



**Australian Government**

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**Department of Foreign Affairs and Trade**

*Amendments of 2014 to the Maritime Labour Convention, 2006  
Approved by the Conference at its One Hundred and Third Session*

(Geneva, 11 June 2014)

**NIA reference: [2015] ATNIA 18  
ATNIF reference: [2015] ATNIF 11  
Head Agreement: [2013] ATS 29**

**National Interest Analysis [2015] ATNIA**

**with attachment on consultation**

**Amendments of 2014 to the Maritime Labour Convention, 2006  
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## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### SUMMARY PAGE

**Amendments of 2014 to the Maritime Labour Convention, 2006**  
**Approved by the Conference at its One Hundred and Third Session**  
(Geneva, 11 June 2014)

**[2015] ATNIF 11**  
**[2013] ATS 29**

#### **Nature and Timing of Proposed Treaty Action**

1. The Australian Government ratified the International Labour Organization's (ILO) Maritime Labour Convention, 2006 (MLC, 2006) in 2011 and it entered into force on 20 August 2013. MLC, 2006 was intended to be a comprehensive instrument for the maritime sector, and consolidated, as far as possible, all existing international maritime labour conventions and recommendations, as well as the fundamental principles found in other international labour conventions.
2. MLC, 2006 comprises three parts: the Articles, the Regulations and the Code. The Articles and Regulations set out the core rights and principles, while the Code (mandatory) provides the details for their implementation.
3. The Special Tripartite Committee established under Article XIII of MLC, 2006 adopted a number of amendments to the Code (the Amendments) on 11 April 2014, which were subsequently approved by the 103<sup>rd</sup> Session of the International Labour Conference on 11 June 2014. In accordance with Article XV of MLC, 2006 the Amendments will automatically come into force for Australia on 18 January 2017.
4. Under Australia's domestic treaty making requirements the Government will need to ensure that all the necessary policy and legislative changes required to implement the Amendments have been made prior to 18 January 2017 to remain compliant with its obligations under MLC, 2006.
5. There are provisions in MLC, 2006 that allow a Government to formally object to the Amendments. If, before 18 July 2016, formal expressions of disagreement are received from more than 40 per cent of Members who have ratified MLC, 2006 and which represent not less than 40 per cent of the gross tonnage of ships of the Members which have ratified MLC, 2006, the Amendments will not be deemed approved by the Conference. This scenario is unlikely. However, any Member (including Australia) who does express such disagreement will not be bound by the Amendments when they enter into force.

## **Overview and national interest summary**

6. MLC, 2006 sets minimum working conditions for seafarers to work on ships. The Amendments of this particular treaty action relate to the abandonment of seafarers and claims for compensation in the case of a seafarer's death or long-term disability due to an occupational injury or illness.
7. It is in the national interest to accept the Amendments, as it will ensure Australia remains compliant with MLC, 2006 and that seafarers covered by MLC, 2006 have appropriate workplace protections in place in the event of abandonment or sickness, injury or death.

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

8. As a member of the ILO and a member who has ratified MLC, 2006, as mentioned at paragraph 5 accepting the Amendments will continue to ensure Australia remains compliant with MLC, 2006 and that appropriate workplace protections for seafarers are in place.

## **Obligations**

9. These Amendments will impose the following legal obligations on Australia:
  - **Standard A2.5.2 - Financial security** contains new requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.
  - It requires each State to ensure a financial security system is in place for ships flying its flag, and sets out the requirements of such a system, including that it must provide the abandoned seafarer with direct access to the system, sufficient coverage and expedited financial assistance.
  - **Standards A4.2.1 and A4.2.2 – Shipowners' liability and Treatment of contractual claims** specifies new requirements of the financial security system to assure compensation to seafarers in the case of death or long-term disability due to an occupational injury, illness or hazard.

The Amendments require that:

- seafarers receive prior notification if a shipowner's financial security (such as workers' compensation insurance) is to be cancelled or terminated (new paragraph 9 of A4.2.1);
- insurers notify the competent authority (in Australia's case, the Seacare Authority) if the financial security of an employer is cancelled or terminated (new paragraph 10 of A4.2.1);
- shipowners carry and post in a conspicuous place on-board a ship a certificate, or other documentary evidence, of their financial security, and that this evidence be

- in English or accompanied by an English translation (new paragraphs 11 and 14 of A4.2.1);
- financial securities not cease before the end of their period of validity unless the financial security provider has given prior notification of at least 30 days to the competent authority (in Australia, the Seacare Authority) (new paragraph 12 of A4.2.1);
  - effective arrangements are in place to receive, deal with and impartially settle contractual claims for compensation related to Standard A4.2.1 through expeditious and fair procedures (new paragraph 3 of A4.2.2); and
  - the system of financial security under Standard A4.2.1 may be in the form of a social security scheme or insurance or fund or other similar arrangements (new paragraph 2 of A4.2.2).

### **Implementation**

10. The Commonwealth is primarily responsible for the implementation of MLC, 2006. The Australian Maritime Safety Authority (AMSA) has responsibility for the operational application of the Government's policies to ensure safety and one of its statutory functions is to combat pollution in the marine environment.
11. It is estimated that the Commonwealth legislative instruments that apply MLC, 2006 (Marine Order 11 (*living and working conditions on vessels*) 2015) affects the operation of around 100 Australian registered ships, and while these ships represent a relatively small proportion of total Australian shipping, they are critical to Australia's international and domestic trade and commerce.
12. Legislative amendments are required at the Commonwealth level to give effect to the international obligations that the Government would assume once the Amendments enter into force.
13. These obligations could be implemented through amendments to Marine Order 11 (*living and working conditions on vessels*) 2015 and/or the *Seafarers Rehabilitation and Compensation Act* 1992 (Seafarers Act).
14. The Department of Employment has policy responsibility for the Seafarers Act, which provides a workers' compensation scheme for a defined part of the Australian maritime industry. This Act covers a proportion of employees whose employment is covered under MLC, 2006.

15. The Government is currently developing a broad package of policy and legislative reforms for the Seacare scheme, including changes to the Seacare Workers' Compensation scheme that will incorporate the required changes to ensure compliance with the Amendments to MLC, 2006 prior to 18 January 2017. One change already announced is that the Government will transfer the Seacare Authority's role of administering the Seacare scheme to the Safety, Rehabilitation and Compensation Commission (SRCC).

### **Costs**

16. The amendment to Standard A2.5 may impose additional insurance premium costs to Australian vessel owners who currently hold Protection and Indemnity insurance, and minor administrative costs if insurers require additional information be provided. It is estimated that this cost will be less than \$200 per vessel per year.
17. In addition, under the Amendments there are likely to be minor supplementary regulatory costs for Seacare scheme employers and insurers, as they will be required to provide additional information to the SRCC and their employees. Minor additional costs are also expected for Comcare, which will receive and assist the SRCC to monitor this new information.

### **Future treaty action**

18. The Amendments will automatically come into force for Australia on 18 January 2017 unless Australia lodges a formal objection to the Amendments with the Director-General of the ILO before 18 July 2016. Australia has no plans to lodge any formal objection to the Amendments with the Director-General of the ILO. Any Member (including Australia) who does express such disagreement will not be bound by the Amendments when they enter into force.
19. Future treaty action may occur again if further amendments are deemed necessary to MLC, 2006.

### **Withdrawal or denunciation**

20. The only way the Amendments will be withdrawn or denounced is if 40 per cent of Members which have ratified MLC, 2006 and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified MLC, 2006 notify their disagreement with the amendments by 18 July 2016 to the Director-General of the ILO, as per Article XV of MLC, 2006.

### **Contact details**

Participation and International Labour Branch  
Workplace Relations Policy Group  
Department of Employment

## ATTACHMENT ON CONSULTATION

### **Amendments of 2014 to the Maritime Labour Convention, 2006 Approved by the Conference at its One Hundred and Third Session (Geneva, 11 June 2014)**

**[2015] ATNIF 11  
[2013] ATS 29**

#### **CONSULTATION**

21. As representatives on the ILO's Special Tripartite Committee, the Australian Government and relevant shipowners and seafarers' organisations were involved in the development and adoption of the Amendments to MLC, 2006.
22. The International Group of Protection and Indemnity Clubs was consulted at length during the ILO Special Tripartite Committee to ensure that its members could facilitate the changes associated with these amendments.
23. The Department of Employment and the Australian Maritime Safety Authority will continue to undertake detailed consultations with maritime industry stakeholders, including employers, unions and workers compensation insurers to bring the appropriate legislation and policies into effect and to ensure compliance with the Amendments prior to automatic entry into force of the Amendments on **18 January 2017**.
24. Briefing on the Amendments was provided to the Standing Committee on Treaties on 29 May 2015.

# **International Labour Conference Conférence internationale du Travail**

AMENDMENTS OF 2014  
TO THE MARITIME LABOUR CONVENTION, 2006,  
APPROVED BY THE CONFERENCE  
AT ITS ONE HUNDRED AND THIRD SESSION,  
GENEVA, 11 JUNE 2014

AMENDEMENTS DE 2014 À LA CONVENTION  
DU TRAVAIL MARITIME, 2006,  
APPROUVÉS PAR LA CONFÉRENCE  
À SA CENT TROISIÈME SESSION,  
GENÈVE, 11 JUIN 2014

AUTHENTIC TEXT  
TEXTE AUTHENTIQUE

**TEXT OF THE AMENDMENTS OF 2014  
TO THE MARITIME LABOUR CONVENTION, 2006**

**Amendments to the Code implementing Regulations 2.5 and 4.2 and appendices of the Maritime Labour Convention, 2006 (MLC, 2006), adopted by the Special Tripartite Committee on 11 April 2014**

**I. Amendments to the Code implementing Regulation 2.5 – Repatriation of the MLC, 2006 (and appendices)**

**A. Amendments relating to Standard A2.5**

In the present heading, “Standard A2.5 – Repatriation”, replace “A2.5” by “A2.5.1”.

Following paragraph 9 of the present Standard A2.5, add the following heading and text:

*Standard A2.5.2 – Financial security*

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers’ employment agreement, the shipowner:

- (a) fails to cover the cost of the seafarer’s repatriation; or
- (b) has left the seafarer without the necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners’ and seafarers’ organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.

6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.

8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
- (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

## **B. Amendments relating to Guideline B2.5**

At the end of the present Guideline B2.5, add the following heading and text:

### **Guideline B2.5.3 – Financial security**

1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer's nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.

C. Amendment to include a new appendix

Before Appendix A5-I, add the following appendix:

**APPENDIX A2-I**

**Evidence of financial security under Regulation 2.5, paragraph 2**

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

D. Amendments relating to Appendices A5-I, A5-II and A5-III

At the end of Appendix A5-I, add the following item:

Financial security for repatriation

In Appendix A5-II, after item 14 under the heading Declaration of Maritime Labour Compliance – Part I, add the following item:

15. Financial security for repatriation (Regulation 2.5)

In Appendix A5-II, after item 14 under the heading Declaration of Maritime Labour Compliance – Part II, add the following item:

15. Financial security for repatriation (Regulation 2.5)

At the end of Appendix A5-III, add the following area:

Financial security for repatriation

**II. Amendments to the Code implementing Regulation 4.2  
– Shipowners' liability of the MLC, 2006  
(and appendices)**

A. Amendments relating to Standard A4.2

In the present heading, "Standard A4.2 – Shipowners' liability", replace "A4.2" by "A4.2.1".

Following paragraph 7 of the present Standard A4.2, add the following text:

8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:

- (a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;

- (b) there shall be no pressure to accept a payment less than the contractual amount;
- (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;
- (d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and
- (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated.

10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.

11. Each Member shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

14. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A4-I. It shall be in English or accompanied by an English translation.

Add the following heading and text following the present Standard A4.2:

*Standard A4.2.2 – Treatment of contractual claims*

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term "contractual claim" means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures.

**B. Amendments relating to Guideline B4.2**

In the present heading, "Guideline B4.2 – Shipowners' liability", replace "B4.2" by "B4.2.1".

In paragraph 1 of the present Guideline B4.2, replace "Standard A4.2" by "Standard A4.2.1".

Following paragraph 3 of the present Guideline B4.2, add the following heading and text:

**Guideline B4.2.2 – Treatment of contractual claims**

1. National laws or regulations should provide that the parties to the payment of a contractual claim may use the Model Receipt and Release Form set out in Appendix B4-I.

**C. Amendment to include new appendices**

After Appendix A2-I, add the following appendix:

**APPENDIX A4-I**

**Evidence of financial security under Regulation 4.2**

The certificate or other documentary evidence of financial security required under Standard A4.2.1, paragraph 14, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' contractual claims;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.

After Appendix A4-I, add the following appendix:

**APPENDIX B4-I**

**Model Receipt and Release Form**  
referred to in Guideline B4.2.2

Ship (name, port of registry and IMO number): .....

Incident (date and place): .....

Seafarer/legal heir and/or dependant: .....

Shipowner: .....

I, [Seafarer] [Seafarer's legal heir and/or dependant]\* hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of [my] [the Seafarer's]\* employment and I hereby release the Shipowner from their obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to [my] [the Seafarer's legal heir and/or dependant's]\* right to pursue any claim at law in respect of negligence, tort, breach of statutory duty or any other legal redress available and arising out of the above incident.

Dated: .....

Seafarer/legal heir and/or dependant: .....

Signed: .....

*For acknowledgement:*

Shipowner/Shipowner representative:

Signed: .....

Financial security provider:

Signed: .....

\* Delete as appropriate.

**D. Amendments relating to Appendices A5-I, A5-II and A5-III**

At the end of Appendix A5-I, add the following item:

Financial security relating to shipowners' liability

In Appendix A5-II, as the last item under the heading Declaration of Maritime Labour Compliance – Part I, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

In Appendix A5-II, as the last item under the heading Declaration of Maritime Labour Compliance – Part II, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

At the end of Appendix A5-III, add the following area:

Financial security relating to shipowners' liability

The foregoing is the authentic text of the Amendments duly approved by the General Conference of the International Labour Organization during its One hundred and third Session which was held at Geneva and declared closed the twelfth day of June 2014.

IN FAITH WHEREOF we have appended our signatures this twelfth day of June 2014.

Le texte qui précède est le texte authentique des amendements dûment approuvés par la Conférence générale de l'Organisation internationale du Travail dans sa cent troisième session qui s'est tenue à Genève et qui a été déclarée close le douzième jour de juin 2014.

EN FOI DE QUOI ont apposé leurs signatures, ce douzième jour de juin 2014:

*The President of the Conference,  
Le Président de la Conférence,*

DANIEL FUNES DE RIOJA

*The Director-General of the International Labour Office,  
Le Directeur général du Bureau international du Travail,*

GUY RYDER

The text of the Amendments as here presented is a true copy of the text authenticated by the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office.

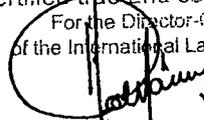
Le texte des amendements présenté ici est une copie exacte du texte authentiqué par les signatures du Président de la Conférence internationale du Travail et du Directeur général du Bureau international du Travail.

Certified true and complete copy,  
Copie certifiée conforme et complète,

*For the Director-General of the International Labour Office:  
Pour le Directeur général du Bureau international du Travail:*

Certified true and complete copy.

For the Director-General  
of the International Labour Office:



Georges POLITAKIS  
Deputy Legal Adviser  
of the International Labour Office