the numerous existing ILO maritime conventions. AIMPE strongly supports these objectives. AIMPE also supports the earliest possible ratification of the MLC by Australia.

Submission

Many of the ILO maritime convention obligations are delivered in Australia by the Navigation Act 1912. However the Navigation Act 1912 is far from comprehensive in application – being restricted to trading vessels on inter-State or international voyages. As a result State legislation is relied upon to deliver on the convention obligations in relation to intra-State vessels. Non- trading vessels are however in a doubtful position.

These jurisdictional complexities are part of the underlying rationale for the COAG decision to implement a single national jurisdiction for the maritime industry. In addition the Minister for Infrastructure and Transport has initiated a re-draft of the Navigation Act to eliminate obsolete provisions and build a structure for the new single national jurisdiction.

The key questions for the Joint Standing Committee are:

1. whether the current Federal, State and Territory laws dealing with the maritime industry are effective in ensuring that all operators in Australia's jurisdiction currently comply with all of the MLC obligations; and
2. Whether the proposed new single national jurisdiction legislation will likewise be effective in ensuring that all operators in Australia's jurisdiction comply with all of the MLC obligations.

The Regulatory Impact Statement indicates that a number of relatively minor amendments need to be made to ensure compliance.

Regarding the broad elements of the MLC, AIMPE makes the following observations:

Title 1. Minimum requirements for seafarers to work on a ship – these requirements of the MLC are generally delivered by the Navigation Act and the Marine Orders made under the Navigation Act

Title 2. Conditions of employment – these provisions are generally delivered in Australia by the Fair Work Act, by the Modern Awards made under the FWA and by Agreements negotiated in accordance with the FWA. However compensation matters are delivered by the Seafarers Rehabilitation and Compensation Act 1992 while repatriation and

manning matters are covered by the Navigation Act. The additional complexity is that in relation to some vessels State or Territory Workers Compensation legislation may apply;

Title 3. Accommodation, recreational facilities, food and catering – these requirements of the MLC are generally delivered by the Navigation Act and the Marine Orders made under the Navigation Act;

Title 4. Health protection, medical care, welfare and social security protection – these matters are delivered by a combination of the Occupational Health and Safety (Maritime Industry) Act 1993, Seafarers Rehabilitation and Compensation Act and the Navigation Act. Social Security in Australia is of course funded out of consolidated revenue.

Title 5. Compliance and enforcement – these requirements of the MLC are generally delivered by the Navigation Act and the Marine Orders made under the Navigation Act

AIMPE notes that the Navigation Act ensures that seafarers receive medical treatment until return to home port as required by Regulation 4.1 and Standard A4.1. This is separate from and additional to the matters covered by the compensation legislation – see s.127 and s.132 of the Navigation Act. However seafarers on vessels not covered by the Navigation Act e.g. intra-State voyaging vessels, may not receive this protection under State and/or Territory laws. This gap will presumably be rectified once the re-write of the Navigation Act is enacted however until then it remains a possible compliance gap.

At paragraph 41 of the RIS there is a discussion about the consequences on Australian international trading vessels of a failure to ratify. It appears that there is an assumption that nationality of crewing follows flag of registration. This is not the case. A number of the ‘Australian’ vessels trading internationally - that is Australian owned, Australian operated and Australian crewed – are registered in Flag of Convenience countries. Many if not most of these countries have no requirements at all for the employment of nationals on these vessels.

The owner/operator licenses the ship and uses Australian crew for the operational flexibility of being able to carry coastal cargoes without requiring immigration visas and shipping permit applications to be made. Thus the few internationally trading vessels that are registered in Australia could change flag without any necessary requirement to alter crewing arrangements.

It should be noted that many of the Marine Surveyors who are charged with the responsibility of inspectorate duties (e.g. under ILO 147) are AIMPE members. These same personnel will be called upon to conduct inspections under the MLC too. The potential problem that may arise with the implementation of the MLC is that fraudulent paper records demonstrating compliance may be provided to AMSA Marine Surveyors by unscrupulous ship owners or operators. The last half century of developments in the global maritime industry demonstrates that some Flag States are extremely lax in their implementation and enforcement of international Convention requirements. This is especially the case in relation to the Flag of Convenience States.

AIMPE anticipates that if fraudulent MLC documentation becomes prevalent then international crews may well take the approach of raising complaints when they arrive in ports of countries which they hope will be prepared to take action to address breaches of MLC requirements. Australia will need to demonstrate that it is prepared to take on that role of defending exploited seafarers who are being denied the protection of the MLC. Australia will need to retain the enforcement regime to have the capacity to ensure real compliance when paper compliance becomes a sham.