



Australian Government
Australian Maritime Safety Authority

A guide to the implementation of the
**Maritime Labour
Convention 2006
in Australia**

May 2020





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A guide to the implementation of the

Maritime Labour Convention 2006 in Australia

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This Guide is advisory and designed to provide a distinction between the different elements of relevant legislation and the Convention. This Guide should not be read in isolation and interested parties are advised to consult applicable legislation and the Convention when considering the application of the MLC, 2006.

Terms and definitions

The terms and definitions used in the Guide are from the MLC, 2006, the *Navigation Act 2012*, and Marine Order 11. Readers should consider the relevant legislation and the Convention in conjunction with this Guide.

1. Introduction

The Maritime Labour Convention, 2006 (MLC, 2006 or the Convention), developed by the International Labour Organization (ILO), is the fourth pillar of international maritime law along with the *International Convention for the Safety of Life at Sea* (SOLAS); the *International Convention on Standards of Training, Certification and Watchkeeping* (STCW); and the International Convention for the Prevention of Pollution From Ships (MARPOL).

The MLC, 2006 was developed as a result of a tripartite negotiation by representatives of government, employers and workers. The Convention establishes comprehensive rights and protections of work for the world's seafarers and aims to achieve decent work arrangements for seafarers and secure economic interests in fair competition for quality ship owners.

The MLC, 2006 consolidated and updated 38 existing ILO conventions and entered into force internationally as a mandatory instrument on 20 August 2013.

The application of the MLC, 2006 is set out in Article II, sections 4 and 6 of the Convention and states that the MLC, 2006 essentially applies to all commercial vessels. However, the competent authority of an ILO member State may make determinations about the application of the Convention to vessels of less than 200 gross tonnage, that do not proceed on international voyages. The Convention does not apply to fishing vessels, vessels of traditional build (such as dhows and junks), warships or naval auxiliaries or vessels not ordinarily engaged in commercial activities.

The Australian Maritime Safety Authority (AMSA) is the competent authority responsible for regulation of the Convention and its requirements in Australia.

The purpose of this Guide is to:

- assist vessel owners and seafarers and their representative organisations in understanding how Australia is implementing the MLC, 2006, and
- provide information on the mechanisms for the survey and certification of a vessel under the MLC, 2006.

Any questions relating to the MLC, 2006 should be forwarded to LabourConventions@amsa.gov.au

Additional advice may also be found in industry guidelines such as:

- International Chamber of Shipping Guidelines on the Application of the ILO Maritime Labour Convention
- ILO Guidelines for Port State Control Officers
- ILO Guidelines for Flag State Inspections.

Copies of the MLC, 2006 and the ILO guidelines can be downloaded from the International Labour Organization's Maritime Labour Convention website www.ilo.org

2. Overview of the MLC

Since 20 August 2013, ILO member States that have ratified the Convention (available on the ILO website) regulate the requirements of the MLC, 2006 through their flag State and port State responsibilities.

The main body of the MLC, 2006 (the Regulations and the Code) is grouped in five main subject areas referred to as 'Titles'.

2.1 Title 1: Minimum requirements for seafarers to work on vessels

Title 1 identifies the minimum standards to be met for a seafarer to work on a vessel, including:

- i. minimum age - no persons under the age of 16 can be employed on a vessel
- ii. seafarers under the age of 18
 - may not be employed to do work likely to jeopardize their health/safety
 - requirement for additional attention to health/safety for young seafarers
 - prohibited to perform night work, except where defined by national laws
- iii. medical certificate
 - seafarers are to be certified as medically fit by a duly qualified medical practitioner
 - for vessels on international voyages seafarers medical certificates must be in English
 - validity of a medical certificate is generally 2 years, or 1 year for seafarers under 18
 - colour vision tests are valid for 6 years.
- iv. seafarers must be trained or certified as competent to perform their duties and have successfully completed shipboard personal safety training
- v. seafarer recruitment and placement services are subject to regulation and audit.

2.2 Title 2: Conditions of employment

Title 2 is intended to ensure that seafarers have a seafarers' employment agreement (work agreement) which contains specific minimum employment conditions for all seafarers including:

- i. wages
- ii. hours of work and rest
- iii. entitlement to leave
- iv. repatriation and compensation rights
- v. access to training, skills development and further employment opportunities.

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

Title 3 relates to the living conditions on board a vessel:

- i. accommodation standards, including room sizes and their fixtures
- ii. heating, cooling, lighting, ventilation and noise levels
- iii. sanitary and laundry facilities
- iv. requirements for mess rooms and recreation rooms
- v. requirements for hospital accommodation
- vi. food and catering.

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

Title 4 sets requirements to protect the health of seafarers and ensure their prompt access to medical care on board a vessel and ashore:

- i. medical and essential dental care onboard and ashore:
 - the right to visit medical services ashore at no cost
 - shipowners' liability/provision of financial security
- vii. medical treatment on board by appropriately trained personnel
- viii. carriage of medical equipment and medicines
 - workplace health and safety protection and accident prevention
- ix. access to shore based welfare facilities
- x. social security protection.

2.5 Title 5: Compliance and enforcement

- i. Regulation 5.1 details flag State responsibilities for implementation and enforcement:
 - general principles
 - Recognised Organisations
 - certification
 - inspections
 - reporting
 - complaint procedures
 - investigations
 - marine casualties.

- ii. Regulation 5.2 sets port State responsibilities for enforcement on foreign vessels:
 - inspections
 - certification validity, clear/reasonable grounds
 - more detailed inspection (MDI)
 - deficiencies/detention
 - complaint handling procedures (on shore)
 - investigations
 - reporting.

- iii. Regulation 5.3 specifies labour supplying responsibilities
 - Establishment of an inspection and monitoring system for private seafarer recruitment and placement services.

3. MLC in Australia

In Australia the Maritime Labour Convention, 2006 has been implemented primarily through the:

- *Navigation Act 2012*
- Marine Order 11 (Living and working conditions on vessels).

Note: the accommodation requirements prescribed in Marine Orders – Part 14, issue 1 (Accommodation) as in force on 30 June 2013, Section C1 of the NSCV or ILO Conventions No. 92 and 133 apply to vessels constructed prior to 20 August 2013.

Other Commonwealth legislation and Marine Orders that encompass aspects of the MLC, 2006, are:

- *The Occupational Health and Safety (Maritime Industry) Act 1993*
- *The Fair Work Act 2009*
- *The Seafarers Rehabilitation and Compensation Act 1992*
- Marine Order 15 (Construction – fire protection, fire detection and fire extinction)
- Marine Order 21 (Safety and emergency arrangements)
- Marine Order 27 (Safety of navigation and radio equipment)
- Marine Order 28 (Operations standards and procedures)
- Marine Order 70 (Seafarer certification)
- Marine Order 71 (Masters and deck officers)
- Marine Order 72 (Engineer officers)
- Marine Order 73 (Ratings)
- Marine Order 74 (Masters and deck officers – yachts)
- Marine Order 76 (Health – medical fitness)



All Marine Orders can be accessed on the AMSA website:
www.amsa.gov.au/about/regulations-and-standards/index-marine-orders



Commonwealth legislation and regulations (including Marine Orders) are available at the Australian Government ComLaw website: www.comlaw.gov.au

4. Is your vessel subject to the MLC?

The following section provides guidance in determining the regulatory requirements for owners of commercial vessels which are either registered in Australia, visiting Australian ports or operating in Australian waters.

4.1 Regulated Australian vessels (RAV)

Regulated Australian vessel (RAV) is defined in section 15 of the *Navigation Act 2012*.

As outlined in section 3 of this Guide, the requirements of the MLC, 2006 have been implemented in Australia through several pieces of legislation. Compliance with all relevant legislation will ensure that a RAV meets its obligations under the MLC.

Marine Order 11 captures and consolidates many of the standards and requirements for certification that were introduced into Australian maritime regulation as a result of the Convention's ratification.

Section 6 of Marine Order 11 applies the Order to all regulated Australian vessels. However only the provisions of the Order specified in Section 6(3) apply on RAVs:

1. that:
 - i. are certified to operate exclusively in areas where port limits apply or in the Great Barrier Marine Park region; or
 - ii. is in a NSCV service category class 1C, 1D, 1E, 2C, 2D, 2E, 3A, 3B, 3C, 3D, 3E, 4C, 4D or 4E as defined in section 3.5.1 of Part B of the NSCV; and
2. on which the employment of the seafarers is subject to the *Fair Work Act 2009*.

Important: Vessel operators are urged to seek clarification if any doubt exists as to whether Marine Order 11 applies to their vessel in part or in full. Details on which vessels require Maritime Labour Certification is contained within Section 5 of this Guide.

Note: With respect to RAVs that are Floating Production and Storage Offloading Units (FPSO) and Floating Storage Units (FSU) the MLC, 2006 is applied through Chapter 2 of the *Navigation Act 2012*. Where the Act is disallowed by the application of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA), the requirements under the *Navigation Act 2012*, including those related to the MLC, 2006, will cease to have effect for the period the vessel is subject to OPGGSA. If the vessel 'disconnects' and is no longer subject to OPGGSA then the *Navigation Act 2012* and the MLC, 2006 will apply.

4.2 Australian domestic commercial vessels (DCV)

Australian commercial vessels that are not a RAV are domestic commercial vessels (DCV) and are subject to the requirements of the *Marine Safety (Domestic Commercial Vessel) National Law Act, 2012* (the National Law).

The guidance in this publication is intended for RAVs and foreign flagged vessels. Seafarers rights and employment principles that are applicable to DCVs are captured within the National Law, the Marine Orders associated with this Act (Marine Orders 501–507) and the National Standard for Commercial Vessels (NSCV).



Further information relating to the regulatory requirements for Australian DCVs can be found on the domestic commercial vessel page at AMSA's website: www.amsa.gov.au/domestic

4.3 Foreign-flagged vessels in Australian ports

Article V, paragraph 7, of the Convention requires each signatory Member State to enforce the requirements of MLC 2006 so that ships that fly the flag of a State that has not ratified the Convention are provided 'no more favourable treatment' when in the port of a signatory Member State.

Within Australia, this means that all foreign-flagged vessels will be subject to the port State inspections detailed in Regulation 5.2 of the Convention, irrespective of whether their flag State has ratified the Convention or not. Where the flag State has not ratified the MLC, 2006 such vessels must be able to provide documentary evidence of compliance with its regulations and standards.

The port State control inspection will examine all the matters listed in Appendix A5-III of the MLC, 2006. Further guidance on port State control inspections is contained within Section 8 of this Guide.

5. Certification of regulated Australian vessels

RAVs of 500 GT and over, proceeding on an overseas voyage or for use on an overseas voyage are required to obtain MLC, 2006 certification.

Vessels normally engaged in overseas voyages that are more than 200 GT but less than 500 GT do not require certification. However, the vessel will still need to be compliant with the requirements of the MLC, 2006 and Marine Order 11. AMSA advises that owners should consider the carriage of MLC, 2006 Declaration of Maritime Labour Compliance Parts I and II, at least, to avoid possible delays in foreign ports.

For the purpose of the MLC, 2006 Regulation 5.1.2, AMSA appointed Recognised Organisations (ROs) have been authorised as 'Issuing bodies'. This authorisation permits ROs to conduct inspections and issue AMSA statutory certification, including Maritime Labour Certificates.

Recognised Organisations are listed in *Marine Order 1 (Administration)*.



A current list is also available at:

www.amsa.gov.au/vessels/ship-safety/flag-state-administration/

5.1 Application and certification process

The process of applying for MLC, 2006 certification, and the subsequent issue of the Maritime Labour Certificate, should generally follow the steps below.

1. The vessel owner(s) makes application to their selected RO for MLC, 2006 inspection and certification.
 - 1.1 The owner submits all relevant information to the RO for appraisal.
 - 1.2 Where exemptions or equivalents are to be sought, using the requirements in the DMLC Part I template as a guide, the vessel owner must provide evidence that it will not contravene the MLC, 2006 and include evidence of consultation between the shipowner and seafarers or seafarer organisations, as appropriate, as required by the MLC, 2006.
 - 1.2.1 Exemptions are only permitted where specifically allowed in Title 3 of the MLC, 2006 and Marine Order 11.
 - 1.3 The RO should review any requests for exemptions or equivalents to ensure they are complete and substantiated before forwarding on to AMSA.
 - 1.4 The owner must also complete the Declaration of Maritime Labour Compliance Part II (DMLC Part II) and submit to the RO for review and endorsement.
 - 1.4.1 More detailed guidance on how to complete the DMLC Part II is provided in the International Shipping Federation's, Guidelines on the application of the ILO Maritime Labour Convention.



MLC, 2006 forms including DMLC Parts I and II are available at the AMSA website:
www.amsa.gov.au/forms/seafarer-welfare

2. The RO may then conduct a formal inspection of the vessel. The inspection will cover the 16 areas subject to general inspection, as detailed in Appendix A5-I of the MLC, 2006.
3. When the RO verifies, following inspection, that the vessel and its arrangements comply with the MLC, 2006 and marine order 11, the RO will forward the application, including requests for exemptions/equivalents, the endorsed DMLC Part II and the inspection report to AMSA.
 - 3.1 AMSA assesses the content of the application, including the RO-endorsed DMLC Part II, any requests for exemptions/equivalents and the inspection report.
 - 3.2 If any further information or clarification is required on an exemption/equivalence request or any other documentation, AMSA will liaise with the RO who should consult the vessel owner.
 - 3.2.1 With regard to exemptions/equivalents, when AMSA is satisfied that the requested exemption/equivalence is valid and the outcome of the consultation with the representative organisations is satisfactory, the RO will be informed accordingly.
 - 3.2.2 The details of the exemptions/equivalents granted will be inserted in the relevant section of the DMLC Part I by AMSA. If required, the owner may need to review and resubmit the DMLC Part II to the RO.
4. When AMSA is satisfied that the DMLC Part II and the inspection report are adequate, the DMLC Part I, including any exemptions/equivalents, is finalised, signed and issued. AMSA will issue the signed DMLC Part I in soft copy through the RO. The original DMLC Part I will be posted to the vessel owner.
5. The RO will issue a Maritime Labour Certificate (AMSA Form 318) and provide it to the vessel owner.
6. The RO will ensure that a copy of the Maritime Labour Certificate is sent to AMSA.

5.2 What happens if the RO finds the vessel does not comply?

If during the inspection the RO identifies areas that are not compliant with the MLC, 2006 or marine order 11, they will consult with AMSA.

Where the issues of non-compliance are such that a request for exemption or equivalents is to be considered, the procedure required by Section 5.1 paragraph 1.2 above is to be followed.

Once completed, the owner will need to review and resubmit the request for exemption or equivalents and DMLC Part II. The certification process will then restart from paragraph 1.3 of Section 5.1 above.

5.3 Interim Maritime Labour Certificate

An Interim Maritime Labour Certificate may be issued in accordance with Standard A5.1.3, sections 5 to 7, of MLC, 2006. A Maritime Labour Certificate may be issued on an interim basis under the following circumstances:

- New vessels on delivery;
- When a vessel changes flag; or
- When a vessel owner assumes responsibility for the operation of a vessel which is new to that vessel owner.

The validity of the Interim Maritime Labour Certificate may not exceed a period of 6 months and may only be issued subject to verification that:

- The vessel has been inspected, as far as reasonable and practicable, for the 16 areas subject to general inspection in Appendix A5-I of the MLC, 2006;
- The vessel owner has demonstrated that the vessel has adequate procedures in place to comply with Marine Order 11;
- The Master of the vessel is familiar with the requirements of Marine Order 11; and
- The vessel owner is in the process of developing a DMLC Part II and has submitted relevant information to AMSA for the development of a DMLC Part I, which may include a request for exemptions or equivalents.

A full inspection in accordance with Standard A5.1.3 paragraph 1 shall be carried out prior to the expiry of the Interim Maritime Labour Certificate to enable issue of a full-term Maritime Labour Certificate.

No further interim certificate will be issued following the initial 6-month period. A DMLC Part I need not be issued for the period of validity of the interim certificate.

5.4 Maintaining compliance and ongoing inspections

Specific details on the requirements for maintaining compliance including ongoing inspections is contained in Division 16 of Marine Order 11.

Vessels that are certified in accordance with the Convention will be required to undergo an intermediate inspection between the second and third anniversary of the initial certification date. AMSA has delegated this responsibility to ROs.

An intermediate inspection will be conducted in a manner similar to the initial inspection in that the owner of a vessel will need to demonstrate ongoing compliance with the 16 areas subject to general inspection listed in Appendix A5-I of the Convention.

5.5 Renewal inspections

A renewal inspection is required prior to the expiry date of a Maritime Labour Certificate.

When applying for a renewal, the vessel owner(s) makes application to their selected RO for inspection and certification of the vessel and the procedure detailed in part 5.1 above will apply.

5.6 Validity of certificates

Section 86 of Marine Order 11 details instances where Maritime Labour Certificates and Interim Maritime Labour Certificates may be revoked, including:

- ongoing inspections are not completed within specified time frames;
- a certificate or declaration is not endorsed accordingly;
- the vessel changes flag;
- when an owner ceases to assume responsibility for the operations of a vessel; or
- when a substantial alteration is made to the structure or equipment of accommodation spaces, covered in Title 3 of the MLC, 2006 and with section 37 of Marine Order 11.

A Maritime Labour Certificate may also be revoked by AMSA where there are serious breaches of Marine Order 11 or the Convention.

5. Certification of regulated Australian vessels

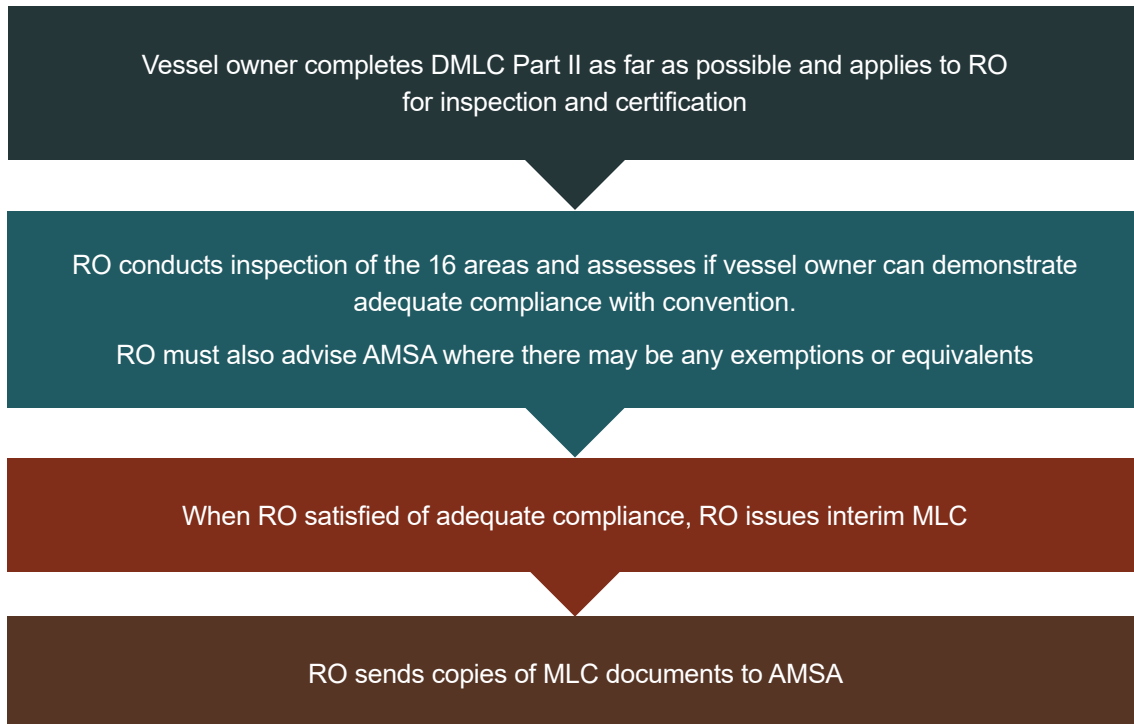
5.7 Certification flowcharts

The flowcharts shown on the following pages illustrate the procedure for inspection and certification of RAVs as required by the MLC, 2006.

Flowchart for obtaining a Maritime Labour Certificate



Flowchart for obtaining an Interim Maritime Labour Certificate



6. Who is a ‘Seafarer’?

The MLC, 2006 generally applies to all seafarers. There are traditionally recognised seafarer roles (deck and engineer officers and integrated ratings) where those performing such roles will clearly fall within the definition of seafarer. However, there may be other situations where it is not clear whether or not an individual is a seafarer and as such whether the relevant provisions of the *Navigation Act 2012* and Marine Orders apply to that person.

Section 14 of the *Navigation Act 2012* defines ‘seafarer’ as any person who is employed or engaged or works in any capacity (including that of master) on board a vessel on the business of the vessel, other than the following:

1. a licensed pilot of the vessel (acting as such a pilot);
2. an owner of the vessel or a person (except the master) representing the owner;
3. law enforcement personnel (in their capacity as law enforcement personnel);
4. if the vessel is a special purpose vessel—special personnel in relation to the vessel;
5. a person temporarily employed on the vessel in port;
6. a person prescribed by the regulations.

In considering prescribing by regulation the types of occupations that are not seafarers, AMSA found that it was difficult to provide a prescriptive list of occupations of persons who may not be seafarers. It was agreed in consultation with AMSA’s stakeholders that the application and intent of the Convention may vary from circumstance to circumstance.

Where the owners of a vessel, that is required to hold a Maritime Labour Certificate, identify that an occupational group engaged or working on board a vessel may, in their view, not be considered ‘seafarers’ for the purpose of the Convention, they may make an application to AMSA who will determine on a case by case basis whether that occupational group is exempt.

Recognising that there may be occasions where this issue would arise, at its 94th session the ILO passed Resolution VII – Information on Occupational Groups providing guidance for Administrations in their deliberations on this matter.

The following considerations, taken from Resolution VII, should be considered in the owner's application for DMLC Part I in relation to occupational groups:

1. the category (occupational group) or capacity of the persons
2. the duration of the stay on board of the persons concerned
3. the frequency of periods of work spent on board
4. the location of the person's principal place of work
5. the purpose of the person's work on board
6. who is responsible for the labour and social conditions for the persons
7. what form of work agreement is in place for the persons
8. the vessel owner's assessment of that work agreement in relation to the standards created by the MLC, 2006; and
9. whether the persons are expected to undertake duties related to the safety or security of the vessel or pollution protection.

Where AMSA has determined that the MLC, 2006 is not applicable to an occupational group or persons employed on board, companies are reminded of their obligations under the *Fair Work Act 2009* regarding the minimum terms and conditions for maritime employees.



Information on how the *Fair Work Act 2009* applies to the maritime industry, the ten National Employment Standards and the safety net of minimum terms and conditions of employment can be found on the Fair Work Ombudsman website: www.fairwork.gov.au



This section is to assist ship owners in demonstrating compliance with the MLC, 2006. Information contained herein is current at the time of publication and owners are advised to review the current legislation/ marine order before taking any action.

7. Demonstrating compliance—Australian vessels

The information contained in this section provides general guidance on the working and living conditions that make up the 16 areas covered in DMLC Parts I and II and are the subject of MLC, 2006 flag State compliance inspections required by Appendix A5-I of the MLC, 2006.

Note: this section is to assist ship owners in demonstrating compliance with the MLC, 2006. Information contained herein is current at the time of publication and owners are advised to review the current legislation/marine order before taking any action.

7.1 Minimum age

7.1.1 General

When employing seafarers on a Regulated Australian Vessel, owners must not:

- employ any person under the age of 16 years; or
- employ any person under the age of 18 years in night work, or where health and safety is likely to be jeopardised.

AMSA will permit seafarers under the age of 18 years to work between the hours of 9 pm and 6 am only if the work is reasonably required for the training of the person in accordance with an approved training program.

Seafarers under the age of 18 years can only perform certain tasks under supervision and instruction. The details of those tasks are listed in schedule 2 of Marine Order 11.

7.2 Medical certification

All seafarers employed on a Regulated Australian Vessel must obtain a Certificate of Medical Fitness issued in accordance with Marine Order 76 (Health – medical fitness) 2017.

The contact details for booking an AMSA medical examination are:

Toll free: 1300 763 822

seafarermedical@sonichealthplus.com.au



A list of overseas providers can be found on the qualifications section of the AMSA website: www.amsa.gov.au/qualifications-training/international-qualifications/medical-fitness-international-certificates

7.3 Qualification of seafarers

7.3.1 General

Seafarers must hold appropriate seagoing qualifications to perform duties at sea in accordance with the International Convention on Standards of Training, Certification and Watchkeeping (STCW) Convention or the National Standard for Commercial Vessels Part D (for near coastal operations on eligible vessels). The requirements for obtaining and maintaining unlimited qualifications are contained in Marine Orders 70, 71, 72 and 73. The requirements for obtaining and maintaining near coastal qualifications are contained in Marine Order 505.

For owners of vessels registered on the Australian International Shipping Register additional information regarding Certificates of Equivalence can be found on the AISR section of the AMSA website.

7.3.2 Marine Cook

Under the MLC, 2006, a person employed as a cook on board a vessel must be over 18 years of age and suitably qualified.

Marine Order 11 section 60 requires the owner of a vessel to ensure that a person working a vessel as a cook holds a certificate of proficiency as marine cook issued in accordance with Marine Order 70. They must also hold a valid AMSA Medical and a Certificate of Safety Training.

The owner of a vessel may apply for an exemption from the requirement above. AMSA may grant an exemption:

1. for a period up to 1 month; or
2. until the vessel arrives at the next convenient port of call.

For a vessel with a prescribed manning level of less than 10, that does not need to carry a fully qualified cook due to its trading pattern, it must be ensured that the person, or persons, processing food in the galley are appropriately trained or instructed in food hygiene, personal hygiene, food handling and storage of food, as per section 60 of Marine Order 11.



Further information can be found on the qualifications section of the AMSA website:
www.amsa.gov.au/qualifications-training/international-qualifications

7.4 Seafarers' Work Agreements (seafarers employment agreements)

7.4.1 General

Seafarers serving on board an RAV must have a signed and current work agreement in accordance with section 21 of Marine Order 11.



A sample work agreement is available at www.amsa.gov.au/forms/sample-work-agreement

Owners should note that the form of the work agreement is not prescribed, however it must contain, at a minimum, the details required by Schedule 3 of Marine Order 11.

A work agreement needs to be signed by both the seafarer and the owner or their agent. At all times seafarers must be given the right to obtain advice prior to signing a work agreement. Work agreements may be linked to a collective agreement or an enterprise bargaining agreement.

Guidance on specific elements of the agreement is provided below:

- 1. *Date of birth or age:*** Normally the date of birth should be inserted in full, only in exceptional circumstances should the seafarer's age be inserted, and only when the seafarer's date of birth cannot be established. The owner should always use the age that the seafarer is at the time of signing the agreement.
- 2. *Capacity in which the seafarer is to be employed:*** This requires a specific and clear description of the occupation type and duties that the seafarer is to perform. If the seafarer changes position on board the vessel then a new agreement will need to be signed.
- 3. *Wages:*** The owner of a vessel must ensure that wages are paid at least monthly and that each seafarer is given a pay slip detailing payments made including additional payments and the rate of exchange used if payment has been made in a currency different from that agreed in the work agreement. A seafarer is entitled to nominate another person to whom wages, or a nominated amount of their wages, are sent at regular intervals.
- 4. *Paid annual leave:*** The period of paid annual leave must be included in the work agreement, a reference to any collective agreement, enterprise bargaining agreement or award is satisfactory.
- 5. *Notice of termination of an agreement:*** Specific details of the notice of termination of an agreement can be found in section 22 of Marine Order 11.
- 6. *Repatriation:*** The terms and conditions governing repatriation entitlements are listed in section 31 of Marine Order 11.

7.4.2 Vessels registered on the Australian International Shipping Register (AISR)

Owners of vessels registered or intending to be registered on the AISR need to be aware that section 61AA of the *Shipping Registration Act 1981* overrides the provisions of the *Fair Work Act 2009*, and the *Seafarers Rehabilitation and Compensation Act 1992* in particular circumstances, and that Ministerial determinations are in place regarding minimum wages and compensation.



Owners of vessels should refer to the 'Guide to the Registration of a Ship on the International Shipping Register' published by AMSA. Details are available at www.amsa.gov.au/vessels-operators/ship-registration/guide-registration-ship-australian-international-shipping

7.4.3 Seafarers discharge forms and records of employment

A seafarer must be handed a record of service at their time of discharge or at the expiry of their work agreement. It is a requirement that vessel masters complete the approved record of service form and that the various copies of the form are distributed as per the instructions contained within.



Record of Service Books (AMSA 143) can be purchased online. Details are available at www.amsa.gov.au/forms/purchase-task-books-record-books-and-log-books

7.5 Seafarer Recruitment and Placement Services

Owners of an RAV, or a foreign-flagged vessel in an Australian port, using private seafarer recruitment and placement services (PSRPS), are reminded of their obligations to ensure that the service is operated in accordance with Regulation 1.4 of the MLC, 2006.

Australian-based PSRPS will need to register with AMSA and may be subject to audit and inspection.



Specific guidance on how to register as a PSRPS provider and the Australian Register of Private Seafarer Recruitment and Placement Services that have been assessed as compliant with Division 3 of Marine Order 11 is on the AMSA website: www.amsa.gov.au/vessels-operators/seafarer-safety/private-seafarer-recruitment-and-placement-services

AMSA will recognise appropriately registered seafarer recruitment and placement services where they exist in member countries that have ratified the MLC, 2006.

7.6 Hours of work and rest

The MLC 2006 contains mandatory requirements governing minimum hours of rest for seafarers. Australia has chosen to harmonise with the requirements of the *IMO Standards of Training, Certification and Watchkeeping for Seafarers 1978* (STCW) (as amended). Marine Order 28 requires that all seafarers have the minimum hours of rest. Vessels that comply with Marine Order 28 will meet Australian requirements for the MLC, 2006.

As part of the management of hours of work and rest, MLC, 2006 requires that individual rest records must be maintained for every seafarer on board the vessel. The master shall monitor rest records to ensure that seafarers are in compliance with the minimum requirements set out in International Convention on Standards of Training, Certification and Watchkeeping (STCW) section A-VIII/1 and Marine Order 28.

These documents are subject to inspection by flag State and port State control officers.

7.7 Manning levels for the vessel



Information on the procedure for obtaining a Minimum Safe Manning Document can be found on the AMSA website: www.amsa.gov.au/vessels/manning

7.8 Accommodation, recreational facilities, food and catering

7.8.1. General

Title 3 of the MLC, 2006 addresses accommodation and recreational facilities and much of this title applies to a 'new vessel'. However, it also includes requirements for accommodation arrangements and the provision of food and water which are given effect by Marine Order 11 as required under sections 60 to 75 of the *Navigation Act 2012*. Accommodation requirements include exposure to noise and vibration, lighting, heating and cooling, and the condition of the accommodation. The master must ensure that the accommodation, catering facilities, food and recreational facilities continue to comply with Marine Order 11 and the MLC, 2006.

7.8.2 Requirements for Regulated Australian Vessels

Marine Order 14, issue 1 (Accommodation) (Order No. 5 of 1990) applies to RAVs constructed prior to 20 August 2013 and deals with accommodation constructed prior to the entry into force of the MLC, 2006. These provisions remain unchanged, and there is no requirement for owners to undertake structural changes to the accommodation.

RAVs constructed after 20 August 2013 must comply with the construction standards for accommodation specified in Marine Order 11.

7.9 Health and safety and accident prevention

All regulated Australian vessels and some foreign-flagged vessels are subject to the requirements of the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act) as it currently applies. The OHS(MI) Act prescribes:

- matters pertaining to the health, safety and welfare of maritime industry employees while at work
- the protection of persons at or near workplaces, from risks to health and safety arising out of the activities of maritime industry employees at work
- ensuring that expert advice is available on occupational health and safety matters affecting maritime industry employees and maritime industry contractors; and
- promoting an occupational environment for maritime industry employees that is adapted to their health and safety needs.

The *Occupational Health and Safety (Maritime Industry) Regulations 1995* and *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003* may also apply.

Trained flag State control officers are appointed as Inspectors under section 84 of that OHS(MI) Act and will conduct OHS(MI) audits of regulated Australian vessels on a regular basis. These audits are normally done in conjunction with a flag State control inspection. AMSA inspectors may also be required to attend and investigate incidents where there has been a complaint or there is clear indication that the health and safety of persons on board has been jeopardized.

7.10 Onboard medical care

7.10.1 General

Sections 66 and 67 of the *Navigation Act 2012* make it an offence for a vessel to proceed to sea without medicines, medical and surgical stores, and the instructions for their use.

In effect, vessels are required to carry medical stores in accordance with the *Medical Carriage Requirements on Regulated Australian Vessels* and to carry a copy of the most recent edition of the *International Medical Guide for Ships*, published by the World Health Organization.

For vessels carrying dangerous goods, where those substances are not included in the *Medical first aid guide for use in accidents involving dangerous goods*, it is the owner and master's responsibility to ensure that they comply with the requirements of subsection 68(3) of Marine Order 11 prior to loading those goods.

Owners will need to ensure that crew members who have completed the Medical Care On Board Ship and Medical First Aid course as part of their Certificate of Competency conduct refresher training at intervals of not more than 5 years. While the form of this training is not prescribed, AMSA recommends that it should cover at a minimum:

- CPR Techniques
- treatment of wounds, bleeding, burns and soft tissue injuries
- general treatment of trauma
- review of content of International Medical Guide for Ships
- review of nursing procedures; and
- legislation and equipment updates.

7.10.2 Standard medical report form

It is now a requirement when exchanging medical information about individual seafarers between a vessel and shore due to illness or injury, to use an approved form. AMSA has produced a standard medical report form (AMSA 278) to be used for the transfer of this information.

The form is in two parts. Part A is to be completed with vessel details, patient information, details of the injury and illness and any tele-medical advice provided. Part B of the form should be completed by the examining Medical Practitioner conducting on shore treatment and providing details of fitness for duty. The form should accompany the seafarer for treatment ashore. Personal information concerning individual seafarers is to be kept confidential at all times.



A copy of this form is available on AMSA's website: www.amsa.gov.au/forms/medical-report

7.11 Payment of wages

Owners of RAVs are reminded of their obligations under the *Fair Work Act 2009*, award or collective agreement to pay seafarers their wage, at a minimum, on a monthly basis. A shorter period can apply by agreement between the seafarer and the owner. Marine Order 11 contains additional requirements with regard to the payment of wages.

The owner of a RAV must also:

- establish a system that allows seafarers to transfer part of their earnings to family; and
- ensure that those payments are made directly to the person named by the seafarer and on time.

The owner of a vessel may charge a reasonable fee to facilitate the transfer of funds.

7.12 Onboard complaint procedures

The MLC, 2006 sets out minimum requirements for a system that ensures seafarers, and/or their representatives, have clear direction as to where and how to make a complaint concerning the working and living conditions of seafarers on board vessels.

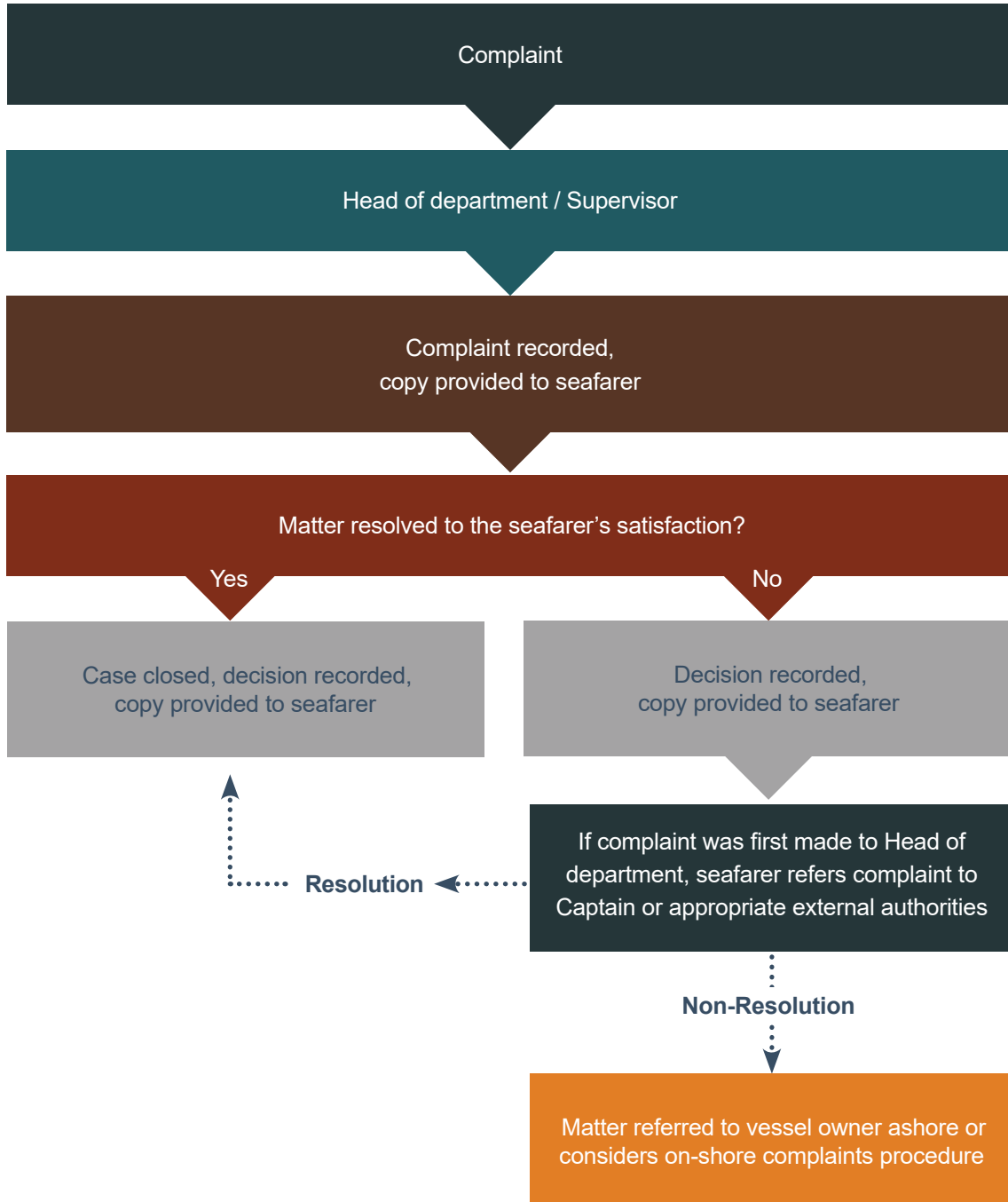
For owners of vessels there is a requirement to establish and manage an onboard complaints system that allows seafarers the opportunity to make a complaint confidentially and without fear of recourse. An onboard complaint system must at the very least provide for the following:

- where possible seek to resolve seafarer complaints at the lowest level of command possible
- include rights of the seafarer, safeguards against victimisation, and have a nominated person on board the vessel who can provide advice
- ensure that contact information for the flag State and the Maritime administration, in the country of residence of seafarers on board is available
- ensure that all complaints are captured in writing
- protect seafarer rights by retaining the right of being accompanied during the complaints process
- provide mechanisms to allow seafarers the right to make complaints ashore, where they cannot be resolved on board
- provide obligations on competent authorities and flag State authorities to attempt to resolve the matter ashore if necessary
- a reporting mechanism to the International Labour Organization when complaints cannot be resolved.

Seafarers will always retain the right to make complaints directly to AMSA or any other organisation directly involved in the welfare of seafarers, and no action can be taken against a seafarer merely because he or she has made a complaint. The onboard complaints system must be posted in an area accessible to all seafarers serving on board.

The onboard complaints system and the associated requirements may be subject to specific inspections in foreign ports of call, especially in cases where competent authorities have received a complaint.

On board complaint flowchart





8. Port State control in Australia

MLC, 2006 inspections will normally be carried out in conjunction with port State control inspections but may also be conducted as a standalone inspection.

Following an initial inspection a more detailed inspection may be required and will be carried out when:

- required documents are not produced or maintained or are falsely maintained or when documents produced do not contain the information required by the Convention or are otherwise invalid
- there are clear grounds for believing that the working and living conditions on the vessel do not conform to the requirements of the Convention
- there are reasonable grounds to believe that the vessel has changed flag for the purpose of avoiding compliance with the Convention
- there is a complaint alleging that specific working and living conditions on the vessel do not conform to the requirements of the Convention.

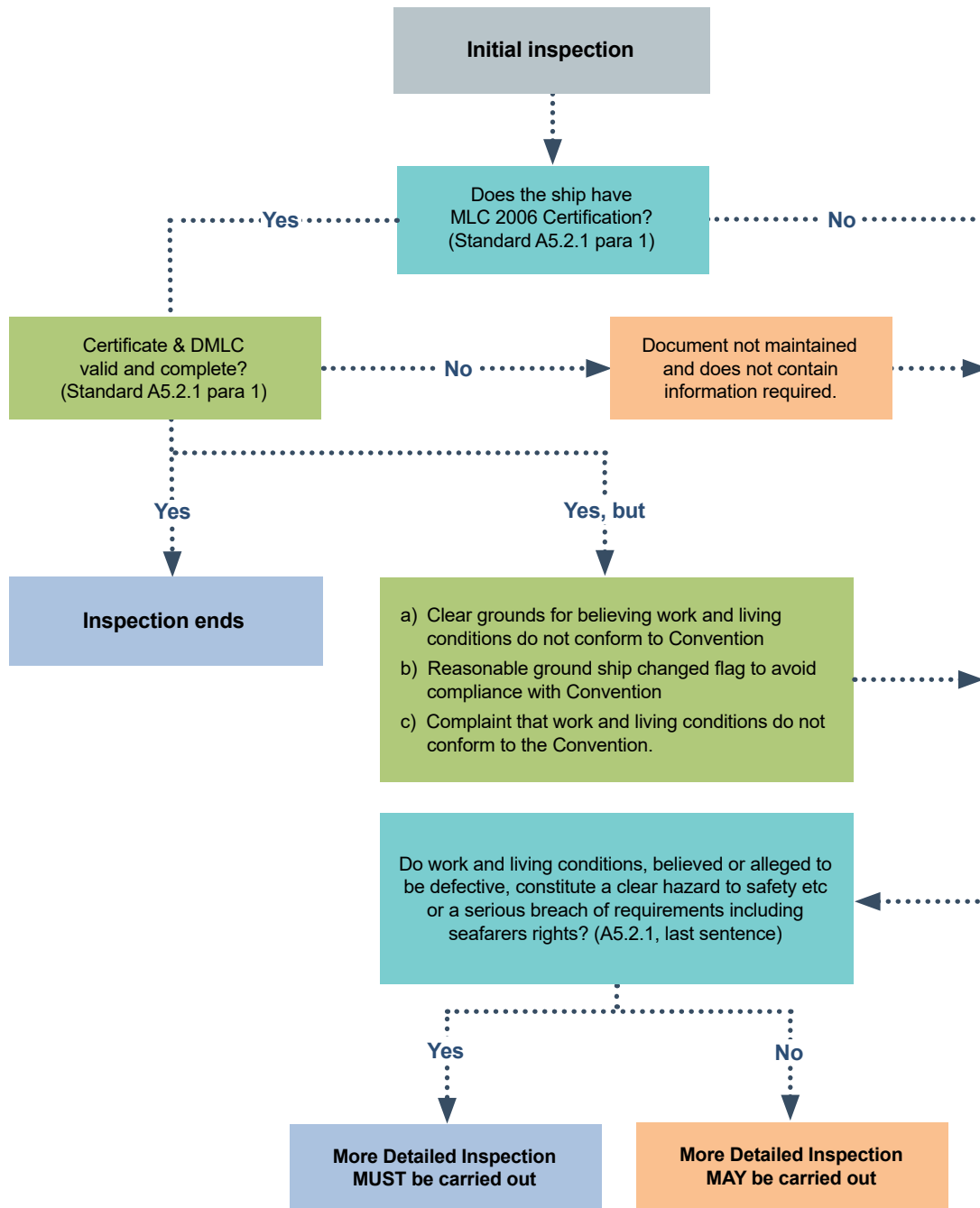
Following a more detailed inspection where the vessel is found not to conform to the requirements of the Convention and:

- a) the conditions on board are clearly hazardous to the safety, health and security of seafarers, or
- b) the non-conformity constitutes a serious breach of the requirements of the Convention (including seafarers rights)

the AMSA Inspector will ensure that the vessel does not proceed to sea until the deficiencies that fall within the scope of (a) and (b) have been rectified or a corrective action plan has been received and agreed.

8. Port State control in Australia

MLC, 2006 Port State inspection flow chart



9. Onshore complaints

Seafarers have a right to make a complaint to the port State/flag State authorities when there is a belief that there has been a breach of the requirements of the MLC, 2006. Marine Order 11 provides that a seafarer may report such a breach to AMSA to facilitate a prompt and practical means of redress.

When complaints are made to AMSA, AMSA will:

- undertake an initial investigation, which may or may not involve a ship visit
- determine whether the onboard complaints system has been used,
 - and if it has been used, examine the records of the matter
- promote resolution of complaint at ship board level if appropriate
- notify the flag State if the complaint has not been resolved seeking resolution, advice or corrective action within a prescribed deadline.

AMSA may also consider a more detailed inspection of the vessel including matters other than those mentioned in Appendix A5-III to the Maritime Labour Convention.

Where a complaint has not been resolved following the action taken above, AMSA will transmit a copy of the reports and associated documents to the ILO Director-General with notification to the port State ship owner and seafarer organisations.

AMSA contact details for on-shore complaints are:



Online MLC on-shore complaint form:

www.amsa.gov.au/safety-navigation/health-and-safety/maritime-labour-convention-shore-complaint-form

Email: OnshoreComms@amsa.gov.au

Web: www.amsa.gov.au/forms/maritime-labour-convention-shore-complaints-and-reporting



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