



Consultation Feedback Report

Marine Order 11 (Living and working conditions on vessels) Amendment Order 2018

Outline

Amendments to *Marine Order 11 (Living and working conditions on vessels) 2015* will commence on 8 January 2019.

The changes include:

- Implementing 2016 amendments to the Maritime Labour Convention 2006 (MLC), which:
 - clarify that the effects of harassment and bullying should be taken into account by a ship's Administration when setting standards for the protection of seafarer welfare; and
 - allow for the extension of maritime labour certificates issued to vessels where a new certificate cannot be issued immediately.
- the need for AMSA to approve the use of equivalents, particularly with reference to vessels generally intended for day use, when they proceed on a single international voyage for the purpose of dry-docking or delivery;
- alignment of a provision concerning vessels <200 GT with the MLC for vessels proceeding on overseas voyages;
- alignment of the wording of existing provisions with the wording used in the MLC;
- clarification of existing provisions; and
- minor editorial corrections.

Consultation feedback

A copy of the draft amended order was placed on the AMSA website for public comment for four weeks from 4 October 2018 until 2 November 2018. It was also emailed to more than 120 stakeholders, including ship operating companies, seafarer representative organisations, classification societies, shipping industry peak bodies and interested government departments and agencies. Comments were received from two industry stakeholders addressing the scope or application of the changes being made.

Feedback received during public consultation and AMSA's responses are listed below.

Marine Order 11 – General

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| <p>Comment</p> | <p>Australia administers Marine Order 11 ('MO11') which largely does not affect Australian ships: the repeal of the Navigation Act 1912 and replacement with the Navigation Act 2012 removed most remaining Australian flag vessels from the ambit of this regulation instead placing them under the Marine Safety (Domestic commercial Vessels) National Law Act 2012 which is outside the scope of MO11.</p> <p>Despite that in its terms the MLC applies only to vessels that trade internationally, this does not prevent the Australian administration from applying the same minimum standard to our domestic shipping.</p> <p>The submitter suggests the application of MO11 should now be widened so as to give protection to Australian seafarers on these Australian vessels outside the scope of MO11:-</p> <ul style="list-style-type: none"> • The assumption that all such vessels are only used for day-light operations is no longer correct. Some tugboats/DCV vessels that were originally designed/approved under this assumption now see employers pressing the crew to live onboard the vessel to give 24 hour availability of operations. • DCV vessels employing low end Certificates of Competency ('CoC') under Marine Order 505/Part'D'NSCV give the employer far greater bargaining power than those employed: there is not a high level of unionisation to independently push for decent living/working conditions. These vessels/seafarers would benefit from having a regulation that included them in a mandated minimum standard in these matters. <p>Given that the impending demise of our 4 remaining Australian-flagged-and-internationally-trading LNG carriers will see us with no vessels remaining under MO11, the submitter has no other comments as to your variations to MO11's text.</p> |
| <p>AMSA's Response</p> | <p>Thank you for your feedback. Your comments have been noted.</p> <p>Marine Order 11 applies to regulated Australian (RAVs) vessels and foreign vessels. It applies to RAVs irrespective of whether they trade or operate internationally.</p> <p>Extending the application of Marine Order 11 to include domestic commercial vessels in addition to regulated Australian vessels is outside the scope of the amendment Order. These comments may be taken into consideration in future reviews of Marine Order 11.</p> |

Section 8 – Equivalent

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| <p>Comment</p> | <p>As is pointed out in the notes contained in the consultation comparison it is necessary and convenient that AMSA be permitted to approve equivalent arrangements for vessels that, given the nature of their usual activity may not necessarily be covered by some or all of Marine Order 11. AMSA may approve equivalent arrangements if satisfied that adequate arrangements are in place and that specified international convention provisions are not contravened provide the appropriate safeguards for the exercise of this power.</p> |
| <p>AMSA's Response</p> | <p>Thank you for your feedback. Your comments have been noted.</p> <p>The provision provides that AMSA may approve the use of an equivalent if satisfied that the vessel has adequate arrangements to protect the working</p> |

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| | and living conditions of its seafarers, and that approving the use of the equivalent would not contravene paragraph 4 of Article VI of the Maritime Labour Convention. |
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Section 38 – Small vessels

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| Comment | The submitter notes the observation in this section that the initial clause is an error as the application of the MLC applies to vessels proceeding on overseas voyages regardless of size. The submitter notes that within the MLC distinctions are made between vessels based on size (for example, the requirement to hold a Maritime Labour Certificate). |
| AMSA's Response | That is correct. The MLC makes distinctions in the application of standards based on vessel size. |

Section 79 – Declaration of maritime labour compliance

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| Comment | The submitter supports what appears to be a pragmatic change which will allow AMSA to issue a declaration of maritime compliance to a vessel not withstanding that it is not obliged to hold a Maritime Labour Certificate. This will be of particular use to vessels who visit foreign ports and may be subject to the no more favourable treatment test under the MLC, but are able to provide port state control inspectors with something to assist to their satisfaction that the vessel meets MLC standards not withstanding that it doesn't hold (and is not required to hold) all certification. |
| AMSA's Response | AMSA agrees that a vessel may have a declaration of maritime labour compliance even if it is not required to have a maritime labour certificate, and this may assist in demonstrating compliance with the MLC. |

Section 80 – Documents to be carried on board

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| Comment | AMSA has made the decision to expressly reference the declaration of maritime compliance. The clause also now requires a copy of the certificate (carried on board) and declaration if required to be easily read by seafarers, whereas the previous requirement was for a certificate to be easily seen by seafarers. It is not immediately apparent why this change has been made the submitter would be interested to understand the reason for this change. The submitter would also seek AMSA's views on whether or not the documents being accessible easily by electronic means would satisfy this provision. |
| AMSA's Response | The MLC requires that a copy of the maritime labour certificate and declaration of maritime labour compliance be posted in a conspicuous place on board where it is available to seafarers. The change from the words "easily seen" to the words "easily read" is intended to ensure that the certificate and declaration are posted so that a seafarer has access to them and can read them if they so desire. While providing copies of the documents using electronic means may be satisfactory to AMSA, this would mean that the seafarers would require unrestricted access to a computer to access the documents at all times, and the obligation would be on the shipowner to ensure that each seafarer had the knowledge and ability to easily access the documents at any time. While AMSA may consider this arrangement, in some circumstances, to be an alternative to physically posting copies of the certificates, another port state may not consider it to be suitable or adequate. For this reason, |

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| | physically displaying the certificates may be the simplest way of providing unrestricted access to copies of the documents for all seafarers. |
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Section 83 – Duration of maritime labour certificate

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| Comment | This reflects the amendments to the MLC agreed in 2016 and is a sensible administrative measure in situations where an inspection has already been conducted and the delay is in issuing a new certificate. |
| AMSA's Response | AMSA agrees that this is reflective of the 2016 amendments to the MLC. |

Section 88 – Criteria for interim maritime labour certificate

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| Comment | The submitter supports the alignment of domestic legislation with convention wording where it is possible and convenient to do so. |
| AMSA's Response | By aligning the language of the Order with the language used in the MLC where possible, the original intent of the convention is carried into the Order. |

Section 92 – Complaint not resolved on board

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| Comment | The submitter recognises that in 2016 there were some changes made to the MLC guidance in relation to the effects of Bullying and Harassment. While the Fair Work Act 2009 does contain specific redress from the Fair Work Commission if criteria is met (in the form of orders), there are a number of other avenues which may be pursued if an on board complaint is not resolved on board depending on the nature of it (i.e. modern awards (including the Seagoing Industry Award) and enterprise agreements contain a clause with respect to resolving disputes). The more generic note under the previous Marine Order does allude to a wider range of remedies that may be sought where a complaint is not resolved on board, and perhaps specific references to bullying and harassment are more appropriately contained with WHS elements of the MLC (and the domestic legislation that implements it). |
| AMSA's Response | AMSA agrees that the references to bullying and harassment are more appropriately contained within WHS legislation. Marine Order 11 is not intended to cover this aspect of the MLC. |