



Australian Government

Fair Work
OMBUDSMAN



Australian Government

Australian Maritime Safety Authority

**MEMORANDUM
OF
UNDERSTANDING
between
The Office of the Fair Work
Ombudsman
and
The Australian Maritime
Safety Authority**

This document represents a non-binding agreement between

The Australian Maritime Safety Authority

And

The Office of the Fair Work Ombudsman

1. Purpose

- 1.1 This Memorandum records the understanding (MOU) reached between the Office of the Fair Work Ombudsman and the Australian Maritime Safety Authority (Agencies).
- 1.2 The purpose of this MOU is to establish a framework that enables the Agencies to successfully discharge their respective responsibilities flowing from the Australian Government's ratification and subsequent entry into force of the Maritime Labour Convention 2006.
- 1.3 The MOU establishes a system of shared responsibility for the undertaking of maritime inspections and consequential compliance actions as required by the convention.

2. The Australian Maritime Safety Authority (AMSA)

- 2.1 AMSA is a Commonwealth Statutory Authority established under the *Australian Maritime Safety Authority Act 1990*. AMSA has responsibilities under Commonwealth legislation for regulation of maritime safety, aviation and maritime search and ship-sourced pollution prevention. AMSA is also the inspectorate for maritime occupational health and safety. As part of its responsibilities, AMSA is the "competent authority" for the purposes of implementing the Maritime Labour Convention 2006.

3. The Office of the Fair Work Ombudsman (FWO)

- 3.1 The Fair Work Ombudsman is a statutory officer under the *Fair Work Act 2009*. The FWO is an agency of the Australian Government within the Employment and Workplace Relations portfolio consisting of the Fair Work Ombudsman, staff and Fair Work Inspectors. The Fair Work Ombudsman is responsible for providing education, assistance and advice about the Commonwealth workplace relations system. The Fair Work Ombudsman is also responsible for impartially enforcing compliance with the *Fair Work Act 2009* and fair work instruments.

4. The Maritime Labour Convention 2006

- 4.1 The Maritime Labour Convention 2006 (MLC) is an international convention created by the United Nation's International Labour Organization (ILO) in collaboration with the International Maritime Organization (IMO) in order to protect the rights of seafarers worldwide.
- 4.2 The MLC creates a single instrument which combines and updates 68 labour standards relating to the maritime industry. The MLC incorporates the principles governing other international labour conventions by protecting the rights, freedoms, safety and employment conditions of all seafarers.
- 4.3 The MLC will enter into force on 20 August 2013. Commonwealth agencies are making necessary amendments to law and practice to ensure that Australia will comply with the MLC.
- 4.4 The MLC will apply to all foreign ships visiting Australia and to Australian registered ships over 200 gross tonnage.
- 4.5 AMSA is the competent authority for regulating compliance with the MLC. However, many of the minimum workplace relations requirements of the MLC are provided for under Australian law by the *Fair Work Act 2009* and related instruments where applicable. The Fair Work Ombudsman has a compliance role in respect of the jurisdiction of the *Fair Work Act 2009* where it overlaps with the MLC.

5. Maritime Inspections to be conducted by AMSA

- 5.1 Regulation 5.1.4 of the MLC provides that member states are to verify compliance with the MLC, as implemented by national laws and regulations, by ships that fly its flag through inspections to be conducted in intervals not exceeding three years.
- 5.2 Regulation 5.2.1 of the MLC provides that member states may inspect every foreign ship calling in the port of the member for compliance with the MLC.
- 5.3 The aforementioned inspections will be conducted by AMSA. The inspections may include aspects of the MLC that are regulated by the *Fair Work Act 2009* and related instruments, as detailed in section 7 below.
- 5.4 Where AMSA inspectors, in the course of conducting inspections establish prima facie evidence of breaches of the *Fair Work Act 2009*, the matter will be referred to FWO for further investigation and compliance action where appropriate.
- 5.5 AMSA will maintain responsibility for all other aspects of MLC compliance.

6. FWO to provide training and assistance to AMSA inspectors

- 6.1 To facilitate the referrals outlined above, FWO will provide inspector training to existing AMSA inspectors in the identification of possible non-compliance with the *Fair Work Act 2009* and related instruments. This training will be provided prior to the entry into force of the MLC.
- 6.2 Further training for newly appointed AMSA inspectors will be provided on a needs basis at the Agencies' discretion. The location of the training will be agreed between the Agencies having regard to the location of appointed AMSA inspectors.
- 6.3 The FWO will provide ongoing assistance to AMSA through the provision of information and advice on an as-needs basis or as identified under the arrangements detailed in section 8.1 and/or 10.

7. Matters to be referred

General

- 7.1 AMSA will refer matters to the FWO where time and wages records indicate a potential breach of the *Fair Work Act 2009* or related instrument.
- 7.2 AMSA will also refer matters to FWO where a complaint is made by an employee of a ship in relation to entitlements prescribed by the *Fair Work Act 2009* or related instrument, or where evidence is furnished to AMSA by a third party of a breach of the *Fair Work Act 2009* or related instrument.
- 7.3 FWO will refer to AMSA matters that relate to general MLC compliance of which it becomes aware as a result of its *Fair Work Act 2009* compliance activities.
- 7.4 FWO will also refer matters where evidence is furnished to FWO by a complainant or third party of a breach of the MLC.
- 7.5 Other matters may be referred on a case by case basis.

Foreign Flagged Ships

- 7.6 In respect of foreign flagged ships, only ships that are 'majority Australian crewed' (as defined by the *Fair Work Regulations 2009*) or those licensed under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* come under the jurisdiction of the *Fair Work Act 2009*. For those licenced ships, the *Fair Work Act 2009* only has application during the operation of the licence. Accordingly, suspected cases of non-compliance with the MLC in respect of time and wages matters on 'majority Australian crewed' or licensed foreign ships should be referred to FWO.
- 7.7 Time and wages breaches on non-licensed foreign flagged ships that are not 'majority Australian crewed' cannot be referred to FWO for compliance action. These matters will be addressed as part of general MLC compliance and these ships are within AMSA jurisdiction for this purpose.

Australian Ships on the General Register

- 7.8 The industrial instruments within FWO jurisdiction that may apply to Australian General Register ships (and some licensed ships) can vary. Training will be provided by FWO in the identification of suspected cases of non-compliance and any suspected non-compliance with these instruments is to be referred to FWO, as per section 6.

Australian Ships on the Australian International Shipping Register

- 7.9 Ships registered on this register are ships predominately engaged in international trading. When engaged in international trading FWO jurisdiction is excluded and the monitoring of compliance with wages and other conditions falls wholly within AMSA jurisdiction. However, should the vessel cease to be engaged in international trading for any period of time, the *Fair Work Act 2009* applies and any non-compliance should be referred to FWO.

8. Referral Protocol

- 8.1 A representative from each Agency will be appointed as the Delegate for discussion of operational matters relating to MLC inspections. Each Agency will endeavour to ensure that this channel is used to facilitate all regular discussion between the Agencies and the sharing of information relating to operational matters arising from the MLC inspections.
- 8.2 The FWO and AMSA will each undertake further investigation of matters within its jurisdiction referred in accordance with operational policies and procedures and will keep the other Agency advised on progress, as appropriate in the circumstances.
- 8.3 The Agencies remain bound by applicable legislative and general disclosure obligations and will take all reasonable measures to protect information supplied under this MOU from unauthorised use or disclosure to third parties.
- 8.4 Where appropriate the Agencies will work co-operatively in the course of carrying out their respective functions.

9. General

- 9.1 Each Agency recognises that, in the course of carrying out its functions, it will periodically come into possession of information which would, if provided to the other agency, be likely to assist that other agency in administering or enforcing the particular laws for which that Agency is responsible.
- 9.2 Each Agency agrees that, subject to any legal requirements or restrictions, its delegate will, in a timely manner, notify the other Delegate of the existence of information which the agency holding that information judges to be relevant to the responsibilities of the other Agency and provide that information to the other agency, notwithstanding that it may not have received a request from the other Agency for that information.
- 9.3 The Agencies agree that, where appropriate, each Agency will provide advance notice of policy changes, operational matters or media releases that may be of interest to, or have impact on, the other Agency.
- 9.4 Each Agency agrees that it will pay its own costs in giving effect to this MOU.
- 9.5 Nothing in this MOU is intended to change the role, function or statutory obligations of the Agencies, nor is it intended to be legally binding in any form.

10. Review of this MOU

- 10.1 The Agencies will keep the operation of this MOU under periodic review and will consult with each other through the Delegates with a view to improving its operation and resolving any matters which may arise.
- 10.2 On or shortly before the 1st anniversary of the date of this MOU, representatives of the Agencies will review the flow of information between the Agencies and consider, if appropriate, amendment to this MOU. Additional areas for cooperation between the Agencies will also be considered at this time.
- 10.3 Any amendment is to be agreed in writing between the Agencies and will come into effect on the date agreed for that purpose.

11. Execution

- 11.1 This MOU becomes effective when signed by the Fair Work Ombudsman and the acting Chief Executive Officer of AMSA.
- 11.2 This MOU will continue in operation until it is terminated by either Agency on the giving of one month's notice.

**Signed by representatives of AMSA and FWO
on 14 January 2013**