



Australian Government

Australian Maritime Safety Authority

Maritime Labour Convention GUIDE



Version 1: July 2013

Contents

1.0	Is your vessel subject to the MLC, 2006?	1
2.0	Is your vessel subject to the MLC, 2006?	2
2.1	Ships that are subject to the MLC, 2006	2
2.2	Foreign-flagged vessels in Australian ports	3
2.3	Australian vessels – Regulated Australian Vessels (RAV)	3
2.4	Australian vessels - Domestic Commercial Vessels (DCV)	4
3.0	Terms and definitions	4
4.0	Overview of the MLC, 2006	5
4.1	Title 1 – Minimum requirements for seafarers to work on vessels	5
4.2	Title 2 – Conditions of employment	6
4.3	Title 3 - Accommodation, recreational facilities, food and catering	6
4.4	Title 4 – Health protection, medical care, welfare and social security protection	7
4.5	Title 5 – Compliance and enforcement	7
5.0	Implementation of the MLC, 2006	8
5.1	Timing for implementation	8
5.2	Individuals and groups who may not be considered seafarers	8
6.0	Certification of regulated Australian vessels	10
6.1	Application and certification process	11
6.2	What happens if the RO finds the vessel does not comply?	11
6.3	Exemptions and equivalence	12
6.4	Interim Maritime Labour Certificate	12
6.5	Certification flowcharts	12
	Flowchart for obtaining a Maritime Labour Certificate	13
	Flowchart for obtaining an Interim Maritime Labour Certificate	14
6.6	Maintaining compliance and ongoing inspections	15
6.7	Renewal inspections	15
6.8	Validity of certificates	15

7.0	Guidance on demonstrating compliance with the MLC, 2006 for Australian vessels	16
7.1	Minimum age	16
7.2.	Medical certification	16
7.3.	Qualification of seafarers	16
7.4	Seafarers' work agreements (seafarers employment agreements)	16
7.5	Recruitment and placement	17
7.6	Hours of work and rest	18
7.7	Manning levels for the vessel	18
7.8	Accommodation, food and recreational facilities	19
7.9	Health and safety and accident prevention	19
7.10	Onboard medical care	20
7.11	Onboard complaint procedures	20
7.12	Payment of wages	20
8.	Port State control in Australia	22
	MLC inspection flow chart	23
	Action to take flow chart	24
9.	Onshore complaints	24
	On shore complaints flow chart	25
APPENDIX 1:		
	Additional Legislative information to assist vessel owners in demonstrating compliance	26

1.0 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 is the result of a tripartite negotiation by representatives of government, employers and workers. The convention establishes comprehensive rights and protections at work for the world's seafarers. With aims to achieve both decent work arrangements for seafarers, and secure economic interests in fair competition for quality shipowners.

The MLC, 2006 consolidates and updates more than 68 existing ILO conventions, and enters into force internationally as a mandatory instrument on 20 August 2013. In Australia, the MLC 2006 will be implemented through the *Navigation Act 2012* and associated delegated legislation called Marine Orders.

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
- provide information on the mechanisms to be employed for the survey and certification of a vessel under the MLC, 2006.

Note: 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.

Additional advice may also be found in industry guidelines:

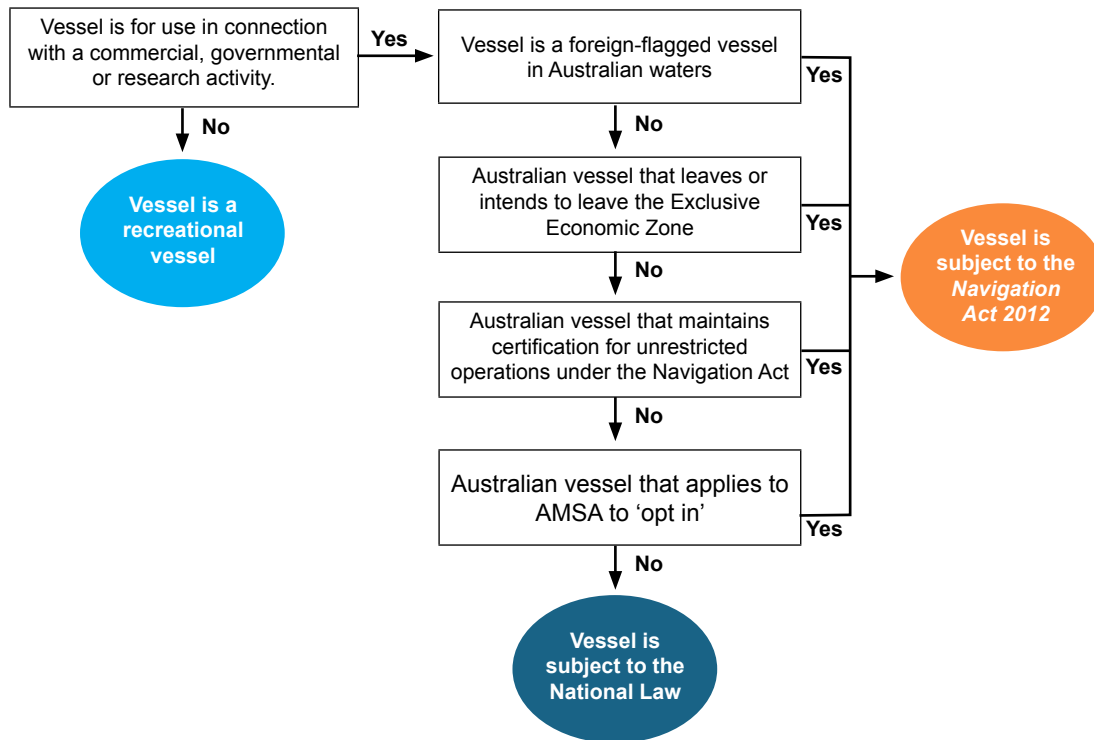
- International Shipping Federations Guidelines on the application of the ILO Maritime Labour Convention
- ILO Guidelines for Port State Control Officers
- ILO Guidelines for Flag State Inspections.

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



2.0 Is your vessel subject to the MLC, 2006?

The table below provides a guide in determining the regulatory requirements for owners of commercial vessels which are either registered in Australia, visit Australian ports or operate in Australian waters. More detailed advice on how this table can be interpreted is provided in subsequent sections.



2.1 Vessels that are subject to the MLC, 2006

The application of the MLC, 2006 is set out in Article II, section 4 and 6 of the convention. Essentially:

- i. The MLC, 2006 applies to all vessels ordinarily engaged in commercial activities.
- ii. The competent authority may make determinations with respect to vessels of less than 200 gross tonnes not engaged on international voyages.

The MLC, 2006 does not apply to:

- i. fishing vessels
- ii. vessels of traditional build (such as dhows and junks)
- iii. warships or naval auxiliaries
- iv. vessels not ordinarily engaged in commercial activities.

Note: with respect to Floating Production and Storage Offloading Units (FPSO) and Floating Storage Units (FSU) the MLC, 2006 applies to Australian register vessels by virtue of section 41 of the *Navigation Act 2012*. Where the Act is disallowed by virtue of the application of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGSA) 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 is applicable.

2.2 Foreign-flagged vessels in Australian ports

The MLC, 2006 has been ratified by Australia and legislation created to apply the convention to foreign-flagged vessels trading in Australian waters.

Article V, paragraph 7, of the convention requires each member to implement its responsibilities on foreign-flagged vessels on the basis of 'no more favourable treatment'. Within Australia, this means that all foreign-flagged vessels will be subject to the port State responsibilities detailed in Regulation 5.2 of the MLC, 2006 irrespective of whether their flag State has ratified the convention.

Where the flag State has not ratified the MLC, 2006 such vessels must be able to provide documentary evidence of compliance with the convention. The port State control inspection will examine all the matters listed in Appendix A5-III of the MLC, 2006 as with any other vessel.

2.3 Australian vessels – Regulated Australian Vessels (RAV)

Noting 2.1 of this guide, Australian vessels that will be subject to the full survey and certification requirements of the MLC, 2006 will also be Regulated Australian Vessels (RAV) as defined in section 15 of the *Navigation Act 2012*. Essentially these are commercial vessels that are:

- i. intending to undertake overseas voyages
- ii. certified to undertake overseas voyages
- iii. other vessels that choose to 'opt-in' under section 25 of the *Navigation Act 2012*.

Overseas voyages are defined as voyages beyond the EEZ of Australia (see s.16 of the *Navigation Act 2012*).

While the MLC 2006 will apply to RAVs, this does not mean all RAVs are captured. Noting the ability of vessels to opt into the *Navigation Act 2012*, the following vessels will be exempt from the application of the MLC, 2006:

- a) vessels in service category other than:
 - Class 1A (Non-SOLAS Passenger vessel with unrestricted operations)
 - Class 2A (non-SOLAS Cargo vessel with unrestricted operations)
 - Class 1B (Domestic Passenger Vessel operating within the EEZ)
 - Class 2B (Domestic Cargo Vessel operating within the EEZ)
 as defined in section 3.5.1 of Part B of the National Standards for Commercial Vessels (NSCV)
- b) vessels used only for fishing or aquaculture
- c) vessels of under 200 gt not engaged in overseas trading, noting these may generally be captured by one of the above.

For vessels in category 1B and 2B listed in (a) above, this only applies to such vessels that have 'opted in' to the *Navigation Act 2012* (see s.25 of the *Navigation Act 2012*). Such vessels will be expected to comply fully with the MLC, 2006, including certification for a vessel of their size.

Vessels that are certified to operate wholly within port limits, in enclosed waters, and within the Great Barrier Marine Park region, are exempt from certain MLC, 2006 requirements, which are contained in section 7 of *Marine Order 11 (Living and working conditions on vessels) 2013*. These vessels do not require inspection and certification and are exempt from specific accommodation and working arrangement requirements. However these requirements are only exempted if seafarers have work protections in accordance with the *Fair Work Act 2009*.

2.4 Australian vessels - Domestic Commercial Vessels (DCV)

Where a commercial vessel is not subject to the requirements of the *Navigation Act 2012* as a RAV, it will be a Domestic Commercial Vessel (DCV) falling under the requirements of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

This guide is limited to dealing with matters as required under the *Navigation Act 2012* and does not address requirements for DCVs.

All requirements for DCVs are identified in the National Law Act and the Marine Orders under this Act (Marine Orders 507- 507) Further information relating to the regulatory requirements imposed on DCVs can be found on the domestic commercial vessel page at AMSA's website.

3.0 Terms and definitions

The terms and definitions used in the guide are from the *Navigation Act 2012*, the MLC, 2006 and Marine Order 11. A full text of definitions is not provided in this guide, readers should refer to the relevant legislation and the convention.

Competent authority: Marine Order 11, Article II of MLC 2006–AMSA is the competent authority in Australia.

Declaration of Maritime Labour Compliance (DMLC): Forms part of the MLC, 2006 certifying documentation. It is attached to the Maritime Labour Certificate and is made up of two parts:

1. DMLC Part 1 is prepared by the competent authority (AMSA) and contains references to specific legislative requirements. This is a standard form drafted by AMSA, only AMSA can make variations or modifications to this form.
2. DMLC Part 2 is prepared and maintained by the owner for each of its vessels.

Issuing body: See section 14 of the *Navigation Act 2012*. This means AMSA or a Recognised Organisation.

Master: See section 14 of the *Navigation Act 2012*.

New vessel: For the MLC, 2006, a new vessel is one that is constructed after 20 August 2013 (the date the convention comes into force)–the date of construction being the date the keel was laid or at a similar stage of construction (see Marine Order 11 (Living and Working Conditions on vessels)).

Owner: See section 14 of the *Navigation Act 2012*. This effectively captures, owner and operator, including where the operator is the demise charterer of the vessel.

Recognised Organisation (RO): See section 14 of the *Navigation Act 2012* – effectively a classification society delegated by AMSA to inspect vessels for compliance with the MLC 2006 and to issue statutory certification on AMSA's behalf.

Seafarer: See section 14 of the *Navigation Act 2012*.

Seafarer recruitment and placement service: See Marine Order 11 and Article II of the MLC, 2006.

Special personnel: See section 14 of the *Navigation Act 2012*, Marine Order 50. Effectively this means personnel on board in connection with the work of a special purpose of a vessel, which complies with the Special Purpose Ship Code.

Work agreement: See section 54 of the *Navigation Act 2012*, Marine Order 11 and Article II, paragraph 1 (g) of the MLC, 2006. This is an agreement between a seafarer and the owner of the seafarer's vessel, and has the same meaning as the Seafarer's employment agreement as defined in the MLC, 2006. A collective agreement that covers seafarers during their period of employment can form part of a work agreement.

4.0 Overview of the MLC, 2006

From 20 August 2013, member States that have ratified the convention will regulate the requirements of the MLC, 2006 through their flag State inspection and port State responsibilities. This is intended to ensure compliance with the MLC, 2006 - requirements for Fundamental Rights and Principles (Article III) and Seafarers' Employment and Social Rights (Article IV).

The main body of the MLC, 2006 (the regulations and the code) is divided in five general subject areas referred to as 'Titles'.

4.1 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. no person under the age of 16 can be employed on a vessel
- ii. seafarers under the age of 18
 - not employed to do work likely to jeopardize their health/safety
 - special attention to health/safety as per national laws
 - night work prohibited, except where defined by national laws
- iii. seafarers are to be certified as medically fit, by a duly qualified medical practitioner; medical certificate in English for vessels on international voyages – validity as per national law (2 years/1 year for under 18/6 years for colour vision)
- 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.



4.2 Title 2 – Conditions of employment

Title 2 is intended to ensure that seafarers have a seafarers' employment agreement (work agreement) which contains at least specific minimum employment conditions for all seafarers. For RAVs, work agreements are covered in section 54 of *Navigation Act 2012* and section 47 and 48 of Marine Order 11. The work agreement will cover:

- i. pay
- 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.

4.3 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.



4.4 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 on-board and ashore – the right to visit medical services ashore at no cost, as per national law; shipowners' liability/provision of financial security
- ii. treatment on board by appropriately trained personnel
- iii. carriage of medical equipment and medicines
- iv. workplace health and safety protection and accident prevention
- v. access to shore based welfare facilities
- vi. social security protection.

4.5 Title 5 – Compliance and enforcement

Regulation 5.1 - Flag State responsibilities for implementation and enforcement:

- general principles
- Recognised Organisations
- certification
- inspections
- reporting
- complaint procedures
- investigations
- marine casualties.

Regulation 5.2 - 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.

Regulation 5.3 – Labour supplying responsibilities

- Use of regulated private seafarer recruitment and placement services

5.0 Implementation of the MLC, 2006

The *Navigation Act 2012* commences on 1 July 2013 as does a new *Marine Order 11 (Living and working conditions on vessels) 2013*. Marine Order 11 absorbs and replaces the following orders that existed under the *Navigation Act 1912*:

- Marine Orders - Part 10: Medical first aid on ships
- Marine Orders - Part 11: Substandard ships
- Marine Orders - Part 14: Accommodation
- Marine Orders - Part 53: Employment of crews.

Note: The accommodation requirements prescribed in Marine Orders - Part 14, issue 1 (Accommodation) as in force on 30 June 2013 will continue to apply to vessels constructed prior to 20 August 2013.

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

- Marine Order 3 (Seagoing qualifications)
- Marine Order 9 (Health – medical fitness)
- Marine Order 15 (Construction – fire protection, fire detection and fire extinction)
- Marine Order 21 (Safety of navigation and emergency procedures)
- Marine Order 28 (Operations standards and procedures)
- The *Occupational Health and Safety (Maritime Industry) Act 1993*
- The *Fair Work Act 2009*
- The *Seafarers Rehabilitation and Compensation Act 1992*.

All Marine Orders can be accessed on the AMSA website. Note that the title format of Marine Orders has changed under the *Navigation Act 2012*.

The MLC, 2006 will be implemented using the above instruments. The subsequent sections are intended to provide advice on how these pieces of legislation will be applied.

5.1 Timing for implementation

For Regulated Australian Vessels (RAV): With the implementation of the *Navigation Act 2012* and Marine Order 11 on 1 July 2013, it will be possible for Recognised Organisations to start issuing certification to RAVs from this date. Owners of RAVs are expected to have certification issued by 20 August 2013.

For foreign-flagged commercial vessels: AMSA will commence port State control activities with respect to the MLC, 2006 when the convention comes into effect on 20 August 2013.

5.2 Individuals and groups who may not be considered seafarers

The MLC 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' and includes some general exclusions from the definition. The exclusions are:

- a) a licenced pilot of the vessel
- b) an owner of the vessel or a person (except the master) representing the owner
- c) law enforcement personnel
- d) special personnel (see explanation below)
- e) a person temporarily employed on the vessel in port
- f) a person prescribed by regulation.

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

As a result, where the owners of a vessel consider that a person engaged (or travelling) aboard a vessel that is required to hold a *Declaration of Maritime Labour Compliance* may not be a seafarer, but are unsure, it is suggested that they contact AMSA who will decide on a case-by-case basis, in consultation with the vessel owner and the seafarer representative organisations concerned as to whether that occupation is exempt.

Where there are identified occupational groups that will always work on board a particular vessel, the applicable application will be annotated within the *Declaration of Maritime Labour Compliance* (DMLC) Part I, on the basis that:

- i. with the exception of special purpose vessel, those proceeding on a voyage on the vessel will be embarked as either seafarers or passengers
- ii. where a person is expected to undertake duties related to the safety of the vessel or those on board then they should be seafarers.

In making a determination, AMSA will rely upon the provisions contained in Part VII of the Resolutions adopted by the International Labour Conference at its 94th (Maritime) Session, assessing occupational groups against the following factors:

- (i) duration of on board working periods
- (ii) frequency of on board working periods
- (iii) location of the person's principal place of work
- (iv) purpose of the work on board
- (v) protections that would normally be available to the persons concerned, for their labour and social conditions, to ensure they are comparable to that under the MLC, 2006.

5.2.1 Special Purpose Vessels

Special purpose personnel:

- i. as defined in section 14 of the *Navigation Act 2012*, and
- ii. serving on a special purpose vessel, as defined in section 18 of the *Navigation Act 2012* and *Marine Order 50 (Special purpose ships) 2012*, which is
- iii. certified as a Special Purpose Ship under Marine Order 50 or a regulation made by the flag State.

These individuals are not seafarers.

What may constitute a Special Purpose Vessel is detailed in section 1.3.4 of the IMO Special Purpose Ships (SPS) Code which states:

“special purpose ship” means a mechanically self-propelled ship which, by reason of its function, carries on board more than 12 special personnel including passengers. Special purpose ships to which this Code applies include the following types:

- *ships engaged in research, expeditions and survey;*
- *ships for training of marine personnel;*
- *whale and fish factory ships not engaged in catching;*
- *ships processing other living resources of the sea, not engaged in catching;*
- *other ships with design features and modes of operation similar to ships referred to above which in the opinion of the Administration may be referred to this group.*

It should be noted that personnel embarked for transfer to another vessel, facility or location are not special purpose personnel, and are would normally be treated as passengers.

6.0 Certification of regulated Australian vessels

Regulated Australian Vessels over 500 gross tonnage¹ are required to obtain certification prior to 20 August 2013. As with other conventions, AMSA has appointed a number of Classification Societies to act as recognised organisations (ROs) for the issue of the Maritime Labour Certificate.

Classification Societies appointed as recognised organisations are listed in *Marine Order 1 (Administration) 2013*.

The following table provides a list of ROs authorised to conduct inspections and issue certificates on behalf of AMSA, however, Marine Order 1 should be consulted to confirm RO appointment status:

Corporation or association	Acronym	Website
American Bureau of Shipping	ABS	www.eagle.org
Bureau Veritas	BV	www.veristar.com
China Classification Society	CCS	www.ccs.org.cn
Det Norske Veritas	DNV	www.dnv.com
Germanischer Lloyd	GL	www.gl-group.com
Korean Register of Shipping	KR	www.krs.co.kr
Lloyds Register	LR	www.lr.org
Nippon Kaiji Kyokai	Class NK	www.classnk.or.jp
RINA S.P.A	RINA	www.rina.org

¹Vessels normally engaged in overseas voyages that are more than 200gt but less than 500gt do not normally need certification. However, the vessel will need to be compliant with the requirements of the MLC and *Marine Order 11 (Living and working conditions on vessels) 2013*. AMSA advises that owners should consider the carriage of MLC certificates to avoid possible delays in foreign ports.

6.1 Application and certification process

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

1. The vessel owner(s) makes application to their selected RO for inspection and certification of the vessel.
2. On receipt of the application, the RO forwards the request to AMSA. AMSA will confirm the content of Part I of the *Declaration of Maritime Labour Compliance* (DMLC) and provide a formal copy to the RO. The RO should provide this to the owner. (Generally, the DMLC Part I will be one of two standard formats applicable to the General or International Register, but may also be *ship type* based).
3. The owner is required to complete Part II of the *Declaration of Maritime Labour Compliance* (DMLC). This must be provided to the RO for assessment before the Maritime Labour Certificate can be issued. More detailed guidance on how to complete Part II of the DMLC is provided in Annex 2 – Example of a completed *declaration of Maritime Labour Compliance* (Part II) of the International Shipping Federation, Guidelines on the application of The ILO Maritime Labour Convention, Second Edition.
4. The RO will use the provided DMLC Part I to assess compliance and determine if any exemptions or substantial equivalences are applicable. Once this process is completed, the RO will advise AMSA.

Exemptions are only permitted where specifically allowed by the convention. Substantial equivalences can only be considered as defined by Article VI, and as previously mentioned, Australian regulations exist covering the full scope of the MLC once:

- i. any proposed exemption is accepted or AMSA is satisfied that no such action is required
- ii. the DMLC Part II endorsed by the RO, is provided to AMSA
- iii. the Manager Ship Inspection and Registration is satisfied that the DMLC Part II is adequate
- iv. the Manager Ship Inspection and Registration signs the DMLC Part I.

Any exemptions and equivalence will only be issued after consultation between the vessel owner and the relevant seafarers' representative organisations concerned.

5. The AMSA-endorsed DMLC Part I will be returned to the RO who will conduct a formal inspection of the vessel. The inspection will cover the 14 areas subject to general inspection, as detailed in Appendix A5-I of the MLC, 2006.

If it is determined that the vessel, and its arrangements, comply with the convention and Marine Order Part 11, the RO will issue a Maritime Labour Certificate with DMLC Parts I and II.

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

If during the inspection the RO identifies issues that are not compliant with the MLC, 2006 or Marine Order 11, they will consult with AMSA. Depending on the nature of the issue, and where the owner is seeking an Interim Maritime Labour Certificate, the RO (in consultation with AMSA) may choose to permit the issue of an Interim Maritime Labour Certificate (see below), in accord with Regulation 5.1.3 section 7 of the convention.

Where the issues are such that an exemption is required, the RO will not issue the Maritime Labour Certificate until such stage as the consultation required for the issue of such exemptions has been undertaken. Once completed, the owner will need to review and resubmit the DMLC Part II. The certification process will then restart from point 4 of 6.1 above.

6.3 Exemptions and equivalence

The Manager Ship Inspection and Registration is responsible for the consideration and approval of exemptions and substantial equivalences, in accord with Articles VI and VII of the convention.

As noted in section 6.1 and 6.2 above, where AMSA issues exemptions or substantial equivalences, these must be defined in the DMLC Part I, and must be held with the DMLC Part I, DMLC Part II and the Maritime Labour Certificate.

6.4 Interim Maritime Labour Certificate

Interim Maritime Labour Certificates may be issued in accordance with Standard A5.1.3, section 5 to 8 of the MLC, 2006. A Maritime Labour Certificate may be issued on an interim basis for:

- new vessels on delivery
- when a vessel changes flag
- when a vessel owner assumes responsibility for the operation of a vessel which is new to that vessel owner
- to any vessel when the MLC, 2006 is first implemented.

An Interim Maritime Labour Certificate may be issued for a **period not exceeding 6 months**, and may only be issued subject to verification that:

- the vessel has been inspected, as far as reasonable and practicable for the 14 areas subject to general inspection in Appendix A5-I of the MLC, 2006
- the vessel owner has demonstrated to AMSA/RO that the vessel has adequate procedures in place to comply with the MLC, 2006
- the master of the vessel is familiar with the requirements of the MLC, 2006
- the vessel owner is in the process of developing a DMLC Part II, and has submitted relevant information to AMSA/RO for the development of a DMLC Part I.

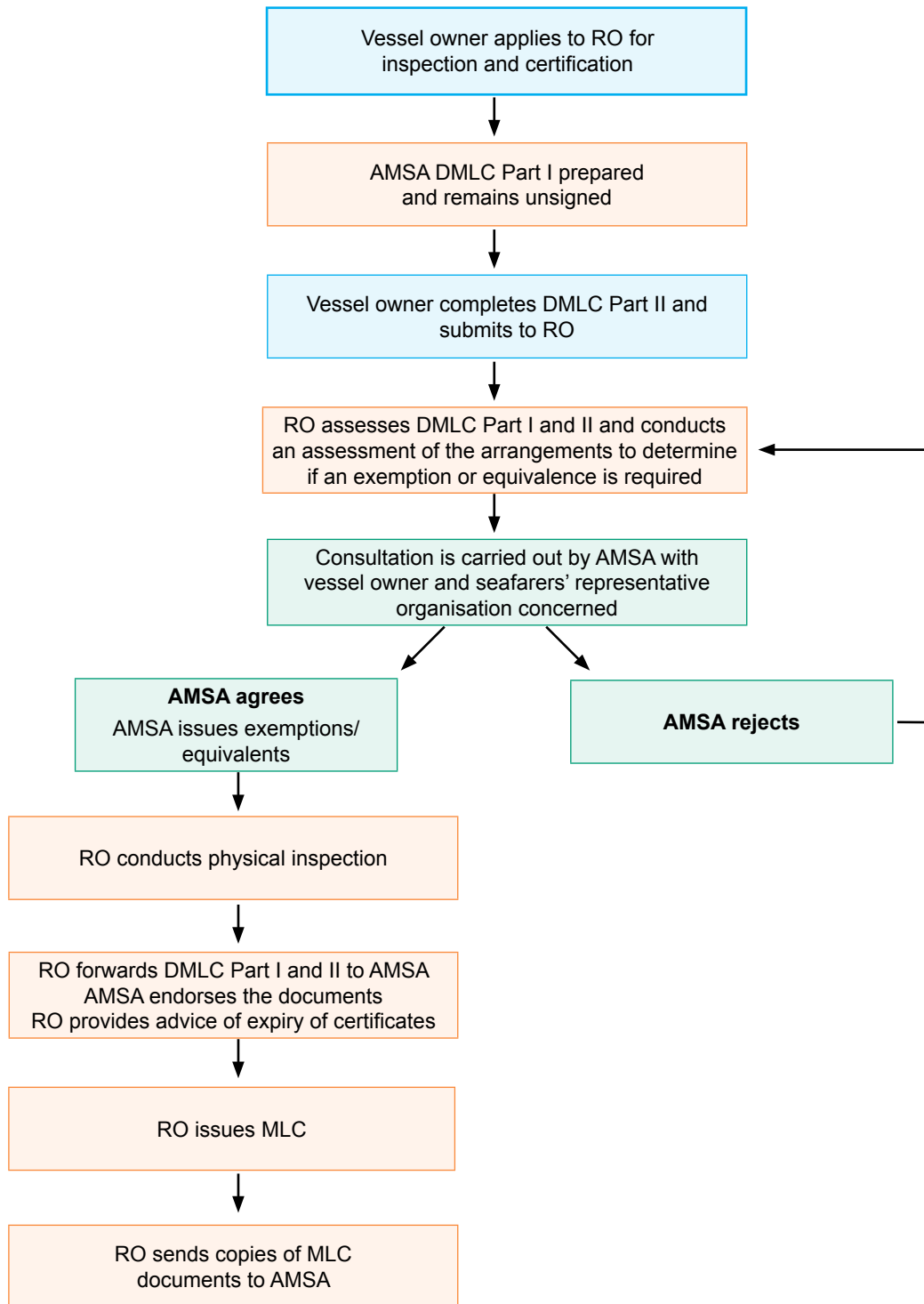
A full inspection in accordance with Standard A5.1.3 paragraph 1 shall be carried out prior to the expiry of the Interim Maritime Labour Certificate to enable issue of a Maritime Labour Certificate.

An Interim Maritime Labour Certificate may not be renewed following the initial six months referred to in Standard A5.1.3 paragraph 6.

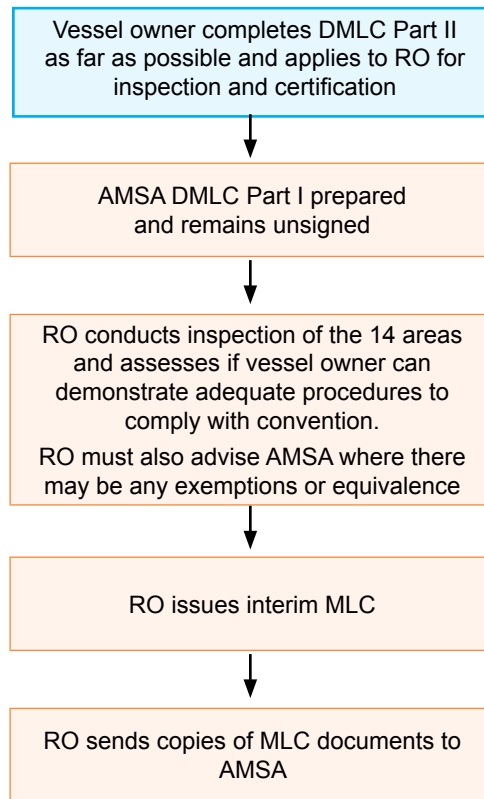
6.5 Certification flowcharts

The flowcharts shown on pages 13 and 14 demonstrates the procedure for inspection and certification of Regulated Australian vessels as required by the MLC, 2006.

Flowchart for obtaining a Maritime Labour Certificate



Flowchart for obtaining an Interim Maritime Labour Certificate



6.6 Maintaining compliance and ongoing inspections

Regulation 5.1.3 of the MLC, 2006 prescribes matters regarding ongoing certification and inspection.

- 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 RO's. 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 14 areas subject to general inspection listed in Appendix A5-I of the convention. Specific details of the requirements for this inspection are contained in Standard A5.1.3 of the convention and division 2 and 3 of Marine Order 11.

6.7 Renewal inspections

A renewal inspection will be required prior to the issue of a new Maritime Labour Certificate which will require the development of a new DMLC. The renewal process should follow the flow chart above. Where a statement has been obtained from the owner of the vessel that there have been no changes and that the vessel still complies, the RO will have authority to renew any exemption or substantial equivalences. 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 6 .1 above will apply.

6.8 Validity of certificates

Maritime Labour Certificates and Interim Maritime Labour Certificates may cease to be valid in accordance with Standard A.5.1.3.14 of the convention and division 2 of Marine Order 11 in instances where:

- relevant ongoing inspections are not completed within specified time frames
- a certificate or declaration is not endorsed accordingly
- when a vessel changes flag
- when an owner ceases to assume responsibility for a vessel
- when substantial alterations have been made to the structure or equipment covered in title 3 of the MLC, 2006 and in accordance with section 68 of Marine Order 11. A Maritime Labour Certificate may also be withdrawn by AMSA where there are serious breaches of the convention.



7.0 Guidance on demonstrating compliance with the MLC, 2006 for Australian vessels

7.1 Minimum age

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

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

AMSA will permit seafarers under the age of 18 years to work between the hours of 9pm and 6am 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 located in schedule 1 of Marine Order 11 and B4.3.10 of the MLC, 2006.

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 9. The contact details for booking an AMSA medical examination are:

- Toll free: 1300 277 904
- Phone: +61 (0)3 9224 8510
- Email: SeafarerMedicals@medibank.com.au

A list of overseas providers can be found on the qualifications section of the AMSA website.

An AMSA medical may only be obtained by a medical practitioner who has been approved by AMSA.

7.3. Qualification of seafarers

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. The requirements for obtaining and maintaining qualifications are contained in Marine Order 3.

Under the MLC, 2006, a person employed as the vessel's cook must be over 18 years of age and suitably qualified as a marine cook. Details about the eligibility requirements for a marine cook, including recognition of existing seagoing experience, are contained in section 55 of Marine Order 11. AMSA will issue certification to eligible candidates when Marine Order 11 enters into force.

Further information can be found on the qualifications section of the AMSA website.

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

7.4 Seafarers' work agreements (seafarers employment agreements)

7.4.1 Section 54 of the *Navigation Act 2012* requires that a seafarer serving on board a vessel must have a signed and current work agreement. The work agreement effectively replaces articles of agreement and will have validity for no more than nine months (plus or minus one month for operational convenience).

Subsection 47(1) and Schedule 3 of Marine Order 11 specify the detailed requirements of the contents of work agreements.

A sample work agreement that is available at www.amsa.gov.au. These are available in a booklet and can be purchased by the owner/s of vessels from any AMSA office (www.amsa.gov.au/About_AMSA/AMSA_Offices.asp). 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. Specific guidance on the contents of the agreements are below.

- a) **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.
- b) **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.
- c) **Wages:** The Owner of a vessel must ensure that wages are paid at least monthly and that each seafarer is given a payslip 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 who wages, or a nominated amount of their wages, are sent at regular intervals.
- d) **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.
- e) **Notice of termination of an agreement:** Specific details of the notice of termination of an agreement can be found in division 6 of Marine Order 11.
- f) **Repatriation:** The terms and conditions governing repatriation entitlements are listed in division 6 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* dis-applies 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 Register' published by AMSA. The guide is available in electronic form on the AISR section of the AMSA website.

7.4.3 Seafarers discharge forms and records of employment – MLC, 2006 Standard A2.1 prescribes that a seafarer must be handed a document at the expiry of their work agreement which includes their record of service Whilst at sea. Whilst AMSA does not require the delivery of work agreements it is a requirement that vessel owners complete the approved discharge form whenever a seafarer's work agreement expires. Pads of discharge forms can be purchased from any AMSA office (www.amsa.gov.au/About_AMSA/AMSA_Offices.asp).

7.5 Recruitment and placement

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

Australian-based Private seafarer recruitment and placement service providers that are used on Australian flagged vessels will need to register their organisations with AMSA and may be subject to audit and inspection as required under division 4 of Marine Order 11. Specific guidance on how to register as a Recruitment Service Provider can be found on the MLC section of the AMSA website. AMSA will recognise appropriately registered seafarer recruitment and placement services where they exist in member countries that have ratified the MLC, 2006.

Australian private seafarer recruitment and placement services that have been assessed as compliant with division 4 of Marine Order 11 are listed on the AMSA website.

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 (Operations standards and procedures) 2013* requires that all seafarers must have minimum hours of rest in accordance with *International Convention on Standards of Training, Certification and Watchkeeping (STCW)*. This will comply with Australian requirements for the MLC, 2006.

As part of the management of hours of work and rest Individual rest records must be maintained for every seafarer on board the vessel as per Standard A2.3.12. 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.

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

Sample documents are can be found on the MLC section of the AMSA website.

7.7 Manning levels for the vessel

Information on the procedure for obtaining a minimum safe manning document can be found on the qualifications section of the AMSA website.



7.8 Accommodation, food and recreational facilities

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 with regard to accommodation arrangements and the provision of food and water which are given effect by regulations (Marine Order 11) made under section 60 to 75 in the *Navigation Act 2012*. These requirements include factors such as 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 national requirements and the MLC, 2006.

7.8.1 Requirements for Regulated Australian Vessels

Regulated Australian Vessels constructed prior to the entry into force of the MLC, 2006 will need to continue to comply with the requirements of *Marine Order Part 14, issue 1 (Accommodation)* as specified in section 7 of Marine Order 11. For the most part these provisions remain unchanged, and there will be no requirement for owners to undertake structural changes to the accommodation.

Regulated Australian Vessels constructed after 20 August 2013 must comply with the construction standards of accommodation specified in Marine Order 11.

7.9 Health and safety and accident prevention

All Regulated Australian Vessels and some foreign-flagged vessels will remain subject to the requirements of the *Occupational Health and Safety (Maritime Industry) Act 1993* as it currently applies.

Trained flag State control officers are appointed as inspectors under section 84 of that Act and will conduct audits of Regulated Australian Vessels on a regular basis. These audits are not 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

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. Division 8 of Marine Order 11 prescribes the minimum carriage requirements as detailed in the *Medical Carriage Requirements on Regulated Australian Vessels* – in accordance with Marine Order 11.

Marine Order 14, as contained in Marine Order 11, division 14 set out the requirements for hospital accommodation on board in certain circumstances.

For vessels carrying dangerous goods, where those substances are not included in the International Medical Guide for Ships, it is the owner and master's responsibility to ensure that they comply with the requirements of subsection 63(2) of Marine Order 11 prior to loading those goods.

7.10.1 Standard medical report form

The MLC, 2006 places an obligation on AMSA to produce a standard medical report form. The form is used to facilitate the transfer of important medical information from a vessel to shore when seafarers are in need of medical care. The operator will have immediate access to relevant information about obtaining medical assistance in Australia and for the purposes of requesting assistance when medical evacuation is necessary. All personal information is to be kept confidential at all times. A copy of this form is available on AMSA's website: www.amsa.gov.au.

7.11 Onboard complaint procedures

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

Owners of vessels now have a requirement to establish and manage an onboard complaints system that allows seafarers the opportunity to make a complaint without recourse or concern. The on-board complaint system must at the very least provide for the following requirements:

- where possible seek to resolve seafarer complaints at the lowest level possible
- include rights of the seafarer, safeguards against victimisation, and have a nominated person on board the vessel who can provide advice
- ensure that flag State contact information is available
- ensure that all complaints are captured in writing
- protect seafarer rights in regard to retaining the privilege 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 on-board complaints system must be posted in an area accessible to all seafarers serving on board.

The on-board 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.

Note: For the purpose of paragraph 7.11 the AMSA contact details are:

email: LabourConventions@amsa.gov.au

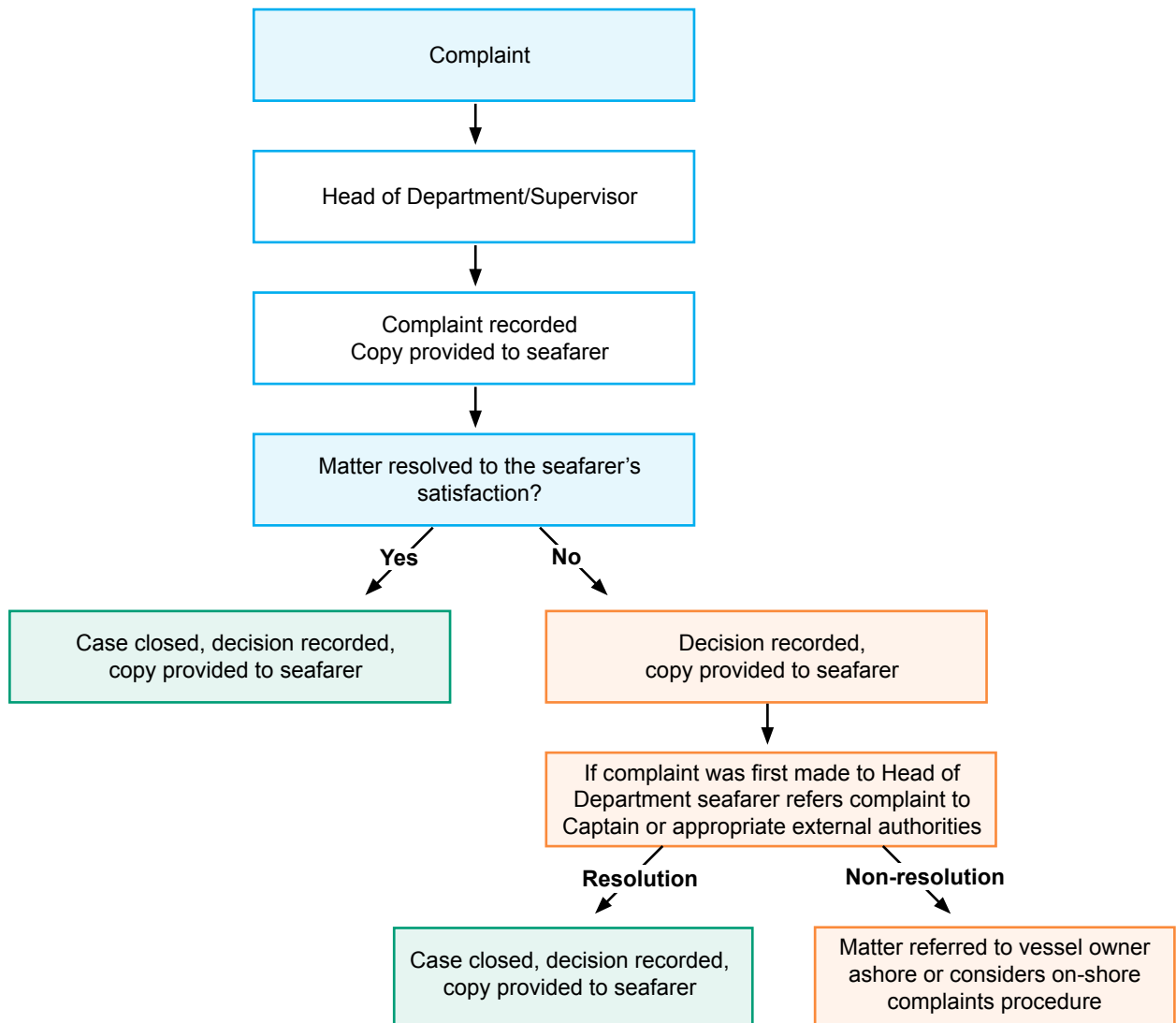
phone: 02 6279 5080

7.12 Payment of wages

Owners of Regulated Australian Vessels 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). The owner of a Regulated Australian Vessel must also:

- establish a system that allows seafarers to transfer part of their earnings to family
- ensure that those payments are made directly to the person named by the seafarer and on time
- the owner of a vessel may also charge a reasonable fee to facilitate the transfer of funds.

Onboard complaint flow chart



8. Port State control in Australia

Any foreign-flagged vessel entering an Australian Port may be inspected by an AMSA inspector.

From 20 August 2013, *Marine Order 11 (Living and working conditions on vessels) 2013* applies 'no more favourable treatment' in accordance with the MLC, 2006. This requires that for vessels of non-parties to the convention, when in Australian ports and waters, MLC, 2006 standards are required to the extent that they would apply to that vessel as if the flag State were a signatory to the convention.

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 in accordance with the MLC, 2006 and will be carried out when:

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

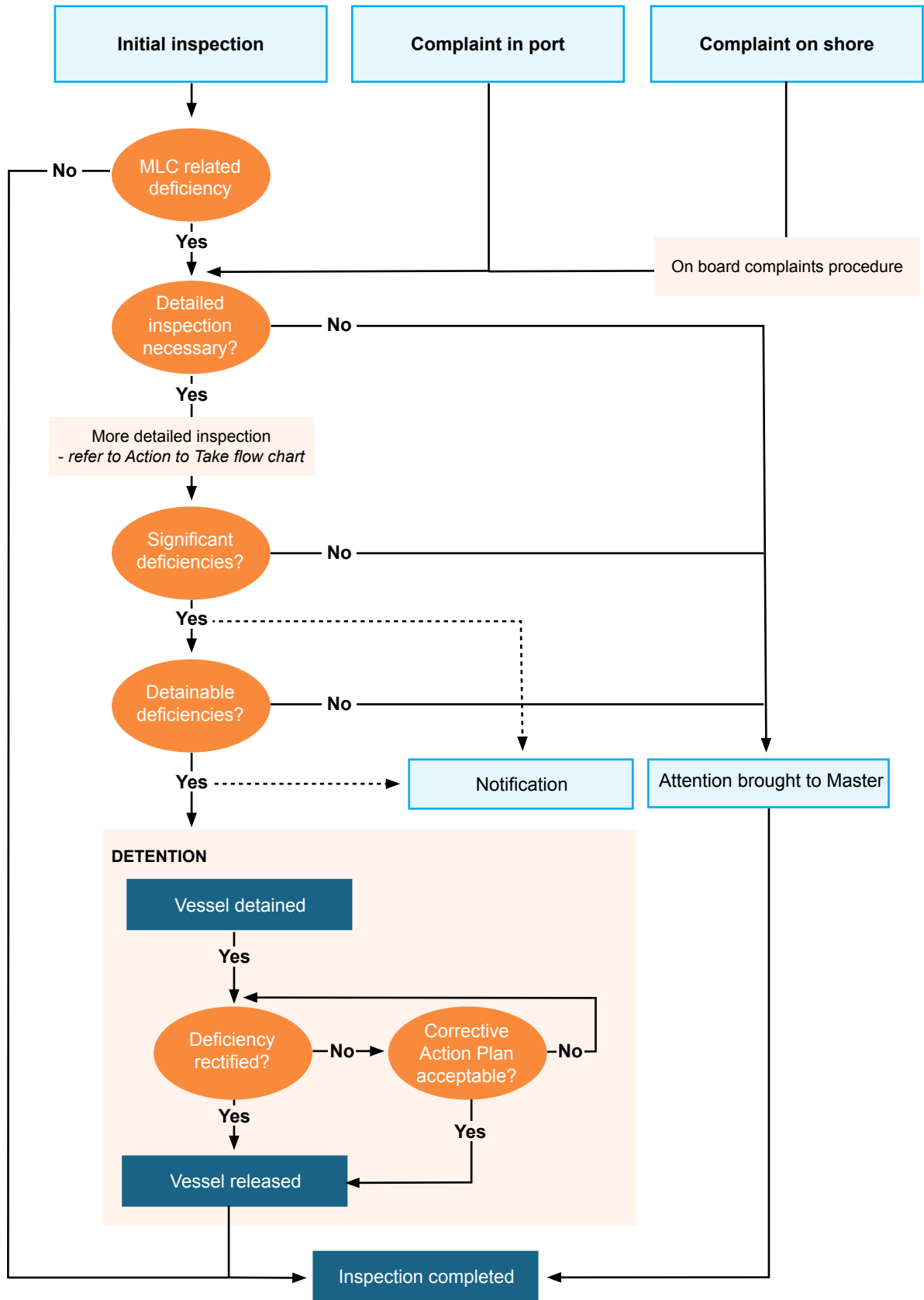
Following a more detailed inspection where the vessel is found not to conform to the requirements of the convention and:

- 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 this convention (including seafarers rights),

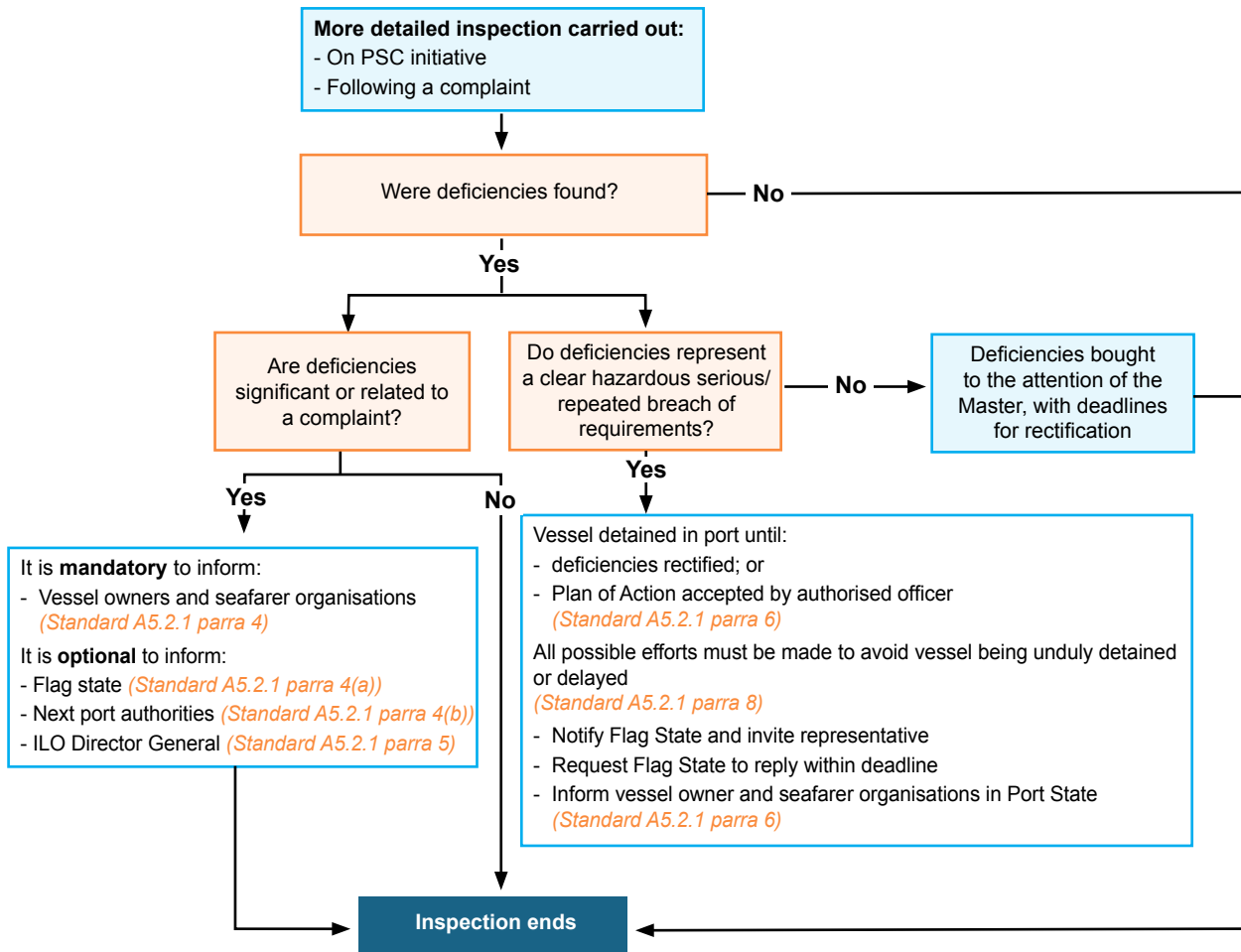
the AMSA inspector shall ensure that the vessel does not proceed to sea until the deficiencies that fall within the scope of (a) and (b) have been rectified or a corrective action plan has been received and agreed.



MLC inspection flow chart



Action to take flow chart



9. Onshore complaints

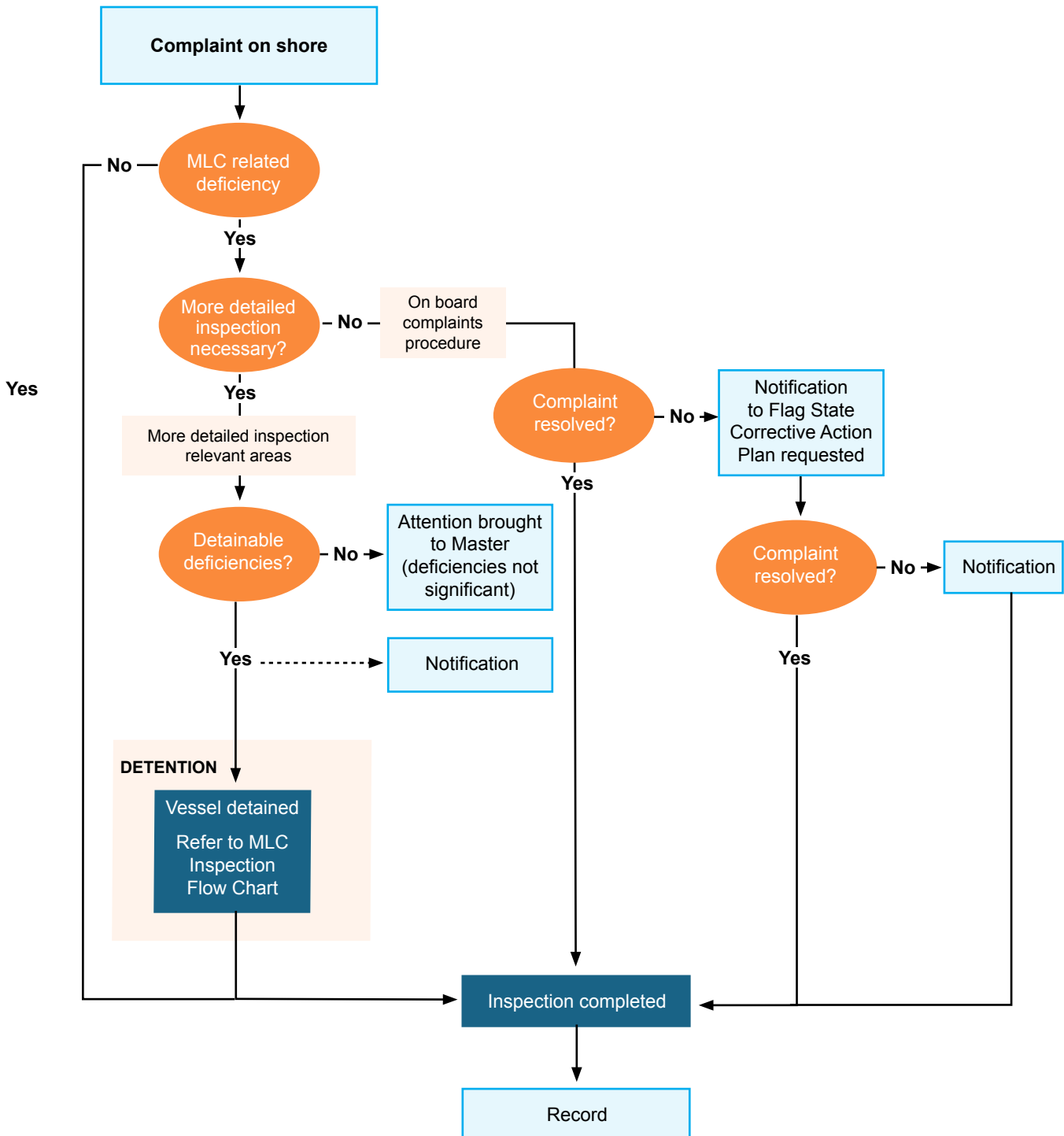
Seafarers have a right to complain to the port State/flag State authorities when there is a belief that there has been a breach of the requirements of the MLC, 2006.

When complaints are made on shore to AMSA, an AMSA inspector will:

- undertake an initial investigation, which may or may not entail a ship visit
- advise seafarers to use the on-board complaints procedure where appropriate
- carry out a more detailed inspection if necessary
- 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 within a prescribed deadline.

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 shipowners and seafarers' organisations.

On shore complaints flow chart



APPENDIX 1: Additional Legislative information to assist vessel owners in demonstrating compliance

The following information is indicative of all the matters that owners will need to address in maintaining full compliance. It is an aide-mémoire to assist in locating the relevant legislation that is contained within the Declarations of Maritime Labour Compliance Part I.

Note: This information was current at the time of publication and owners are advised to check if any information has changed before taking any action.

Minimum age

- *Marine Order 11 (Living and working conditions on vessels) 2013:*
 - Division 6 section 42(1) sets a minimum employee age of 16 years. Division 6, section 42(4) and 42(5) places work restrictions on employees under 18 years.
 - Division 7, section 55 prescribes that a person who works on board the vessel as a cook is over 18 years of age.
 - Schedule 1 provides for specific working conditions for seafarers under the age of 18 years.
- *Marine Order 3 (Seagoing qualifications) 2004* sets out the eligibility requirements for holding certificate: section C (General Requirements for Certificates), section D (Specific Requirements for Deck Officers), section E (Specific Requirements for Engineer Officers), and section F (Specific Requirements for Ratings).
 - Section C: clause 19.2 Certificate of proficiency for survival craft and rescue boats – minimum age of 18 years; clause 20.2 Certificate of safety training – minimum age of 16 years
 - Section D: clause 25.3 Certificate of competency as Master (<500GT) – minimum age of 20 years; clause 25.6.1 Certificate of competency as Mate (<500GT) – minimum age of 20 years; clause 25.6.2 Certificate of competence as Mate with capacity limitation as Watchkeeper only – minimum age of 20 years; clause 25.7 Certificate of competency as Watchkeeper (Deck) – minimum age of 20 years
 - Section E: clause 32.3 Certificate of competency as Engineer Watchkeeper – minimum age is 20 years
 - Section F: clause 38.2.1 Certificate of competency as Integrated Rating – minimum age of 18 years (this requirement is not applicable depending on other certificates held and qualifying sea service); clause 38.4 Certificate of rating as Deck Rating – minimum age of 18 years; clause 38.5 Certificate of rating as Engine Room Rating – minimum age of 18 years.

Medical certification

- *Marine Order 9 (Health – medical fitness) 2010*, provides the framework for medical certification of fitness to perform duties. Clause 4 sets out who this Marine Order applies to; clause 6 sets out the requirements for a seafarer to be medically fit; clause 7 sets out the evidence required of medical fitness; clause 8 sets out the requirements for the Certificate of Medical Fitness; clause 9 deals with Aids to vision or hearing, and clause 10 deals with Recognition of medical certificates issued overseas.

Qualifications of seafarers

- *Marine Order 3 (Seagoing qualifications) 2004* sets out the prescribed qualifications required on board Australian vessels.
 - Section B relates to the administration of the certificates.
 - Section C sets out the general requirements for certificates; clause 12 – knowledge of English; clause 13 - medical fitness; clause 14 - medical training; and clause 15 -equivalent qualifying sea service and training. Section C also sets out specific requirements for service on tankers (clause 17), service on for service on passenger ships (clause 18), being in charge of survival crafts and rescue boats (clause 19); and for holding a certificate of safety training (clause 20). Section 21 deals with the recognition of certificates issued overseas.
 - Section D sets out the specific requirements for Deck Officers. Clause 23 relates to Watchkeeping, section 24 sets out the grades of certificates, and section 25 sets out eligibility for certificates, including for Master (clause 25.1); Master (<3000 GT) (clause 25.2); Master (<500 GT) (clause 5.3); Chief Mate (section 25.4); Chief Mate (<3000 GT) (clause 25.5); Mate (<500 GT) (clause 25.6); and Watchkeeper (Deck) (clause 25.7). Section 26 deals with qualifying sea service. Section 27 deals with revalidation courses. Section 28 sets out the requirements for high speed craft, including the requirement for type rating endorsement (28.1) and for eligibility, duration, and revalidation. Section 29 sets out the requirements for sailing ships, including for eligibility.
 - Section E sets out the specific requirements for Engineer Officers. Section 30 deals with Watchkeeping, section 31 deals with grades of certificates, section 32 deals with eligibility for certificates, including for Engineer Class 1 (clause 32.1); Engineer Class 2 (clause 32.2); Engineer Watchkeeper (clause 32.3); and “other grades” (clause 32.4). Section 33 deals initial training, section 34 deals with qualifying sea service, and section 35 deals with revalidation courses.
 - Section F sets out the specific requirements for ratings. Section 36 deals with Watchkeeping, and section 37 deals with grades of certificates. Section 38 deals with eligibility for certificates, including for Chief Integrated Rating (clause 38.1); Integrated Rating (clause 38.2); Able Seaman (clause 38.3); Deck Rating (clause 38.4); and Engine Room Rating (clause 38.5). Clause 39 deals with training courses for each type of Rating.
 - Section G sets out the specific requirements for Wig Craft Officers, and covers certificate required (clause 41), and eligibility for certificate (clause 42).
 - Section H sets out the specific requirements for Certificates of Proficiency as Ship Security Officer, and covers eligibility (clause 43), and transitional provisions (clause 44).

Seafarers’ employment (work) agreements

- The *Navigation Act 2012*, section 54, requires that a vessel cannot be taken to sea with a seafarer who does not hold a current work agreement.
 - *Marine Order 11 (Living and working conditions on vessels) 2013*, division 6 sets out the provisions regarding seafarer’s employment.
 - Section 47 requires that a seafarer’s work agreement contains the information mentioned in Schedule 3; it must be in English; it must not have a validity in excess of 9 months (+/- 1 month for operational convenience); it must be signed by both the seafarer and the owner of the vessel or their representative; and both parties must have a signed original. Schedule 3 lists 17 matters that constitute ‘seafarer’s work agreement information’ for the purposes of section 47(1) of the Marine Order and includes information such as the seafarer’s full name,

address and date of birth, the vessel owner's full name and address, the role the seafarer is employed or engaged to do, the amount of the seafarer's wage, and the date of the expiry of the agreement.

- Section 50 requires the owner of a vessel to ensure that specified people have access to a copy of any work agreement, including incorporated documents, kept on board. The specified people are (a) the seafarer to whom the agreement applies, (b) a representative of the seafarer, (c) the master of the vessel, (d) AMSA, and (e) a port State control officer of a country being visited by the vessel. Section 51(2) and (3) make it an offence to not comply.
- Section 51 provides for the minimum notice period for termination. Subject to any instrument under the *Fair Work Act 2009* or any collective agreement applying to a vessel, the seafarer or employer must give at least 7 day notice of the termination, but the seafarer can give less if required to for compassionate reasons or other urgent circumstances recognised in the work agreement.

Use of any licensed or certified or regulated recruitment and placement service

- *Marine Order 11 (Living and working conditions on vessels) 2013* sets out the regulations regarding seafarer recruitment and placement services. Section 5 defines the phrase "seafarer recruitment and placement service" as meaning a person carrying on the business of recruiting seafarers for owners or placing seafarers with owners. Division 4 within Schedule 13, which takes effect from 20 August 2013, sets out the requirements for the use of these services.
 - Section 21 prohibits a person from charging a seafarer for recruitment services, but allows a person to charge a reasonable amount for ancillary services such as a medical certificate of fitness, a seafarer's qualification, a national seafarer's record book, a passport, and travel documents.
 - Section 22 requires a recruitment service whose primary purpose is the recruitment and placement of seafarers to inform AMSA in writing using the approved form, and makes it an offence to not do so.
 - Section 23 requires recruitment service providers to have a register of persons recruited or placed and lists the information that must be kept on the register, and makes it an offence to fail to comply.
 - Section 24 lists the records that recruitment service providers must keep about persons recruited or placed to work on a vessel and makes it an offence to fail to comply.
 - Section 25 and 26 requires a recruitment service provider to verify the qualifications, documentation and experience for each seafarer for whom it provides services, and makes it an offence to fail to comply.
 - Section 27 requires a recruitment service provider to ensure, to the extent practicable, that the owner of the vessel where a seafarer is placed is insured to protect seafarers from being stranded in foreign ports.
 - Section 28 requires the recruitment service provider to be contactable at all times in an emergency, and provides a penalty for failure to comply.
 - Section 29 requires a recruitment service provider to investigate any complaint made about its activities and to tell AMSA if the complaint is unresolved, and provides a penalty for failure to comply.
 - Section 30 requires recruitment service providers to be insured against monetary loss caused to a seafarer by the provider failing to meet a legal obligation to the seafarer, and provides a penalty for failure to comply.

Hours of rest

- *Marine Order 11 (Living and working conditions on vessels) 2013*, division 6, sets out the requirements for the engagement and working conditions of seafarers.
 - Section 42(4) states that a person must employ or engage to work on a vessel a person under 18 years if (b) the person is required to work between 9pm and 6am if the work is not reasonably required for the training of the person as a seafarer in accordance with an approved program.
 - Section 42(5) requires, subject to any instrument under the *Fair Work Act 2009* or any collective agreement that applies to the vessel, the owner of the vessel to ensure that the working conditions mentioned in schedule 1 for a person under 18 years are met.
- Schedule 1 of *Marine Order 11* lists the working conditions for seafarers under 18 years, and provides at (1) that they may only work (a) no more than 8 hours in any 24 hours, and (b) no more than 40 hours in 7 days. It further states at (2) that in an unavoidable situation if safety is at risk or they are required to undertake an emergency drill, the seafarer may work more than the hours mentioned in (1), and must be given a compensatory rest period for any additional hours worked. (3) states that the seafarer must have (a) a break of at least 1 hour for the main meal of the day and (b) a 15 minute rest as soon as possible after 2 hours of continuous work. (4) states that (3) does not apply if it is impracticable for seafarers assigned to watchkeeping duties or on a rostered shift work that are in the deck, or engine room, or the catering department, or where the scheduled training of seafarers would be impaired in accordance with the guidelines set by AMSA. (6) requires that a record of the circumstances mentioned in clause 4 and the reasons for it must be kept and signed by the master.
 - Section 43 states that a seafarer must have at least the minimum hours of rest for a seafarer to whom division 3 of applies (set out further down).
- Section 44 requires vessel owners to post a notice of shipboard working arrangements in an area easily accessible by all seafarers.
- Section 45(1) requires the owner of a vessel to maintain records of seafarer's daily hours of rest. Section 45(2) requires the master to give a seafarer a copy of the record relating to them, and to ensure that the record is endorsed by the master or a person authorised by the master and the seafarer.
- *Marine Order 28*, division 3 sets out the requirements for minimum hours of rest.
 - Section 14 sets out the minimum hours of rest for the categories of seafarers listed in clause 12. Section 14.1 states that the minimum hours of rest for a seafarer must be 10 hours in any 24 hours, and 77 hours in any 7 days. Section 14.2 states that the minimum hours of rest may be divided into 2 periods, of which 1 period must be at least 6 hours. Section 14.3 states that the interval between consecutive periods of rest must not exceed 14 hours.
 - Section 15 sets out the exceptions from minimum hours of rest, being where AMSA has granted an exception upon application by the operator of a ship.
 - Section 16 provides exceptions to the minimum hours of rest requirement during emergency or drill or other overriding operational conditions.
 - Section 17 requires the operator of a ship to ensure current watch schedules are displayed in areas of the ship easily accessible by all seafarers on board, requires seafarers to record their hours of work and rest for specified periods and to transfer these to the records of the ship, and requires the ship operator to keep those records for a set period, to provide them to the seafarer on request, and to have them available for inspection by a surveyor.

Manning

- The *Navigation Act 2012*, Part 4, division 2 contains sections relating to the requirements for minimum safe manning on board Regulated Australian Vessels. Section 51 prescribes that AMSA may determine in writing that a vessel, or a vessel included in a class of vessels, must carry a specified number of Officer and a specified number of seafarers. Section 52 makes it an offence to operate a vessel other than in accordance with a determination made in respect of section 51.

Accommodation

- The *Navigation Act 2012*, Part 5, division 4 contains sections relating to accommodation. Section 74(1) states that regulations may make provisions in relation to accommodation to be provided for seafarers on vessels. Section 75 states that the owner of a vessel must not take the vessel to sea, or cause or permit the vessel to be taken to sea, if the vessel does not comply with the accommodation prescribed by the regulations made for the purposes of subsection 74(1), and makes it an offence to do so.
- Marine Order Part 14, issue 1 (Accommodation) (Order No. 5 of 1990) applies to Australian vessels constructed prior to 20 August 2013 and deals with accommodation.
 - Section 4 deals with accommodation for crew, and section 5 deals with hospital accommodation.
- Section 4.2 sets out the standards to be applied for crew accommodation.
- Section 4.2.1 states that the crew accommodation, other than hospital accommodation, of a ship other than (a) a ship of less than 500 gross tonnage; (b) a ship the keel of which was laid or the construction of which was otherwise commenced before 21 April 1954; (c) a ship primarily propelled by sail; or (d) a fishing vessel or ship engaged in whaling or similar pursuits, must comply with the requirements of Appendix 1.
- Appendix 1 lists the basic requirements for accommodation and includes (1) location and construction; (2) heating, lighting and ventilation; (3) sleeping accommodation; (4) mess and recreation rooms; (5) offices and day rooms; (6) sanitary accommodation; (7) washing and change rooms; (8) laundries and drying rooms; (9) supply and discharge of water; (10) galleys; and (11) store rooms.
- Section 4.2.2 states that the crew accommodation, other than hospital accommodation, of a ship other than (a) a ship of less than 1,000 gross tonnage; (b) a ship the keel of which was laid or the construction of which was otherwise commenced before 15 March 1977; (c) a ship primarily propelled by sail; (d) a fishing vessel or ship engaged in the pursuit of whaling or similar pursuits; or (e) dynamically supported craft, must also comply with the requirements of Appendix 2.
- Appendix 2 lists additional requirements and includes (1) headroom; (2) mechanical ventilation; (3) sleeping rooms; (4) sanitary accommodation; (5) washing accommodation; and (6) asbestos.
- The note under section 4.2 states that where reasonable and practicable, ships of less than 500 gross tonnage should apply the standards set out in Appendix 1 and ships of less than 1,000 gross tonnage should apply the standards set out in Appendix 2.
- Section 4.3 prohibits using any part of crew accommodation for passengers.
 - Section 7 states that accommodation and sanitary arrangements must be provided for

passengers on board a passenger ship in accordance with Part II of subsection E of section 5 of the Uniform Shipping Laws Code.

- Section 8 deals with maintenance and cleanliness of accommodation.
- Section 9 sets out the offences.
- Appendix 3 sets out the requirements for hospital accommodation, and covers (1) minimum number of berths to be provided; (2) location (3) general standards; (4) arrangement of berths (5) construction and fittings; (6) equipment; (7) lighting; (8) ventilation; and (9) sanitary arrangements.
- Australian vessels constructed after 19 August 2013 must comply with the accommodation provisions contained within divisions 9,10, 11, 12 and 13 of *Marine Order 11 (Living and working conditions on vessels) 2013*.
 - Division 9, section 67 requires that, before construction of a vessel that is to be registered on the Australian Shipping Register commences, specific plans must be approved by an issuing body.
 - Division 10 specifies design and construction requirements in relation to (section 70) headroom; (section 71) location of sleeping rooms in non-passenger vessels; (section 72) location of sleeping rooms in passenger vessels; (section 73) sleeping rooms; (section 74) sleeping berths; (section 75) insulation; (section 76) pipes; (section 77) vessel batteries; (section 78) bulkhead and deckhead surfaces; (section 79) decks and flooring; (section 80) lighting and drainage; (section 81) air conditioning; (section 82) heating; (section 83) lighting; (section 84) floor space for sleeping rooms of non-officers; (section 85) floor space for officer rooms; and (section 86) mess rooms.
 - Division 11 deals with noise and ambient factors. Section 87 requires the owner of vessels constructed after 19 August 2013 and at least 500 gross tonnage, to ensure that the vessel is assessed in accordance with the standards mentioned in IMO resolution A468(XII) Code of noise levels on board ships, and to adopt measures in accordance with the guidance provided in the ILO Code of Practice Ambient factors in the workplace 2001 to ensure that the standards are complied with.
 - Division 12 deals with the welfare of seafarers, specifically in relation to (section 88) recreational facilities, amenities and services; (section 89) mail; (section 90) visitors; (section 91) common vessel's office.
 - Division 13 deals with sanitary and laundry facilities.
 - Division 14 deals with hospital facilities.
 - Schedule 6 lists the requirements for sleeping rooms.
 - Schedule 7 lists the requirements for sleeping berths.
 - Schedule 8 lists the requirements for heating.
 - Schedule 9 lists the requirements for the mess room.
 - Schedule 10 lists the requirements for recreational facilities.
 - Schedule 11 lists the minimum standards for sanitary facilities.
- Schedule 12 lists the requirements of hospital accommodation.

Onboard recreational facilities

- Australian vessels constructed on or prior to 19 August 2013 must comply with the requirements for onboard recreational facilities listed in Marine Orders Part 14 (Accommodation), issue 1 (Order No. 5 of 1990), section 4.2 sets out the requirements for recreation rooms.
- Vessels constructed on or after 20 August 2013 must comply with the recreational facilities requirements outlined in division 12 of *Marine Order 11 (Living and working conditions on vessels) 2013*.
 - Section 86 requires the owners of vessels to ensure that the vessel has a mess room that meets the requirements outlined in Schedule 9 and that it is available to all seafarers. Under section 88(3) the owner of a vessel can apply for an exemption to any of the requirements listed in Schedule 10. Under section 86(4) the Manager Ship Inspection and Registration may approve the application having regard to the health and safety of seafarers.
 - Section 88 states that the owner of a vessel must ensure that the vessel has recreational facilities that comply with schedule 10 and area adapted to meet the special needs of seafarers living and working on the vessel. Section 88(2) requires the owner to ensure that recreational facilities are reviewed frequently, to ensure that they are appropriate for any changes in the needs of seafarers resulting from developments in the maritime industry.
 - Section 10 states that recreational facilities must include at least a bookcase; facilities for reading and writing; if practicable, televisions and videos and facilities for games; a space or spaces on an open deck to which off-duty seafarers have access and that is of adequate size for the size of the vessel and the number of seafarers on board; a prayer room or similar facility; facilities for recreational handicrafts; and exercise facilities.

Food and catering

- *Navigation Act 2012*, Part 5, division 2 contains sections relating to provisions.
 - Section 62 requires the owner of a vessel to provide or ensure the provision of free provisions to the vessel's seafarers, and contains a penalty for failure to comply.
 - Section 63 prohibits the master of a vessel taking it to sea, or causing or permitting it to be taken to sea, unless the vessel is carrying sufficient drinking water and food of suitable quality and quantity, having regard to the nature and duration of the voyage and the number, cultural and religious backgrounds of the vessel's seafarers. It also makes it an offence to fail to comply.
 - Section 64 prohibits the owner of a vessel taking the vessel to sea, or causing or permitting the vessel to be taken to sea, unless the vessel has catering facilities that are arranged and equipped so as to enable proper meals to be served to the vessel's seafarers, and makes it an offence to fail to comply.
- Division 7 of *Marine Order 11 (Living and working conditions on vessels) 2013* deals with provisions.
 - Section 54 requires the owner of a vessel to ensure that the organisation and equipment of the catering department on board a vessel allows for the preparation of varied and nutritious meals and for the serving of meals in hygienic conditions.
 - Section 55 sets out the requirements for training persons processing food.
 - Section 56 sets out the requirement for galleys, including its construction, equipment, and maintenance. Schedule 4 contains a list of requirements for galleys, including that it must be situated as near as practicable to the seafarers' mess room, the floor must have efficient scuppers, it must have either an efficient mechanical exhaust ventilation system to draw off

fumes from cooking appliances or natural ventilation to ensure that fumes escape to open air and do not remain in the galley.

- Section 57 sets out provisions regarding the storage of food and includes offences for failure to comply. Schedule 5 sets out further requirements for dry provision stores.

Health and Safety and accident prevention

- The *Occupational Health and Safety (Maritime Industry) Act 1993* 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 matter 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.
 - Part 2, Division 1 sets out general duties relating to occupational health and safety. Section 11 lists the duties of operators in relation to their employees, which includes taking all reasonable steps to protect the health and safety at work of employees.
 - Part 2, Division 2 contains provisions regarding the specific duties which arise in relation to occupational health and safety. Section 33(2) lists some of the duties that may be regulated for, including providing for the provision of first aid equipment and facilities at workplaces. (section 33(2)(r))
 - Part 3, division 1 provides for the creation of 'Designated work groups', and Part 3, division 2, provides for Health and Safety Representatives to be selected for each designated work group. The Health and Safety Representative, under section 48, may inspect the workplace, request that an investigation into the workplace occur, accompany an Inspector during the inspection, and, if there is no health and safety committee, represent the employees in the group in consultation with the person in command about the development, implementation and review of measures to ensure the health and safety at work of the employees in the group. Under section 49 the health and safety representation may also investigate complaints made by employees in the group regarding the health and safety of any employees at work, and under section 51 they may obtain access to any information in the operator's control relating to risks to the health and safety of any employees.
 - Part 3, division 3 provides for the issuing of provisional improvement notices by a health and safety representative. These are used when it is likely that a breach of the Act is going to occur and the representative and supervisor cannot agree on rectifying the issue.
 - Part 3, division 4 provides for the creation and operation of health and safety committees in certain circumstances.
 - Part 3, division 5 contains provisions regarding emergency procedures, and the actions of health and safety representatives.
 - Part 4 sets out provisions regarding advice and investigations.
 - Part 5, section 115, prohibits an operator from dismissing employees on the grounds that the employee complained about a matter concerning the health, safety or welfare of employees at work, assisted in an investigation, or stopped work in accordance with the direction of a health and safety representative, and creates an offence for failure to comply.
- There is also the *Occupational Health and Safety (Maritime Industry) Regulations 1995* and *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003*

Onboard medical care

- Part 5, division 3 of the *Navigation Act 2012* prescribes that it is an offence to take a vessel to sea without proper medical supplies (sections 66 and 67) and, depending on the size of the ship, a qualified medical practitioner (section 72). Vessel owners are also liable for the medical expenses of seafarers away from their home port (section 68).
- Division 8 of *Marine Order 11 (Living and working conditions on vessels) 2013* deals with Health, and sets out provisions regarding on-board medical care. The owner of a vessel is required to provide for the medical and dental care of seafarers working on board. Section 63 sets out the list of medical supplies that must be carried on a vessel. Section 66 requires the owner of the vessel to keep on board a register of drugs in a form approved by AMSA.
- Schedule 12 of *Marine Order 11 (Living and working conditions on vessels) 2013* lists the requirements for hospital accommodation on vessels constructed after 19 August 2013.
- Appendix 3 of Marine Orders Part 14 (Accommodation), issue 1 (Order No. 5 of 1990) lists the requirements for hospital accommodation on vessels constructed prior to 20 August 2013.

Onboard complaint procedure

- *Marine Order 11 (Living and working conditions on vessels) 2013* division 5 within Schedule 13, which takes effect from 20 August 2013, prescribes matters regarding the requirement for owners of Regulated Australian Vessels to ensure that there is an onboard complaints procedure.

Payment of wages

- *Marine Order 11 (Living and working conditions on vessels) 2013* division 6, section 53 requires the owner of a vessel to: pay seafarers at least monthly and in accordance with any applicable work agreement or award; give the seafarer an account at least monthly setting out the payments due, period to which the payments relate, amounts paid, and details of any deductions; and establish a system for enabling seafarers to send a portion of their earnings to their family.

