

Four International Labour Organisation Treaties

Introduction

- 7.1 On 24 November 2010, four International Labour Organisation (ILO) treaties were tabled in Parliament. While the treaties are separate documents dealing with different issues, the Committee has considered them together. For convenience and economy, they are also dealt with together in this report.
- 7.2 The four treaties are:
- *International Labour Organisation Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Work Environment* (the Occupational Safety and Health Protocol);
 - *International Labour Organisation Convention No. 162: Convention Concerning Safety in the Use of Asbestos* (the Safety in the Use of Asbestos Convention);
 - *International Labour Organisation Convention No. 175: Part Time Work* (the Part Time Work Convention); and
 - *International Labour Organisation Convention No. 186: Maritime Labour Convention* (the Maritime Labour Convention).
- 7.3 All these treaties involve important protections for employees in the areas covered by the treaties. However, Australia is by and large already compliant with the treaties, so ratification is essentially an exercise in

ensuring international recognition of Australia's current practices. The exception to this is the Maritime Labour Convention, which needs to be ratified if Australian flagged vessels are to be permitted to dock in ports of other signatory states without difficulty.

Occupational Safety and Health Protocol

The Protocol and the Convention

- 7.4 The Occupational Safety and Health Protocol is a treaty that implements Articles 4 and 11 of *Convention No. 155 concerning Occupational Safety and Health and the Working Environment*, which was adopted in 1981.¹ The Occupational Safety and Health Protocol came into force in 2005, and will enter into force for Australia 12 months after Australia's ratification documents are lodged with the Director-General of the ILO.²
- 7.5 Article 4 of Convention No. 155 states the principles underlying the Convention. It states:
1. Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.
 2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.³
- 7.6 Article 11 of Convention No. 155 concerns the implementation of Article 4. It requires that the competent authority within each signatory country perform the following tasks:
- when the degree of hazard requires it, issue determinations concerning:
 - ⇒ the design, construction and layout of projects;

1 *National Interest Analysis (NIA)*, [2010] ATNIA 62, International Labour Organisation Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Working Environment, 1981, adopted at Geneva on 20 June 2002 [2010] ATNIF 47, para. 1.

2 *Occupational Safety and Health Protocol NIA*, para. 3.

3 *Convention No. 155 concerning Occupational Safety and Health and the Working Environment*, 1981, Article 4.

- ⇒ the commencement of their operations;
 - ⇒ major alterations affecting them and changes in their purposes;
 - ⇒ the safety of technical equipment used on the projects; and
 - ⇒ the application of procedures.
- issue determinations concerning substances that are prohibited, limited or subject to authorised control;
 - establish procedures for the notification of occupational accidents and diseases by employers and, when appropriate, insurance institutions and others directly concerned, and the production of annual statistics on occupational accidents and diseases;
 - hold inquiries into cases of occupational accidents, occupational diseases and any injuries to health which arise in connection with work which reveal situations which are serious;
 - publish annual information on measures taken to implement Article 4 on occupational accidents, occupational diseases and other injuries to health which arise in the course of, or in connection with, work; and
 - introduce or extend systems to examine chemical, physical and biological agents in respect of the risk to the health of workers.⁴
- 7.7 According to the NIA, ratification will commit Australia to maintaining an occupational health and safety regime in line with international standards.⁵
- 7.8 The Protocol provides specific instructions for the implementation of Convention No. 155's Articles 4 and 11. In particular, the Protocol requires that:
- the competent authority within a signatory country establish requirements and procedures for the recording and notification of occupational safety and health accidents and diseases by employers;⁶
 - the procedures require employers to record occupational safety and health related incidents, report these to their employees, maintain

4 *Convention No. 155 concerning Occupational Safety and Health and the Working Environment*, 1981, Article 11.

5 *Occupational Safety and Health Protocol NIA*, para. 6.

6 *International Labour Organisation Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Working Environment*, 1981, adopted at Geneva on 20 June 2002 [2010] ATNIF 47 (hereafter, the *Occupational Safety and Health Protocol*), Article 2.

records of these incidents, and refrain from instituting regulatory or disciplinary action against an employee for reporting an incident;⁷

- employers be responsible for reporting to competent authorities, relevant professionals (such as medical professionals), and employees, on occupational safety and health incidents;⁸ and
- national statistics on occupational safety and health incidents be collected and published.⁹

What ratification will mean for Australia

- 7.9 Implementing the Protocol will primarily be the responsibility of the State and Territory Governments, with some lesser responsibility being borne by the Commonwealth Government.¹⁰ All State and Territory Governments have formally agreed to the ratification of the protocol.¹¹
- 7.10 The NIA details a number of specific aspects of the Protocol that are of interest to Australia at present. For example, regular reporting of occupational health and safety statistics was identified as an area for national action in the *National Occupational Health and Safety Strategy 2002-2012*. According to the NIA, adoption of the Protocol will provide a direct stimulus to developing this reporting regime.¹²
- 7.11 In addition, the requirement in the Protocol for employers to record occupational accidents and diseases, notify relevant authorities of occupational accidents and diseases, and consult with their employees on occupational health and safety matters is consistent with key elements of the occupational health and safety frameworks in Australia.¹³
- 7.12 As Australian occupational health and safety laws are consistent with Australia's obligations under the Protocol, no legislative measures will be necessary to implement the Protocol.¹⁴ A combination of general and industry specific legislation already requires employers to record occupational accidents and diseases, inform their employees of the

7 The Occupational Safety and Health Protocol, 2002, Article 3.

8 The Occupational Safety and Health Protocol, 2002, Article 4.

9 The Occupational Safety and Health Protocol, 2002, Article 6.

10 Occupational Safety and Health Protocol NIA, para. 21.

11 Occupational Safety and Health Protocol NIA, para. 25.

12 Occupational Safety and Health Protocol NIA, para. 8.

13 Occupational Safety and Health Protocol NIA, para. 9.

14 Occupational Safety and Health Protocol NIA, para. 21.

recording system and notified cases, and notify the competent authority when an occupational accident or disease occurs.¹⁵

- 7.13 National statistics are collected and published by Safe Work Australia, the responsible authority at the Commonwealth level, in a manner that accords with the Protocol.¹⁶

Conclusion – Occupational Safety and Health Protocol

- 7.14 It is clear to the Committee that the basic requirements of the Protocol are already in place and are accepted by employers, employees, State, Territory, and Commonwealth Governments. This treaty action confirms that the standards in Australia have for some years met international requirements. The Committee supports ratification of the Protocol.

Recommendation 6

The Committee supports the *International Labour Organisation Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Working Environment* and recommends that binding treaty action be taken.

Safety in the Use of Asbestos Convention

The Convention

- 7.15 The Safety in the Use of Asbestos Convention requires signatory states to implement national laws regulating the prevention and control of exposure to asbestos and the protection of workers against exposure to asbestos.¹⁷
- 7.16 The Convention entered into force in June 1989, and Australia would like it ratified as soon as possible. Ratification can occur 12 months after the

15 Occupational Safety and Health Protocol NIA, para. 22.

16 Occupational Safety and Health Protocol NIA, para. 22.

17 *National Interest Analysis* (Safety in the Use of Asbestos Convention NIA), [2010] ATNIA 60, International Labour Organisation Convention No. 162: Convention Concerning Safety in the Use of Asbestos, adopted at Geneva on 24 June 1986 [2010] ATNIF 48, para. 4.

date on which Australia's ratification documents are registered with the Director-General of the ILO.¹⁸

- 7.17 Asbestos is a naturally occurring fibrous mineral that has been extensively used for its fire and chemical resistant properties.¹⁹ There are three common types of Asbestos: chrysotile; crocidolite; and amosite (or white, blue, and brown asbestos respectively). Asbestos is used in two ways: it is either enclosed in a bonding compound, such as asbestos cement; or it is free (referred to as friable), such as in loose thermal insulation.²⁰
- 7.18 The Safety in the Use of Asbestos Convention requires signatory states to adopt laws or regulations to either: prohibit the use of asbestos; or control its use through regulations; and replace asbestos with less harmful materials.²¹
- 7.19 The Convention requires the outright prohibition of the use of crocidolite asbestos and the spraying of all forms of asbestos.²²
- 7.20 The Convention also requires a range of specific procedures for the handling of asbestos, including that:
- employers are responsible for notifying the responsible authorities of an asbestos related work incident;
 - producers and manufacturers must label asbestos containing products appropriately;
 - competent authorities must issue limits for exposure of workers to asbestos products and make measures to control the release of asbestos dust into the air;
 - only authorised persons may undertake the demolition of structures containing asbestos;
 - employers must provide appropriate safety clothing to employees working with asbestos;

18 Safety in the Use of Asbestos Convention NIA, para. 2.

19 Queensland Department of Justice and Attorney-General, *What is Asbestos and Where is it Found?* <<http://www.deir.qld.gov.au/workplace/subjects/asbestos/definition/index.htm>> viewed 13 April 2011.

20 Queensland Department of Justice and Attorney-General, *What is Asbestos and Where is it Found?* <<http://www.deir.qld.gov.au/workplace/subjects/asbestos/definition/index.htm>> viewed 13 April 2011.

21 Safety in the Use of Asbestos Convention NIA, para. 16.

22 *International Labour Organisation Convention No. 162: Convention Concerning Safety in the Use of Asbestos*, adopted at Geneva on 24 June 1986 [2010] ATNIF 48, Articles 11 and 12.

- employers must dispose of asbestos in a way that does not pose a health risk to workers or people living in the vicinity of the enterprise.²³
- 7.21 Exposure to asbestos must be monitored and employees exposed to asbestos must be provided with medical examinations where necessary. When employees can no longer work in an asbestos environment, every effort is to be made to find them other means of maintaining their income.²⁴

Implementation in Australia

- 7.22 Asbestos poses a health risk when the fibres become airborne and are inhaled,²⁵ and has been banned from use in Australia since 2003, after the Workplace Relations Ministers' Council agreed to amendments to the National Occupational Health and Safety Commission's *National Model Regulations for the Control of Workplace Hazardous Substances* to prohibit the use of chrysotile, crocidolite, and amosite asbestos.²⁶
- 7.23 Responsibility for the prohibition and regulation of the use of asbestos falls largely within the jurisdiction of the State and Territory Governments, with only the national reporting requirements being the responsibility of the Commonwealth Government.²⁷ All State and Territory Governments have agreed to the ratification of the Safety in the Use of Asbestos Convention, and have advised that their legislation is compliant with the Convention.²⁸
- 7.24 The amendments to the National Model Regulations that came into effect in 2003 give effect to the provisions of the Convention. In other words, Australia's regulation of asbestos already meets the requirements of the Convention.²⁹ According to the NIA, ratification of the Convention will ensure that Australians continue to enjoy the protection of a system that reflects best practice in protecting employees from the harmful effects of asbestos.³⁰

23 Safety in the Use of Asbestos Convention NIA, para. 17.

24 Safety in the Use of Asbestos Convention NIA, para. 18.

25 Queensland Department of Justice and Attorney-General, *What is Asbestos and Where is it Found?* <<http://www.deir.qld.gov.au/workplace/subjects/asbestos/definition/index.htm>> viewed 13 April 2011.

26 Safety in the Use of Asbestos Convention NIA, para. 9.

27 Safety in the Use of Asbestos Convention NIA, para. 22.

28 Safety in the Use of Asbestos Convention NIA, para. 25.

29 Safety in the Use of Asbestos Convention NIA, para. 23.

30 Safety in the Use of Asbestos Convention NIA, para. 5.

- 7.25 Notwithstanding this a process is currently underway to review legislation pertaining to asbestos as part of a national program to harmonise all Australian occupational health and safety legislation. A requirement of the review is that the outcome complies with relevant ILO conventions, including the Safety in the Use of Asbestos Convention.³¹

Conclusion – Safe Use of Asbestos Convention

- 7.26 Like the Occupational Safety and Health Protocol, Australia has effectively been compliant with the Safety in the Use of Asbestos Convention for some time. Ratification is also therefore a simple confirmation of Australia's compliance with the Convention. The Committee supports ratification of the Convention.

Recommendation 7

The Committee supports the *International Labour Organisation Convention No. 162: Convention Concerning Safety in the Use of Asbestos*, and recommends that binding treaty action be taken.

The Part Time Work Convention

The Convention

- 7.27 The purpose of the Part Time Work Convention is to ensure that part time workers receive the same treatment as comparable full time workers.³²
- 7.28 The Convention entered force in 1998. The Australian Government has indicated that it would like the Convention ratified as soon as possible.³³ The Convention will take effect 12 months in Australia after the documents of ratification are lodged with the Director-General of the ILO.³⁴

31 Safety in the Use of Asbestos Convention NIA, para. 24.

32 *National Interest Analysis* (Part Time Work Convention NIA), [2010] ATNIA 61, International Labour Organisation Convention No. 175: Part Time Work, adopted at Geneva on 24 June 1994 [2010] ATNIF 49, para. 4.

33 Part Time Work Convention NIA, para. 2.

34 Part Time Work Convention NIA, para. 1.

- 7.29 According to the NIA, the Convention requires that part time workers receive the same treatment as full time workers in respect of:
- the right to bargain collectively and organise;
 - occupational health and safety;
 - discrimination in employment and occupation; and
 - leave entitlements.³⁵
- 7.30 The Part Time Work Convention also requires signatory states to ensure part time workers receive a basic wage which, when calculated proportionately on an hourly basis, performance basis, or piece basis, is not lower than the basic wage for comparable full time workers.³⁶
- 7.31 Article 7 of the Convention requires signatory states to ensure that part time workers receive benefits comparable or equivalent to those of full time workers in the areas of:
- maternity protection;
 - termination of employment;
 - paid annual leave and public holidays; and
 - sick leave.³⁷
- 7.32 In addition, the Convention requires that states should facilitate access to freely chosen part time work by ensuring there is no systemic discouragement of part time work.³⁸ Transfer between part time and full time work should, where appropriate, be voluntary.³⁹
- 7.33 As with the other ILO Conventions and Protocols considered here, signatory states must provide annual reports to the ILO on the measures that have been taken to implement the Convention.⁴⁰

Implementation in Australia

- 7.34 The Convention is of particular relevance to Australia because part time work is a common form of employment in Australia. The latest available

35 Part Time Work Convention NIA, para. 4.

36 Part Time Work Convention NIA, para. 78.

37 *International Labour Organisation Convention No. 175: Part Time Work*, adopted at Geneva on 7 June 1994 [2010] ATNIF 49, Article 7.

38 Part Time Work Convention NIA, para. 19.

39 Part Time Work Convention NIA, para. 20.

40 Part Time Work Convention NIA, para. 21.

labour force statistics at the time of writing indicate that in March 2011, 3 351 500 Australian residents were in part time employment compared to 8 105 600 in full time employment.⁴¹ In other words, approximately 30 per cent of the Australian workforce is in part time work.

7.35 There is also a strong economic incentive to ensure part time workers are protected. Part time work enables greater participation in the workforce for people who are not in a position to take on full time employment, such as employees with family or study commitments.⁴²

7.36 The role of part time work in increasing workforce participation is also highlighted in the preamble of the Convention.

The General Conference of the International Labour Organisation...

Recognizing the importance of productive and freely chosen employment for all workers, the economic importance of part time work, the need for employment policies to take into account the role of part time work in facilitating additional employment opportunities...

Adopts... the following Convention...⁴³

7.37 Those aspects of the Convention that relate to employment entitlements will fall within the jurisdiction of the Commonwealth Government.⁴⁴ The NIA states that compliance with the Convention in Australia has been achieved through the *Fair Work Australia Act 2009*, which regulates the working conditions of 96 per cent of Australia's private sector workforce. According to the NIA:

The obligations of the Convention support the policy intentions behind the Fair Work Act, which has as one of its objects the need to assist employees to balance their work and family responsibilities by providing them with genuine flexible working arrangements.⁴⁵

7.38 State and Territory Governments continue to have responsibility for employees that have not been transferred to the Commonwealth

41 Australian Bureau of Statistics, *6202.0 - Labour Force, Australia, March 2011* <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/6202.0>> viewed 13 April 2011.

42 Part Time Work Convention NIA, para. 7.

43 *International Labour Organisation Convention No. 175: Part Time Work*, adopted at Geneva on 7 June 1994 [2010] ATNIF 49, Preamble.

44 Part Time Work Convention NIA, para. 23.

45 Part Time Work Convention NIA, para. 12.

workplace relations jurisdiction. This includes State Government employees in all States and employees of non-constitutional corporations in Western Australia.⁴⁶

- 7.39 The Commonwealth and State and Territory Governments will share responsibility for implementing the occupational health and safety aspects of the Convention.⁴⁷
- 7.40 All jurisdictions have indicated that their laws comply with the Part Time Work Convention.⁴⁸ Consequently, no legislative action will be necessary to implement the Convention.

Conclusion – Part Time Work Convention

- 7.41 Increasing workplace participation has been accepted policy for many years now with governments on both sides of the political spectrum. Part time work is proving an effective approach to including in the workforce people who would not otherwise be included, and the statistics indicate that Australian workers have embraced part time work.
- 7.42 The ratification of this Convention can only enhance the attractiveness of this employment choice. The Committee supports ratification of the Convention.

Recommendation 8

The Committee supports the *International Labour Organisation Convention No. 175: Part Time Work*, and recommends that binding treaty action be taken.

The Maritime Labour Convention

The Convention

- 7.43 The Maritime Labour Convention:

46 Part Time Work Convention NIA, para. 24.

47 Part Time Work Convention NIA, para. 25.

48 Part Time Work Convention NIA, para. 26.

...sets minimum requirements for seafarers who work on ships. Ratification will ensure decent working and living conditions for seafarers on foreign-flagged ships entering Australian ports and on Australian ships.⁴⁹

- 7.44 The Convention was adopted at the 94th (Maritime) Session of the International Labour Conference in February 2006. The Convention consolidates 37 separate ILO maritime labour conventions adopted since 1920 and replaces them with a single instrument. Australia has ratified 13 of the 37 conventions involved.⁵⁰
- 7.45 The Convention contains three parts: a statement of core principles (the Articles), the general rights of maritime labour (the Regulations), and specific details for their implementation (the Code). The matters contained in the Convention are organised into five topic areas:
- minimum conditions for seafarers to work on ships;
 - conditions of employment;
 - accommodation, recreational facilities, food and catering;
 - health protection, medical care, welfare and social security protection; and
 - compliance and enforcement.⁵¹
- 7.46 The Committee does not intend to detail here the basic conditions contained in the Convention except to the extent that they impact on implementation in Australia. The general obligations under each of the five topic areas have been extracted from the NIA and are included in this Report at Appendix C.
- 7.47 The criteria for the Convention to enter into force are somewhat more complicated than for the other ILO treaties discussed in this chapter. For the Convention to enter into force at least 30 ILO member states must ratify the Convention and a 33 per cent share of the world gross tonnage of ships must be covered. The NIA states that the tonnage requirement has already been met and, following a direction to European Union members

49 *National Interest Analysis* (Maritime Labour Convention NIA), [2010] ATNIA 58, International Labour Organisation Convention No. 186: Maritime Labour Convention, done at Geneva on 7 February 2006 [2010] ATNIF 44, para. 5.

50 Maritime Labour Convention NIA, para. 14.

51 Maritime Labour Convention NIA, para. 16.

to ratify the Convention, the convention is likely to enter into force in December 2011.⁵²

7.48 Entry into force of the Convention takes place 12 months after the lodgement of ratification documents with the Director-General of the ILO. The ILO has advised the Australian Government that, in an ideal situation, signatory states may be in a position to issue compliance documentation and inspect foreign flagged ships against the provisions of the Convention between the dates of lodgement of the ratification documents and the entry into force. The NIA states that this possibility is currently being explored with the Australian Government Solicitor and the Office of International Law.⁵³

7.49 This approach appears to be supported by the shipping community in Australia.⁵⁴

Implementation in Australia

7.50 Implementation in Australia will not require significant changes to Australian law and practice as Australia is already largely compliant with the Maritime Labour Convention.⁵⁵ However, it is important to note that there is a difference between an Australian flagged vessel and a vessel that has an Australian crew and uses Australian ports but is registered in a flag of convenience State. Vessels in this situation are not currently subject to compliance action in relation to the working and living conditions of seafarers.⁵⁶

7.51 A handful of matters contained in the Convention are worth examining in greater detail.

Article 2

7.52 Article 2 of the Maritime Labour Convention limits the scope and application of the Maritime Labour Convention to particular ships. Some basic categories of ships are excluded from the Convention, such as ships that navigate exclusively inland and harbour waters, ships engaged in

52 Maritime Labour Convention NIA, para. 2.

53 Maritime Labour Convention NIA, para. 4.

54 Maritime Labour Convention, Maritime Union of Australia, *Submission 5*, para. 3.7.

55 Maritime Labour Convention, Australian Institute of Marine and Power Engineers, *Submission 4*, pp. 1–2.

56 Maritime Labour Convention, Australian Institute of Marine and Power Engineers, *Submission 4*, p. 1.

fishing, ships of traditional construction, naval vessels, and ships not engaged in commercial activities.⁵⁷

- 7.53 In addition, signatory states may exclude ships of less than 200 gross tons⁵⁸ that are not engaged in international voyages. If this is the case, the Convention would cover ships of 200 gross tons or more regardless of whether they are undertaking international trade or not and ships of less than 200 gross tons that are involved in international trade. The NIA advises that Australia intends to exclude relevant ships in this way.⁵⁹

Article 4

- 7.54 Article 4 of the Maritime Labour Convention establishes a series of employment and social rights for seafarers, including rights to:

- a safe work environment;
- fair terms of employment;
- decent work and living conditions; and
- health protection and medical care.⁶⁰

- 7.55 The Australian Shipowners' Association (ASA) raised two issues pertaining to this Article.

- 7.56 The first relates to the treatment of cadets and trainees by the Convention. According to the ASA, cadets and trainees are to be considered as seafarers for the purposes of the Convention. The Convention requires that each seafarer be provided with an individual sleeping room. According to the ASA:

This could, potentially, adversely impact on the ability of vessel operators to provide cadets/trainees with appropriate sea time to gain their qualifications.⁶¹

- 7.57 The ASA states that the Australian Government is already aware of this matter and is considering a possible solution.⁶²

57 Maritime Labour Convention NIA, para. 18.

58 Note that 'tons' in this instance refers to Maritime Long Tonnes, a measure of water displacement that is different to metric tonnes and imperial tons. The spelling of 'tons' in this chapter reflects that used in the *National Interest Analysis*.

59 Maritime Labour Convention NIA, para. 19.

60 *International Labour Organisation Convention No. 186: Maritime Labour Convention*, done at Geneva on 7 February 2006 [2010] ATNIF 44, Article 4.

61 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, p. 3.

62 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, p. 3.

- 7.58 The second matter of concern to the ASA is the obligation under the Convention to provide free meals to seafarers on board vessels. The *Regulation Impact Statement* for the Convention indicates that this will simply codify current practice.⁶³ However, the ASA is concerned that this practice may now attract fringe benefits tax, which will significantly increase the costs of providing this service.⁶⁴
- 7.59 The ASA indicates that the Government should ensure that the codification process does not result in taxation consequences for ship owners.⁶⁵

Article 5

- 7.60 Article 5 of the Maritime Labour Convention requires that ships must not be placed at a disadvantage because their flag states have ratified the Convention and other flag states have not. Article 5 seeks to create a level playing field by removing incentives to operate ships with crew whose living and working conditions do not comply with the Convention.⁶⁶ The NIA argues that this means that when a ship enters the port of a signatory state, the crew will be treated in the same way as ships of signatory states, regardless of whether the flag state of the ship is signatory to the Convention or not.⁶⁷
- 7.61 The effect of this, as argued by the Maritime Union of Australia (MUA), will be:
- ... to reduce the competitive gap between domestic and international shipping, [thus] improving competitiveness in the domestic and international freight markets, and providing incentives for investment in Australian shipping.⁶⁸
- 7.62 This assessment was also made by the Australian Ship Owners' Association.⁶⁹
- 7.63 Article 5 will have serious consequences for Australian shipping if Australia does not ratify the Convention.⁷⁰ Ships of 500 gross tons or more will have to hold a Maritime Labour Certificate and a Declaration of

63 Maritime Labour Convention Regulation Impact Statement, para. 84.

64 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, p. 3.

65 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, p. 3.

66 Maritime Labour Convention NIA, para. 8.

67 Maritime Labour Convention NIA, para. 9.

68 Maritime Labour Convention, Maritime Union of Australia, *Submission 5*, para. 3.1.4.

69 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, pp. 1–2.

70 Maritime Labour Convention NIA, para. 6.

Maritime Labour Compliance. In the absence of ratification, Australia will not be in a position to issue these certificates to Australian flagged vessels. A consequence of this will be that Australian ship owners will be obliged to meet the costs of enforcement measures in signatory state ports.⁷¹

7.64 Shipping Australia Limited expressed some concern at the possible cost to Australian exporters and importers when a ship from a non-signatory state is detained and required to undertake work in an Australian port.⁷²

7.65 Shipping Australia Limited offered the following example:

...foreign flagged ships visiting Australia whose flagged states have not ratified the Convention, will be subject to possible detention and extra inspection in Australian ports which will incur considerable costs that will impact on Australia's exporters and importers. Hong Kong, for example, is not a member of the ILO. Vessels flagged in Hong Kong, for example, will not be carrying the necessary documentation to show prima facie compliance with the Convention.⁷³

7.66 The Australian Government believes that if Australia does not ratify the Convention, it will make it difficult for Australia to assist states in the Asia-Pacific region to become compliant with the Convention.⁷⁴

7.67 Shipping Australia Limited argued that it might be possible to use the *Asia Pacific Memorandum of Understanding on Port State Control* to establish a framework to assist non-signatory states in the Asia-Pacific region to meet the requirements of the Convention, therefore simplifying the inspection process in Australian ports and averting additional costs for Australian exporters and importers.⁷⁵

7.68 The Committee believes there would be some benefit in considering this option as part of the implementation process.

Inspection regime

7.69 Because there are no current inspections of foreign flagged vessels in respect of maritime labour conditions, issues relating to the working and living conditions of seafarers on foreign flagged vessels in Australian

71 Maritime Labour Convention NIA, para. 10.

72 Maritime Labour Convention, Shipping Australia Limited, *Submission 3*, p. 1.

73 Maritime Labour Convention, Shipping Australia Limited, *Submission 3*, p. 1.

74 Maritime Labour Convention NIA, para. 6.

75 Maritime Labour Convention, Shipping Australia Limited, *Submission 3*, p. 2.

ports are, at the moment, largely dealt with by organisations in the voluntary sector, a number of whom made submissions to the inquiry.⁷⁶

- 7.70 The Sydney Seafarers' Centre welcomed the prospect of a rigorous inspection scheme relating to seafarer working and living conditions, and described the impact its limited resources have on its ability to deal with seafarers' employment problems:

In our role as Pastoral agents/Care-givers/Volunteers, we are confronted regularly if not daily with seafarers' employment problems and issues to do with their 'social rights'. Many of these issues require assistance that is beyond our capacity. Responding appropriately can often drain our very limited welfare, financial resources and our personnel.⁷⁷

- 7.71 Marine surveyors from the Australian Maritime Safety Authority already routinely inspect foreign ships in Australian ports to ensure they comply with occupational health and safety and environmental standards. These inspections will be extended to include inspections to ensure compliance with the Maritime Labour Convention.⁷⁸
- 7.72 For ships from signatory states, this will involve a simple check of the ship's Maritime Labour Certificate and Declaration of Maritime Labour Compliance. For ships from non-signatory states, a full inspection will be required and any shortfall in compliance will be required to be rectified.⁷⁹ The costs of rectification and further inspections will be recovered from the ship.⁸⁰
- 7.73 The Australian Institute of Marine and Power Engineers (AIMPE) is the organisation that represents the industrial interests of the Australian Maritime Safety Authority's marine surveyors. AIMPE detailed some of the concerns marine surveyors have with the implementation of the Maritime Labour Convention.
- 7.74 In particular, AIMPE argued that there was a strong prospect that ships using flag of convenience states that are non-signatory to the Convention may possess fraudulent Maritime Labour Certificates and Declarations of Maritime Labour Compliance.

76 Maritime Labour Convention, Sydney Seafarers' Centre, *Submission 2*, p. 3.

77 Maritime Labour Convention, Sydney Seafarers' Centre, *Submission 2*, p. 3.

78 Maritime Labour Convention NIA, para. 26.

79 Maritime Labour Convention NIA, para. 26.

80 Maritime Labour Convention NIA, para. 32.

- 7.75 Both AIMPE and the MUA argued that the Australian Government should be prepared for situations in which crews on these ships sought the assistance of port authorities in signature states to address their non-compliant work and living conditions.⁸¹
- 7.76 Participants in the inquiry were also concerned that the Australian Government had not appropriately costed the implementation process. The NIA states that the impact in Australia will be minimal.⁸²
- 7.77 The MUA believes the Government has not recognised the actual cost of expanding the inspection and compliance functions of the Australian Maritime Safety Authority. For example, there is no acknowledgement in the treaty documents that it might be necessary to employ more marine surveyors.⁸³
- 7.78 The Mission to Seafarers discussed this issue from a different angle, arguing that the Convention specifically requires signatory states to provide seafarers with on shore welfare facilities in ports. The Mission to Seafarers argued that the best method for providing these welfare services was for the Government to start funding the current voluntary sector based welfare services for seafarers.⁸⁴
- 7.79 The Mission pointed out that there are insufficient services to meet demand currently, and the voluntary sector does not have a presence in a number of Australian ports that deal with international shipping. According to the Mission, additional funding will be needed to ensure compliance with the Convention, including increasing services in ports already serviced by the voluntary sector and expanding services to those ports that do not have such services.⁸⁵

Conclusion – Maritime Labour Convention

- 7.80 It is clear to the Committee that this Convention is of significant importance to the seafaring community in Australia.⁸⁶ The MUA stated that:

81 Maritime Labour Convention, Australian Institute of Marine and Power Engineers, *Submission 4*, pp. 1-2.

82 Maritime Labour Convention NIA, para. 47.

83 Maritime Labour Convention, Maritime Union of Australia, *Submission 5*, para. 3.11.

84 Maritime Labour Convention, Mission to Seafarers, *Submission 7*, p. 10.

85 Maritime Labour Convention, Mission to Seafarers, *Submission 7*, p. 10.

86 Maritime Labour Convention, Australian Ship Owners' Association, *Submission 5*, p. 1.

The coming into force of the Convention will represent a major watershed in international shipping, and will have profound implications for the regulation of shipping and of seafarers across the globe.⁸⁷

- 7.81 It is also clear from a number of the submissions to this inquiry that implementing the Maritime Labour Convention is going to be a complicated and possibly costly exercise. The Committee is pleased to note that in most cases the submitters have indicated that the Australian Government is in dialogue to resolve the concerns expressed. The Committee looks forward to a successful outcome for all concerned.

Recommendation 9

The Committee supports the *International Labour Organisation Convention No. 186: Maritime Labour Convention*, and recommends that binding treaty action be taken.

Regional leadership

- 7.82 One of the Australian Government's key objectives in engagement with the ILO is to provide policy leadership within the Asia-Pacific region in promoting international labour standards.⁸⁸ A common theme through the ILO treaties being considered here is the leading role Australia can play in the Asia-Pacific region in relation to improving adherence to ILO Conventions.
- 7.83 Few countries in the Asia-Pacific region are party to ILO conventions. None are party to Occupational Safety and Health Protocol,⁸⁹ the Part Time Work Convention⁹⁰ or the Maritime Labour Convention.⁹¹ Two (Japan and South Korea) are party to the Safety in the Use of Asbestos Convention.⁹²

87 Maritime Labour Convention, Maritime Union of Australia, *Submission 5*, para. 2.4.

88 Occupational Safety and Health Protocol NIA, para. 10.

89 Occupational Safety and Health Protocol NIA, para. 7.

90 Part Time Work Convention NIA, para. 6.

91 Maritime Labour Convention NIA, Annexure 1.

92 Safety in the Use of Asbestos Convention NIA, para. 6.

- 7.84 It is not clear from the National Interest Analyses for these treaties how Australia intends to encourage compliance with ILO Conventions in the Asia-Pacific region. The Maritime Labour Convention is likely to encourage compliance by non-signatory states as a result of the impact on trade of a failure to comply. It appears to the Committee, however, that it may be some time before there is widespread adoption in the Asia-Pacific region of the other treaties considered here.