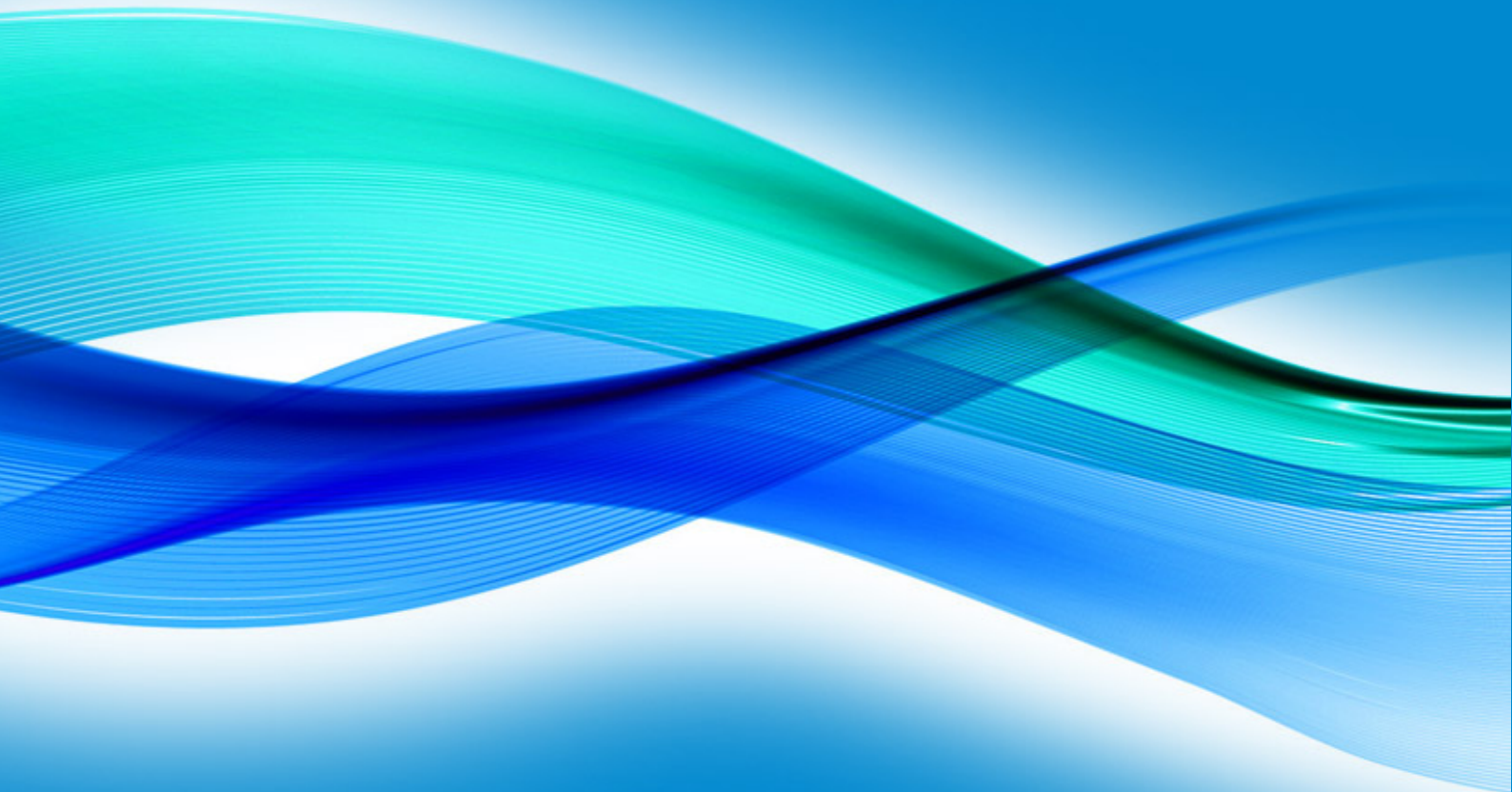




Maritime Labour Convention

Guidance on the implementation of the Maritime
Labour Convention, 2006 in New Zealand



Maritime Labour Convention

MNZ ref. MS286 Last updated: February 2017

In this guide

1	Introduction	4
1.1	About the Convention	4
1.2	Structure of this guide	5
2	National legislation	6
3	Which ships are affected?	7
4	Inspection and certification	11
4.1	Maritime Labour Certificate	11
4.2	Delegation of MLC functions	11
4.3	Statement of compliance	12
4.4	MOSS Certificate of Survey	12
4.5	Certification process	13
4.6	Interim Maritime Labour Certificate	16
4.7	Intermediate inspections	17
4.8	Validity of certificates and renewals	17
5	Who is a seafarer?	19
5.1	Definition of a seafarer	19
5.2	Cadets	19

6	MLC compliance for New Zealand ships	21
6.1	Minimum age (Regulation 1.1)	22
6.2	Medical certification (Regulation 1.2)	22
6.3	Qualification of seafarers (Regulation 1.3)	23
6.4	Seafarers' employment agreements (Regulation 2.1)	23
6.5	Use of any licensed or regulated private recruitment and placement service (Regulation 1.4)	24
6.6	Hours of work and rest (Regulation 2.3)	25
6.7	Manning levels for the ship (Regulation 2.7)	26
6.8	Accommodation (Regulation 3.1)	26
6.9	On-board recreational facilities (Regulation 3.1)	30
6.10	Food and catering (Regulation 3.2)	30
6.11	Health and safety and accident prevention (Regulation 4.3)	33
6.12	On-board medical care (Regulation 4.1)	34
6.13	On-board complaints procedure (Regulation 5.1.5)	34
6.14	Payment of wages (Regulation 2.2)	35
6.15	Financial security for repatriation (Regulation 2.5)	35
6.16	Financial security relating to ship owner's liability (Regulation 4.2)	36
7	MLC complaints	37
7.1	Shore-based complaints resolution (Regulation 5.2.2)	37

1 Introduction

This Guide provides information for seafarers, ship owners and other affected parties on how New Zealand gives effect to the Maritime Labour Convention, 2006.

The Guide is intended as an overview – more information on the detailed requirements, application forms and other processes can be found on the Maritime NZ website.

Learn more about the Maritime Labour Convention on the MNZ website.

maritimenz.govt.nz/MLC

1.1 About the Convention

The Maritime Labour Convention, 2006 (the Convention or MLC) is an international treaty adopted by the International Labour Organization (ILO) and ratified by New Zealand. It sets out minimum standards to address the health, safety and welfare of seafarers. This includes:

- Minimum requirements for seafarers to work on a ship (Title 1 of the Convention)
- Conditions of employment (Title 2)
- Accommodation, recreational facilities, food and catering (Title 3)
- Health protection, medical care, welfare and social security protection (Title 4)

The Convention forms the fourth pillar of the international maritime legal regime, complementing the key Conventions of the International Maritime Organization (IMO) – the SOLAS¹, STCW² and MARPOL³ Conventions. It establishes and protects decent working and living conditions for seafarers while ensuring conditions of fair competition for shipowners.

The Convention was adopted by the ILO in February 2006 and came into force internationally on 20 August 2013. It consolidates and updates 37 existing International Labour Organisation standards and conventions, many of which New Zealand had already adopted and given effect to in current legislation including maritime rules.

A copy of the Convention can be found on the ILO website

<http://ilo.org>

New Zealand ratified the Convention on 9 March 2016, becoming the 71st state to do so. It came into force for New Zealand on 9 March 2017. The Convention was amended in 2014, with amendments entering into force on 18 January 2017. These amendments apply to New Zealand.

¹ The International Convention on the Safety of Life at Sea 1974, as amended (SOLAS)

² The International Convention on the Standards of Training, Certification and Watchkeeping 1995, as amended (STCW)

³ The International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78)

1 Introduction (continued)

The MLC does not apply to fishing vessels. A separate ILO Convention (C.188) covering fishing vessels is under development. The health, safety and welfare of seafarers on New Zealand flagged fishing vessels are already covered by relevant New Zealand legislation.

1.2 Structure of this guide

This guide covers the following matters:

- A summary of national legislation giving effect to the Convention
- Which ships the Convention applies to
- Certification – when a Maritime Labour Certificate is required and how to apply
- Delegation of MLC inspection and certification functions to Recognised Organisations and MOSS surveyors
- Who is a seafarer for the purposes of the Convention
- Detailed requirements to comply with the Convention
- MLC Complaints

References to ‘Parts’ in this guide means parts of New Zealand Maritime Rules e.g. Maritime Rules Part 51 (or MR Part 51).

References to ‘Regulations’ and ‘Standards’ means the regulations and mandatory standards in the Convention.

2 National legislation

In New Zealand the Maritime Labour Convention is implemented through the Maritime Transport Act and maritime rules, as well as other national legislation.

The main Maritime Rules which give effect to elements of the Convention are:

- Part 31: Crewing and Watchkeeping (crewing levels, hours of work and rest)
- Part 32: Seafarer Certification (seafarer training and competencies)
- Part 34: Medical Standards
- Part 51: Crew Accommodation
- Part 52: Maritime Labour Convention

Requirements for safety management systems which provide the overall framework for the health and safety of seafarers working aboard ships are covered by the following maritime rules:

- Part 19: Maritime Transport Operator – Certification and Responsibilities (MOSS)
- Part 21: Safe Ship Management Systems (ISM)

Other national legislation which gives effect to the Convention includes:

- Employment Relations Act 2000
- Holidays Act 2003
- Health and Safety at Work Act 2015 and associated regulations
- Social Security Act 1964
- Wages Protection Act 1983
- Accident Compensation Act 2001
- Human Rights Act 1993 (s28(3) refers to Human Rights Commission guidelines)

In general, the maritime rules supplement primary legislation (Acts) or in some cases may set higher standards than existing New Zealand law where these are mandated by the Convention.

More detailed information on how New Zealand gives effect to the Convention in its legislation is provided in the Declaration of Maritime Labour Compliance (DMLC) Part I which is appended to the Maritime Labour Certificate issued to a ship.

Even if the Convention doesn't apply to a particular New Zealand-flagged ship, New Zealand health and safety, employment and other legislation relevant to the living and working conditions of seafarers on those ships still do.

3 Which ships are affected?

The application to New Zealand commercial ships is shown in the flowchart and explained below. The Convention does not apply to fishing vessels.

In determining the application of the Convention, two key definitions to consider are international voyage and date of construction.

International voyage

For the purposes of the Convention, an international voyage includes a voyage between two or more ports in another country (see definition in Maritime Rules Part 52). For example, for a New Zealand-flagged ship on a voyage between two or more ports in Australia, the MLC requirements for a ship on an international voyage will apply.

Date of construction

For the purposes of the Convention, the date of construction is defined as the date at which the ship's keel is laid, or it is at a similar stage of construction (see definition in Maritime Rules Part 51).

New Zealand commercial ships of 500 gross tonnage or over engaged on international voyages

These ships must comply with the Convention as it relates to their date of construction. They must carry a current and valid Maritime Labour Certificate and accompanying Declaration of Maritime Labour Compliance (DMLC) Parts I and II.

These ships are required to undergo an inspection to confirm compliance with the Convention for the purpose of issuing the certificate and DMLC Parts I and II prior to the in-force date of 9 March 2017. Thereafter they will be required to undergo intermediate inspections between the second and the third anniversary of the date of issue of the certificate.

New requirements in the Convention related to ship construction and equipment (covered by Title 3 of the Convention) apply only to ships constructed after 9 March 2017. All other requirements in the MLC apply irrespective of the date of construction.

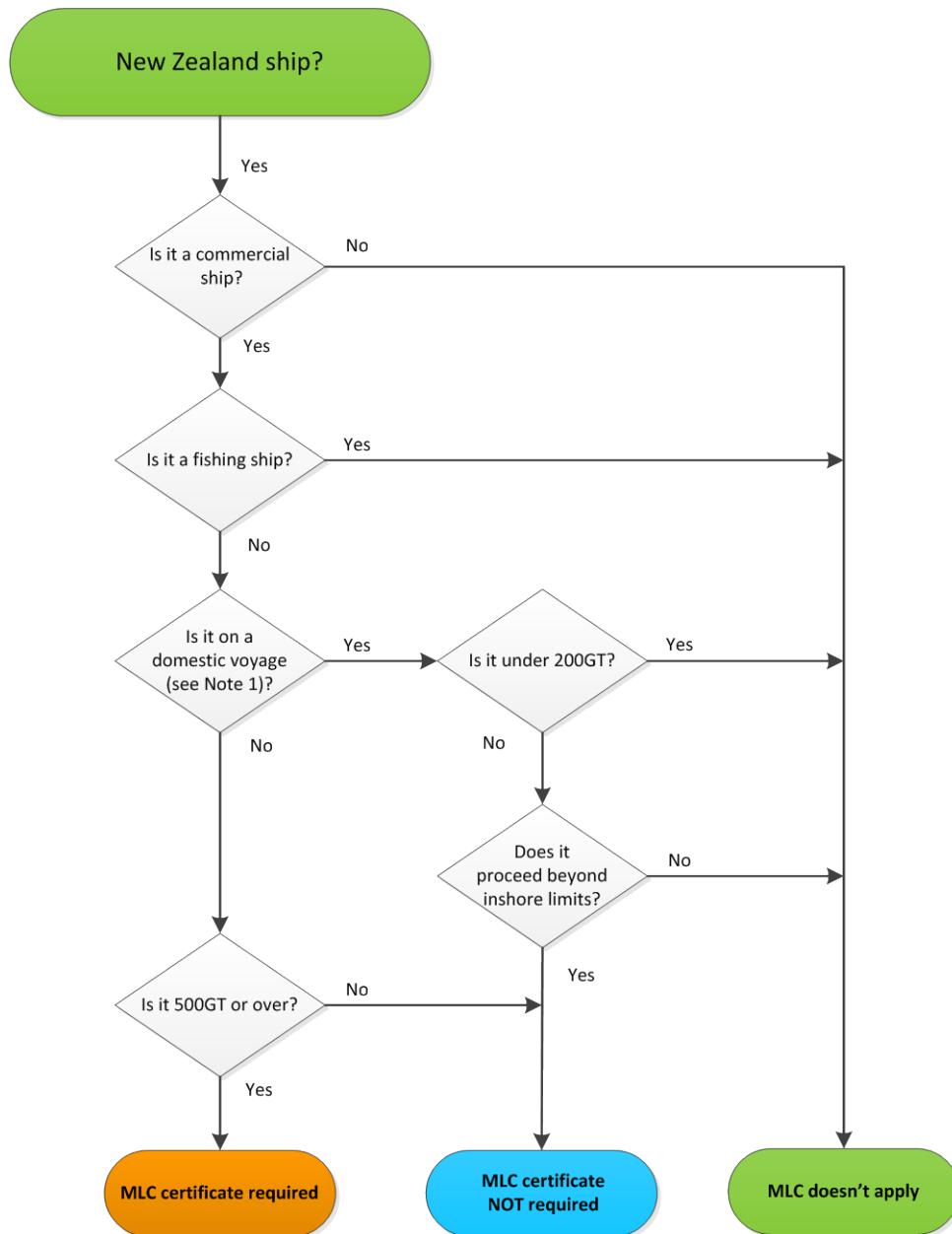
New Zealand ships calling at a port in a state that has ratified the Convention can be inspected by port State Control Officers under the MLC. The Maritime Labour Certificate and DMLC issued by New Zealand will be prima facie evidence of compliance. However, a port State cannot assign deficiencies against matters covered by Title 3 of the Convention if they were not required under New Zealand law at the date of construction of the ship. A statement as to the application of relevant Title 3 requirements will be included in the DMLC Part I for the ship, issued as part of the Maritime Labour Certificate.

For New Zealand ships that operate under ISM (subject to Part 21) flag State inspections are conducted annually by Maritime NZ and compliance with the MLC will be checked as part of those inspections.

For ships that operate under MOSS, compliance with the MLC will be verified by Maritime NZ as part of scheduled MOSS inspections and audits.

3 Which ships are affected (continued)

Application of Maritime Labour Convention, 2006 to New Zealand Ships



Note 1: A domestic voyage is defined as one that is not an international voyage. An international voyage includes a voyage between two ports in another country

Note 2: New MLC crew accommodation standards in MR Part 51 applies only to new-build New Zealand ships after March 2017

3 Which ships are affected (continued)

Other New Zealand commercial ships engaged on international voyages

New Zealand ships of less than 500 gross tonnage (GT) are not required to hold MLC certification. However they are still required to comply with the Convention. A NZ-flagged commercial ship of any size calling at a foreign port may be inspected by port State Control Officers under the MLC.

In such cases, the ship operator may wish to voluntarily obtain certification as evidence of compliance, otherwise they may be subject to a more detailed inspection against the MLC standards (specifically the matters listed Appendix A5-III of the Convention).

Maritime NZ strongly advises owners of such ships to consider voluntary certification, as this may avoid significant delays in foreign ports. Such certification may be accepted as evidence of MLC compliance, the same as for ships of 500 GT or over, even though certification is not mandatory.

New Zealand commercial ships of 200 gross tonnage or more on domestic voyages which proceed beyond restricted limits

A domestic voyage is defined in Parts 51 and 52 as one that is not an international voyage (see above).

These ships must comply with the Convention as it relates to their date of construction but they are not required to hold MLC certification.

As above, requirements in the MLC related to ship construction and equipment (covered by Title 3) will only apply to ships constructed after 9 March 2017. All other requirements in the MLC apply irrespective of the date of construction.

New Zealand ships must comply with the relevant maritime rules. For ships operating under the Maritime Operator Safety System (MOSS) regime, the Maritime Transport Operator Plan (MTOP) and accompanying certificate (MTOC) is the primary mechanism by which compliance with the Convention is demonstrated and assured.

Confirmation of MLC requirements for ship construction and equipment will be part of the design approver's role.

Maritime NZ suggests that ship operators whose ships are subject to the Convention voluntarily complete the DMLC Part II even if they do not intend to seek certification, as a means of internal assurance of compliance. This will assist in flag State inspections and MOSS inspections.

Where a New Zealand ship does not normally operate beyond restricted limits but undertakes a non-commercial domestic voyage beyond restricted limits for the purposes of repositioning it will not be subject to the Convention.

3 Which ships are affected (continued)

Foreign-flagged ships in New Zealand ports

The Convention includes a 'no more favourable treatment' provision that Member States are required to enforce.

Within New Zealand, this means that all foreign-flagged commercial ships of any size (other than fishing vessels) may 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. The port State control inspection will examine all the matters listed in Appendix A5-III of the Convention.

Where the flag State has ratified the MLC, and the ship is 500 GT or over, the ship must carry a valid Declaration of Maritime Compliance (Parts I and II) and a valid Maritime Labour Certificate issued by or on behalf of that State.

Where the flag State has not ratified the MLC, the 'no more favourable treatment' provision means that ships of that flag will be held to the same standards. These vessels may be subject to a more detailed inspection if either:

- they cannot provide documentary evidence of compliance with the regulations and standards of the Convention; or
- there are clear grounds for believing that the working and living conditions on the ship do not comply with the Convention.

An inspection may also be carried out if there are clear grounds to believe the ship has changed flag to avoid compliance, or there has been a complaint about specific living and working conditions on the ship (refer Standard A5.2.1 of the Convention).

As a signatory to the Convention, New Zealand is required to establish an on-shore complaints procedure for seafarers on ships visiting our ports in accordance with Regulation 5.2.2 of the Convention – more detail is contained elsewhere in this guide.

4 Inspection and certification

4.1 Maritime Labour Certificate

A Maritime Labour Certificate can be issued where a ship has been inspected and compliance with the Convention has been confirmed by a person or organisation authorized to do so.

The certificate is issued to the ship owner⁴ in respect of the ship. The certificate comprises three elements – the certificate itself, and the Declaration of Maritime Labour Compliance (DMLC) Parts I and II.

For New Zealand ships, the DMLC Part I is prepared by Maritime NZ as the Competent Authority and sets how New Zealand as a signatory to the Convention gives effect to the Convention in its legislation and practices, as well as any equivalences and exemptions made in respect of the ship itself.

The DMLC Part II is prepared by the ship owner and documents how they achieve compliance with the Convention in respect of the ship. When conducting port State or flag State inspections, an inspector will reference the DMLC Part II.

A sample Maritime Labour Certificate, with the DMLC Parts I and II can be found on the Maritime NZ website.

Under the Convention, the Maritime Labour Certificate (including the DMLC Parts I and II) should be accepted as ‘prima facie’ evidence of compliance, without further inspection, unless there clear grounds for believing that the working and living conditions on the ship do not comply with the Convention.

4.2 Delegation of MLC functions

The Convention provides for administrations to authorise public institutions or other organisations to carry out inspections and/or issue certificates on their behalf (MLC Regulations 5.1.1 and 5.1.2).

Maritime NZ has delegated certain functions under the Convention to the following ‘delegated persons’:

- Recognised Organisations (ROs); and
- selected MLC-trained MOSS surveyors.

In carrying out functions under delegation, ‘delegated persons’ are in effect acting as the Director in relation to those specific functions.

Contact details for ‘delegated persons’ can be obtained from Maritime NZ.

Recognised Organisations (ROs)

New Zealand-based ROs (Classification Societies) have been delegated the powers to inspect and certify New Zealand ships for compliance with the Convention and to issue Maritime Labour Certificates, as an extension to their existing Class delegations.

⁴ The ship owner is the owner of the ship or another organisation or person who has assumed the responsibility for the operation of the ship (as defined in Article II 1(j) of the Convention). For a New Zealand ship, the definition of owner is the same as in the Maritime Transport Act.

4 Inspection and certification (continued)

The New Zealand-based classification societies are:

- DNV-GL
- Lloyds Register
- American Bureau of Shipping (ABS)
- Bureau Veritas
- Class NK

MOSS surveyors

Inspections for compliance with the Convention may also be carried out by a MOSS surveyor holding the appropriate MLC delegation. Such persons must complete MLC training to the satisfaction of the Director.

A MOSS surveyor holding an MLC delegation cannot issue a Maritime Labour Certificate – the certificate must be issued by Maritime NZ.

4.3 Statement of Compliance

Prior to the Convention coming into force in New Zealand, Maritime NZ and ROs could not issue a Maritime Labour Certificate for a New Zealand ship. Instead, where evidence of compliance was required by a ship owner for an international voyage prior to 9 March 2017, an RO may have carried out an inspection and issued a Statement of Compliance.

Statements of MLC compliance are not issued on behalf of Maritime NZ under delegation.

An inspection carried out by an RO for the purposes of issuing a Statement of Compliance may be accepted for the subsequent issue of a Maritime Labour Certificate, but this will need to be assessed on a case-by-case basis. An RO will need to decide whether it will accept its previous inspection, bearing in mind that as a delegation holder, it needs to confirm that the ship still fully complies with the MLC at the time of issue of the Maritime Labour Certificate. ROs should discuss any such situations with Maritime NZ to get a formal acceptance before a certificate is issued on the basis of a Statement of Compliance.

4.4 MOSS Certificate of Survey

A Certificate of Survey for a MOSS ship confirms compliance with all relevant maritime and marine protection rules. This includes compliance with Parts 51 and Part 52 (as applicable). The inspection for the purposes of a Certificate of Survey does not normally require the surveyor to check seafarer qualifications and crewing. However this must be checked by the surveyor as part of an MLC inspection.

A MOSS surveyor can only issue a Certificate of Survey for a ship that is required to comply with the Convention if they have evidence of compliance, by way of an MLC compliance report or the Maritime Labour Certificate (where the ship is required to have one).

For ships that already have a certificate of survey, but do not require a Maritime Labour Certificate, shipowners must ensure that they comply with Convention in order to maintain validity of the Certificate of Survey. MNZ will allow a period of six months from the 9th of March 2017 for shipowners to arrange an MLC inspection by a delegated person, and a compliance report to be sent to MNZ.

4 Inspection and certification (continued)

The responsibility rests with the surveyor issuing the Certificate of Survey and the shipowner to determine whether the ship is required to comply with the MLC in the first place.

4.5 Certification process

The process for issue of MLC certificates is set out below and in the flowchart. The application form for a Maritime Labour Certificate, including the sample DMLC Parts I and II is available on the Maritime NZ website.

Only delegated persons who are ROs can issue MLC certificates. This section should be read with that in mind.

1. The ship owner contacts their selected delegated person (RO or MOSS surveyor holding MLC delegations) to request inspection and certification. The owner:
 - submits all relevant information to the delegated person for appraisal.
 - completes Part II of the Declaration of Maritime Labour Compliance (DMLC Part II) and submits to the delegated person.
2. The delegated person assesses the application and the supporting documentation. Exemptions are permitted where specifically allowed by the Convention (Standard A3.1), which are limited to matters related to seafarer accommodation. Where the need for an exemption is identified, the delegated person liaises with the shipowner and Maritime NZ to also prepare an application for an exemption (see the section on exemptions below).
3. The delegated person then conducts an inspection of the ship against the requirements of the MLC as detailed in Appendix A5-1 of the MLC and prepares an MLC compliance report. More information on the specific requirements for inspection and format of the report is included in the MLC check sheet. A copy of this can be found on the Maritime NZ website.
4. On completion of the inspection and confirmation of MLC compliance, the delegated person endorses the application for a Maritime Labour Certificate, including any exemption applications to ensure they are complete, and liaises with the owner. The delegated person also endorses the DMLC Part II after reviewing it against the DMLC Part I.
5. The delegated person submits the application to Maritime NZ on behalf of the shipowner. They should include the MLC compliance report and check sheet and any recommendations for exemptions if required, together with an exemption application form. The endorsed DMLC Part II should be included.
6. Maritime NZ assesses the application for the MLC along with any exemption applications and may seek further information from the delegated person if necessary. If Maritime NZ is satisfied that the application is complete it signs and issues the DMLC Parts I and II to the delegated person along with any rule exemptions if granted.

4 Inspection and certification (continued)

Process for obtaining a Maritime Labour Certificate



4 Inspection and certification (continued)

- Where the delegated person is an RO and the ship is in Class with that RO they will issue the ship owner a Maritime Labour Certificate, and provide it, with the original copies of the DMLC Part I, Part II to the ship owner. The RO will then forward copies of all certificates and inspection reports to Maritime NZ.
- Where the delegated person is an RO and the ship is in not Class with that RO they may instead provide copies of all certificates and inspection reports to Maritime NZ, who will issue the Maritime Labour Certificate to the ship owner.
- Where the delegated person is a MOSS surveyor, they will provide copies of all certificates and inspection reports to Maritime NZ, who will issue the Maritime Labour Certificate to the ship owner. The delegated person will also give a copy the compliance report and check sheet to the owner. This will be required as evidence of MLC compliance for the purposes of issuing the certificate of survey (see above).

What happens if the delegated person finds that the ship or ship owner does not comply?

If as the result of an inspection, a delegated person identifies areas where the ship or ship owner does not comply with the Convention and the relevant maritime rules and other legislation, then they should first consult Maritime NZ.

Depending on the nature of the deficiency, it may be possible to obtain an exemption where Part 51 provides for that. Otherwise the ship will be non-compliant until the deficiency is addressed, and it cannot be issued with a Maritime Labour Certificate (or a MOSS Certificate of Survey⁵). The delegated person should inform Maritime NZ. Even if a Maritime Labour Certificate is not required, it may still be in breach of the rules. An operator will need to address the non-compliances in order to continue to operate commercially.

Substantial equivalences

The Convention allows administrations to adopt provisions in its laws that are “substantially equivalent” to requirements in Titles 1 to 4 of the Convention. Any substantially equivalent provisions adopted by New Zealand that relate to matters that are subject to certification will be noted in the DMLC Part I.

⁵ See section 4.4. If the ship already has a valid Certificate of Survey, an inspection must be carried out and MLC compliance confirmed within 6 months after 9 March 2017.

4 Inspection and certification (continued)

Exemptions

Exemptions can only be issued by Maritime NZ, as provided for in section 47 of the Maritime Transport Act. Where the owner wishes to seek an exemption, they provide evidence to support an exemption application to the delegated person for review. The process for consideration and granting of exemptions is outlined below.

1. The requirements in Title 3 are given effect in maritime rules, in particular in Part 51. Therefore any exemption from a Convention requirement is an exemption from the relevant rules.
2. Exemptions to maritime rules may only be granted by the Director under section 47 of the Maritime Transport Act. Where the Convention does not allow an exemption, then the Director cannot issue one as this would contravene the provisions in the Act governing exemptions (specifically clause (2)(a) of section 47).
3. A ship owner wishing to apply for an MLC-related exemption must do so through their delegated person.
4. Discretion in relation to exemptions (including acceptance of equivalent measures when the rule requirement cannot be met) rests with the Director. The granting of exemptions is exercised on the advice of the delegated person.
5. Before granting any exemption in relation to Part 51, the Director must consult with the ship owner and seafarers on-board the ship (this may be through relevant organisations that represent the ship owners and seafarers respectively). This requirement is set in maritime rule 51.120.

4.6 Interim Maritime Labour Certificate

An Interim Maritime Labour Certificate may be issued in certain situations, prior to completing the full requirements for the issue of a Maritime Labour Certificate.

An Interim Maritime Labour Certificate may only be issued:

- To new ships on delivery
- When an existing ship changes flag
- When a ship owner assumes responsibility for the operation of a ship for the first time.

An Interim Maritime Labour Certificate may be issued for no more than six months and will only be issued after:

- The ship has been inspected as far as is reasonable and practicable for the 16 areas subject to general inspection in Appendix A5-1 of the Convention;
- The ship owner has demonstrated to Maritime NZ or the delegated person that the ship has adequate procedures in place to comply with the Convention;

4 Inspection and certification (continued)

- The Master of the ship demonstrates familiarity with the requirements of the Convention and relevant maritime rules;
- The ship owner has applied for and submitted relevant documentation for the issue of the DMLC Part I and can demonstrate to Maritime NZ or the delegated person that they are in the process of developing the DMLC Part II.
- Prior to expiry of the Interim Maritime Labour Certificate a full inspection shall be carried out to enable the issue of the full term Maritime Labour Certificate.

4.7 Intermediate inspections

The requirements for maintaining compliance, including ongoing inspections and renewals are specified in subpart F of Part 52.

Ships certified in accordance with the Convention will be required to undergo an intermediate inspection between the 2nd and 3rd anniversaries of the date of issue of the initial Maritime Labour Certificate.

An intermediate inspection will be conducted in a similar manner to the initial inspection, in that the ship owner will need to demonstrate ongoing compliance with the 16 areas subject to general inspection in Appendix A5-1 of the Convention.

For MOSS ships that don't require a Maritime Labour Certificate, confirmation of compliance should be aligned with inspections for the Certificate of Survey.

4.8 Validity of certificates and renewals

A Maritime Labour Certificate will be issued for a maximum period of 5 years. An Interim Maritime Labour Certificate will be issued for a maximum period of 6 months and cannot be extended or renewed.

For renewals of a Maritime Labour Certificate, the certificate may be issued up to 3 months prior to expiry of the old certificate, valid for 5 years from the date of expiry of the old certificate.

When applying for renewal of a certificate, the ship owner applies to their selected delegated person for inspection and certification of the ship following the same procedure as for a new certificate above.

Any exemptions issued as part of the original certificate will also be need to be renewed.

A Maritime Labour Certificate will cease to be valid if:

- intermediate inspections are not completed within the specified timeframes
- there are outstanding items or deficiencies following the inspection, that prevent the re-issue or endorsement of the certificate.
- it is not endorsed with details of the intermediate inspections completed
- the ship changes flag i.e. is no longer flagged to New Zealand.

4 Inspection and certification (continued)

If there is a change of owner, the new owner will need to obtain a new certificate. The issue of a certificate will be subject to an inspection by a delegated person and completion of the DMLC Part II by the new owner.

When substantial changes are made to the structure or equipment covered in Title 3 of the Convention or required by Part 51, after a Maritime Labour Certificate has been issued, an intermediate inspection will be required. The Maritime Labour Certificate may need to be amended and re-issued. Where there are doubts whether the alterations to structure or equipment are 'substantial changes' the ship owner should contact the delegated person.

5 Who is a seafarer?

5.1 Definition of a seafarer

The term 'seafarer' is defined in the Maritime Transport Act (MTA) as:

- any person engaged on the ship in any capacity for hire or reward; or
- any person who works on any ship for gain or reward other than under a contract of employment

For the purposes of the Convention, the term excludes marine pilots and law enforcement personnel. Workers temporarily engaged on the ship while it is in port are also excluded. The DMLC Part I will specify who is a seafarer for the purpose of that ship.

Where a ship operator is uncertain as to whether a person on board a ship is a seafarer, they should seek advice from Maritime NZ.

5.2 Cadets

Cadets on New Zealand-flagged ships are considered to be seafarers for the purposes of the MLC. They are therefore subject to MLC requirements in respect of:

- minimum age
- medical certification
- hours of work or rest
- accommodation
- on-board recreational facilities
- food and catering
- health and safety and accident prevention
- on-board medical care
- on-board complaints procedures
- financial security for repatriation
- financial security related to ship owner's liability

In New Zealand, the placement of cadets on ships is usually arranged between the training provider and the ship owner. As cadets may not be in paid employment, they may not be required to have a Seafarer Employment Agreement (SEA) including holiday provisions.

In these cases Maritime NZ requires:

- a written agreement between the cadet and the training provider that provides for protection of living and working conditions as above; and
- a written agreement between the ship owner and the training provider that provides for the cadet's welfare and sets out their training and responsibilities while on the ship. The agreement should be specific to the individual cadet

5 Who is seafarer (continued)

The agreements should reflect the ship owner's obligation to ensure that minimum standards are met in each of the above matters covered by the Convention. The agreements should also make clear the role of the Master in relation to the conduct and management of the ship, as it applies to the cadet.

A copy of the agreements must be held on board and the cadet must hold a copy of their own agreement with the training provider.

Accommodation should meet the minimum requirements of the Convention for seafarers on the ship. Agreements should cover termination and repatriation, and cadets should have access to the on-board complaints procedure. They are also subject to and required to comply with the Health and Safety at Work Act when on-board the ship.

The DMLC Part I issued by Maritime NZ will note that New Zealand considers the above provisions in respect of cadets constitute a 'substantial equivalence' to the requirements of the Convention. Maritime NZ will require evidence of cadet placement agreements prior to issuing the DMLC Part I for the ship.

6. MLC compliance for New Zealand ships

The information in this section provides general guidance on the working and living conditions that will be subject to inspection before compliance with the Convention can be confirmed and a Maritime Labour Certificate issued.

There are 16 items prescribed in Appendix A5-1 of the Convention.

1. Minimum age
2. Medical certification
3. Qualifications of seafarers
4. Seafarers' employment agreements
5. Use of any licensed or regulated private recruitment and placement service
6. Hours of work or rest
7. Manning levels for the ship
8. Accommodation
9. On-board recreational facilities
10. Food and catering
11. Health and safety and accident prevention
12. On-board medical care
13. On-board complaints procedure
14. Payment of wages
15. Financial security for repatriation
16. Financial security relating to ship owner's liability

The Declaration of Maritime Labour Compliance Part I (see Appendix 1) explains how the above requirements are addressed in New Zealand legislation generally and in New Zealand maritime legislation (the Maritime Transport Act 1994 and maritime rules).

The sections below expand on these subjects as necessary.

The regulation numbers in this section refer to the specific regulation in the text of the Convention.

6 MLC compliance for New Zealand ships (continued)

6.1 Minimum age (Regulation 1.1)

The Convention sets a minimum age for a person to work on a ship.

The Maritime Transport Act prohibits anyone from being employed on a ship if they are under the New Zealand school leaving age, which is currently 16 years.

Working at night

The MLC requires that seafarers under the age of 18 years work must not work at night, though some exceptions apply. Work at night is defined in the Convention as any work during the 9-hour period between 2100 hrs and 0600 hrs. This provision is given effect in Maritime Rule 52.41.

Exceptions may be made where it is reasonably required to train the seafarer, it is in accordance with an approved training programme, and where the training will be significantly less effective if conducted other than at night. In respect of a particular ship, such provisions should be identified by the ship owner in the DMLC Part II.

Other restrictions on young seafarers

MLC standard A1.1(4) prohibits seafarers under the age of 18 from engaging in work that is likely to jeopardize their health or safety. While there are no specific restrictions in New Zealand employment legislation regarding work carried out by those under the age of 18 years, section 36 of the Health and Safety at Work Act 2015 places a primary duty of care on persons conducting a business or undertaking (PCBUs) to ensure the health and safety of all their workers.

By implication this places an obligation on PCBUs to take into account the potential and actual health and safety implications of persons under the age of 18 undertaking work that is likely to jeopardise their health and safety. For example, workers under the age of 18 should not be working at height, handling hazardous chemicals, entering confined spaces or doing other dangerous tasks without supervision. PCBUs should consider whether workers who are under the age of 18 have the strength to safely perform heavy manual handling tasks.

6.2 Medical certification (Regulation 1.2)

The Convention requires seafarers on ships to be certified as medically fit to perform their duties.

The MLC extends medical fitness requirements to a broader range of seafarers than previously. All seafarers will be required to meet the requirements of Part 34.

Holders of New Zealand STCW, STCW-F, national and ring-fenced seafarer certificates of competency and certificates of proficiency are already required to hold a current certificate of medical fitness. The prescribed standards for those medical certificates are aligned with the STCW medical standards and so meet the required MLC standard.

STCW certificates of medical fitness must be issued by a Maritime NZ-approved medical practitioner. A certificate of medical fitness for a national certificate may be issued by any New Zealand registered medical practitioner. In the case of certificates of medical fitness for the purposes of a national certificate, the

6 MLC compliance for New Zealand ships (continued)

medical practitioner may take into account the additional criteria in Maritime Rule 34.24.

For ships that are subject to the MLC, seafarers who are not holders of certificates of competency or proficiency must hold the following:

- a) For SOLAS ships and ships engaged on international voyages, an STCW-compliant certificate of medical fitness issued by a Maritime NZ-approved medical practitioner;
- b) For ships engaged on domestic voyages only, a certificate of medical fitness issued by a New Zealand registered medical practitioner, in accordance with Part 34.

6.3 Qualification of seafarers (Regulation 1.3)

The Convention requires that seafarers be trained and qualified to carry out their duties on board a ship.

The MLC requires that seafarers must not work on a ship unless they are trained or certified as competent to perform their duties, and they should not be permitted to work on a ship unless they have successfully completed, as a minimum, training for personal safety on board a ship.

Training for personal safety is a new responsibility introduced by the MLC and can be completed on board a ship.

Maritime Rules Part 23 sets out requirements for training and on board instruction for seafarers on a ship.

Maritime Rules Part 31 requires the owner and master of certain ships to complete a minimum safe crewing assessment and to ensure that the ship has sufficient crew and with appropriate qualifications to operate the ship safely. The owner must obtain a Minimum Safe Crewing Document (MSCD) from Maritime NZ specifying the number and qualifications of crew. The document must be carried on board and the owner must comply with the requirements of the document. More information on MSCDs can be found on the Maritime NZ website.

Where an MSCD is not required, Part 31 prescribes the requirements for crewing and qualifications.

It is noted that cadets are not part of the minimum safe crewing requirement.

6.4 Seafarers' employment agreements (Regulation 2.1)

The Convention prescribes requirements to ensure that seafarers have fair employment agreements.

Employment Relations Act 2000

Employment of seafarers on New Zealand ships is subject to the Employment Relations Act 2000 (ERA).

The ERA requires there to be a written employment agreement, either a collective agreement (section 54 of the ERA) or an individual employment agreement (sections 64 and 65 of the ERA). The employee (seafarer) must be given an opportunity to examine and seek advice on the agreement before signing. Parts 5 and 6 of the ERA set out what must be included in individual and collective employment agreements.

6 MLC compliance for New Zealand ships (continued)

Maritime rule 52.61 sets additional requirements for seafarer employment agreements (SEA), over and above what is covered by the ERA:

1. Each seafarer on board must be provided with a signed original of their agreement
2. The information that must be contained in any agreement as a minimum
3. Clear information on conditions of employment must be easily obtained on board by seafarers, including the ship's master
4. A copy of the SEA must be kept on board the ship.

The ERA does not specify minimum notice requirements for termination of employment agreements, but where not specified in a SEA, notice must be fair and reasonable. Courts have required that 'reasonable notice' must be given and the provisions of the ERA are considered to be consistent with MLC requirements.

Dismissal of employees is regulated by the ERA, which provides remedies for unjustified dismissal and includes personal grievance provisions.

Any complaints received by Maritime NZ related to employment agreements on New Zealand ships will be referred to Employment New Zealand (part of MBIE) which administers the ERA.

Annual leave requirements

Under Regulation 2.4 of the MLC seafarers are entitled to a minimum of 2.5 calendar days per month of service. On New Zealand ships, annual leave requirements are specified in the Holidays Act.

The maximum period of continuous service (without annual leave taken) must not exceed 12 months.

6.5 Use of any licensed or regulated private recruitment and placement service (Regulation 1.4)

The Convention sets standards to ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system.

The Maritime Labour Convention (MLC) requires that companies who operate as Private Seafarer Recruitment and Placement Services (RPS) meet the standards outlined within the Convention when placing seafarers aboard ships.

Fees for placement of seafarers

Seafarers must not be charged for finding employment on board a ship.

A person intending to obtain employment as a seafarer must not be charged a fee for placement by an RPS provider. However, any person who requires assistance in obtaining documentation necessary to gain employment on a vessel may be charged a reasonable fee, limited to the following documents:

- Certificate of medical fitness

6 MLC compliance for New Zealand ships (continued)

- seafarer's qualification
- National seafarers' record book
- Passport
- travel documents (other than a visa)

Obligations on recruitment and placement services

An RPS must do the following and be able to provide evidence of the same if required:

1. Maintain an up-to-date register of all seafarers recruited or placed through them, to be available for inspection if required;
2. Ensure seafarers are informed of their rights and duties under their employment agreements prior to or in the process of engagement and proper arrangements are made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements;
3. Ensure that all seafarers recruited or placed by them are qualified and hold the documents necessary for the job concerned, and that the seafarers' employment agreements are in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement;
4. Ensure as far as practicable, that the ship owner has the means to protect seafarers from being stranded in a foreign port;
5. Examine and respond to any complaint concerning their activities and advise Maritime NZ of any unresolved complaint;
6. Establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.

6.6 Hours of work and rest (Regulation 2.3)

The Convention regulates hours of work and rest for seafarers.

Hours of work and rest are prescribed in Maritime Rules Part 52 with reference to Standard A2.3 of the MLC, which requires:

1. Maximum hours of work shall not exceed:
 - a) 14 hours in any 24-hour period; and
 - b) 72 hours in any 7-day period
2. Alternatively, minimum hours of rest shall not be less than:
 - a) 10 hours in any 24-hour period; and

6 MLC compliance for New Zealand ships (continued)

- b) 77 hours in any 7-day period

Hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.

The owner and master of the ship are required to:

- Establish and enforce rest periods for seafarers on the ship in accordance with the above hours of work or rest as applicable; and
- Post a table with shipboard working arrangements and the maximum hours of work or the minimum hours of rest required.
- Ensure that records of each seafarer's daily hours of work or hours of rest are maintained, and provided to the seafarer, are endorsed by the master and seafarer, and are kept on board.

MLC requirements above are harmonised with those of the STCW Convention. Maritime Rules Part 31, rule 31.30 prescribes requirements with reference to Section A-VIII/1 of the STCW Convention for those seafarers to whom STCW applies.

In the interests of consistency, Maritime NZ has determined that for the purposes of both STCW and the MLC, working arrangements set minimum hours of rest and records are maintained of hours of rest taken.

Sample formats for shipboard working arrangements and recording hours of rest are available on the Maritime NZ website.

6.7 Manning levels for the ship (Regulation 2.7)

The Convention sets requirements to ensure that ships have a sufficient number of seafarers on board to ensure that they are operated safely, efficiently and securely.

Manning levels are prescribed in Maritime Rules Part 31. Information on safe crewing assessments and obtaining a Minimum Safe Crewing Document (MSCD) can be found on the Maritime NZ website.

6.8 Accommodation (Regulation 3.1)

The Convention sets minimum standards for seafarer accommodation. This section explains the changes to maritime rules as a result of the new standards.

Crew accommodation standards

Maritime rules Part 51 prescribes standards for crew accommodation including:

- Location and general standards
- Heating and ventilation

6 MLC compliance for New Zealand ships (continued)

- Lighting
- Interior finish
- Marking of maximum numbers of persons accommodated in sleeping spaces
- Ceiling height
- Construction of bulkheads, decks and panelling
- Flooring
- Location and general arrangement of sleeping rooms
- Provision of sleeping rooms and day rooms for officers
- Provision of sleeping rooms for other seafarers
- Provision of beds
- Furniture and fittings in sleeping rooms – officers and other seafarers
- Mess rooms including furniture and fittings
- Recreation spaces and offices
- Sanitary accommodation
- Supply of water to washing accommodation
- Supply of drinking water
- Laundry facilities, clothes lockers and changing rooms
- Galleys
- Dry provisions store-rooms, cold-store rooms and refrigeration equipment
- Hospitals
- Protection from mosquitos and fitting of deck awnings

Part 51 also addresses;

- Maintenance of crew accommodation
- Inspection of crew accommodation by the master
- Inspection of crew accommodation by the Director

6 MLC compliance for New Zealand ships (continued)

Changes to Part 51 resulting from the MLC

The following changes to crew accommodation have resulted from the MLC. These only apply to New Zealand ships constructed after 9 March 2017. For the purposes of Part 51, the date of construction is the date the keel was laid.

The changes do not affect ships constructed before that date and the pre-MLC accommodation standards are preserved in subpart A of Part 51. However those standards apply to a wider range of ships than the MLC.

Subpart A applies to commercial ships of 200 GT or more unless:

- They operate only in enclosed waters; or
- They are less than 500 GT and do not travel beyond restricted coastal limits.

Ships constructed after 9 March 2017 are subject to Part B of Part 51 which incorporates the MLC changes described below.

Subpart B applies to commercial ships of 200 GT or more unless:

- They operate only in enclosed waters; or
- They are less than 500 GT and do not travel beyond inshore limits.

Limits in both cases are as defined in Part 20.

Section 47 of the Maritime Transport Act provides for the Director to grant exemptions from certain requirements in Part 51 where these are expressly allowed in the Convention. Such exemptions will be noted on the DMLC Part I for the ship issued by Maritime NZ.

Ship owners wishing to register a ship in New Zealand after 9 March 2017 that was constructed before that date must be aware that the ship must still meet the requirements of subpart A of Part 51.

Location and general standards for crew accommodation (rule 51.80)

Where practicable this must be situated amidships or aft, but not forward of the collision bulkhead, and must be above the summer loadline. This standard applies to all ships subject to the MLC, not just those over 500 GT under the previous Part 51.

- For ships of 500 GT or more, crew accommodation must be accessible from the open deck.
- There must be no direct opening between crew accommodation and cargo spaces or machinery spaces.

Ventilation (rule 51.82)

- For ships of 200 GT or more on international voyages, any separate radio room or centralised machinery control room must be equipped with air conditioning.

6 MLC compliance for New Zealand ships (continued)

Height of crew accommodation (rule 51.87)

- All parts of crew accommodation must have headroom of 2.03 metres (currently 1.98 metres).

Construction of bulkheads, decks and panelling (rule 51.88)

- The external bulkhead of sleeping rooms and that part of a bulkhead separating a sleeping room from a cargo space, machinery space, galley, store room, drying room or communal sanitary area must be gastight and watertight.

Location and general arrangement of sleeping rooms (rule 51.90)

- There must be no direct opening between a sleeping room and any space used as a galley, store room, drying room or communal sanitary area
- On non-passenger ships of less than 3000 GT, two seafarers under 18 may be accommodated in the same room. Previously this arrangement was permitted on non-passenger ships of any size.

Provision of sleeping rooms - officers (rule 51.91)

- For officers' individual sleeping rooms on all ships, the required minimum floor areas have increased. For ships of less than 3000 GT the minimum floor area is now 7.5m², for 3000 GT up to 10,000 GT – 8.5m², and for 10,000 GT and over, 10m².
- For passenger ships only, the minimum requirement for junior officers is 7.5m² and for senior officers, 8.5m². The provision for reduced floor areas where there is an adjoining sitting room or day room remains unchanged.

Provision of sleeping rooms - seafarers who are not officers (rule 51.93)

- For sleeping rooms for seafarers who are not officers, minimum floor areas for individual sleeping rooms on some ships have increased. For ships for 3000 GT up to 10,000 GT – 5.5m², and for 10,000 GT and over, 7m².
- For non-passenger ships of less than 3000 GT, two berth sleeping rooms must be no less than 7m².
- Where sleeping rooms on passenger ships accommodate more than one person, minimum floor areas are now specified – 7.5m² for 2 persons, 11.5m² for 3 persons and 14.5m² for 4 persons – irrespective of the size of the ship.

Furniture and fittings in sleeping rooms - seafarers who are not officers (rule 51.96)

- The minimum cross-sectional area of a wardrobe has increased from 0.2m² to 0.28m². Provision has been made to allow a combined wardrobe with drawer instead of individual units.

Sanitary accommodation (rule 51.101)

- Every sleeping room on non-passenger ships of 200 GT or more must now be provided with a

6 MLC compliance for New Zealand ships (continued)

wash basin, except where the room has a separate private bathroom with a wash basin.

- The provision for the Director to approve special arrangements or a reduction in facilities now only applies to passenger ships on voyages of less than 4 hours, and no longer to any ship with less than 100 seafarers.
- Water closets must now be fully enclosed and separately ventilated.

Hospitals (rule 51.110)

- The requirement to have a permanent hospital has changed. This now applies to ship operating in the unlimited area, which has 15 or more seafarers on board and is on a voyage of more than 72 hours. The previous exclusion for ships under 500 GT has been removed.

Inspection of crew accommodation by master (rule 51.113)

- The requirements for weekly inspection by the master have been amended to state a clear purpose of such inspections and to include specific checks on food supplies and drinking water and the condition of storage areas, food handling and preparation areas and equipment.

6.9 On-board recreational facilities (Regulation 3.1)

The Convention sets minimum standards for recreational facilities for seafarers.

Standards for recreational spaces are prescribed in Part 51. The recreational facilities provided on-board for seafarers should be described by the ship owner in the DMLC Part II.

6.10 Food and catering (Regulation 3.2)

The Convention sets standards for the provision and preparation of food and drinking water for seafarers.

Overview

The stated purpose of MLC regulation 3.2 is to ensure that seafarers have access to good quality food and drinking water provided under hygienic conditions.

- Ships must carry and serve food and drinking water of appropriate quality, nutritional value and quantity.
- Seafarers must be provided with food free of charge during their period of engagement.
- Seafarers employed as ships' cooks with responsibility for food preparation must be trained and qualified.

More specifically:

- The quantity, quality, nutritional value and variety of food must be suitable for the number of seafarers aboard, their religious requirements and cultural practices as they relate to food, and the duration and nature of the voyage.

6 MLC compliance for New Zealand ships (continued)

- The organisation and equipment of the catering department must allow seafarers to be provided with adequate, varied and nutritious meals, prepared and served in hygienic conditions.
- Catering staff must be properly trained or instructed for their positions.

The Convention is concerned with standards and cooking for the crew only. Commercial food preparation for passengers is covered by the Food Act 2014 (see below) and is separate from the Convention although the Food Act will also cover crew food preparation.

General provisions in legislation

Section 23(1)(a) of the Maritime Transport Act (MTA) requires employers of seafarers to provide food and water which, having regard to the size of the crew and the duration and nature of the voyage, are suitable in quantity, nutritive value, quality and variety.

MTA section 24 allows the Director to carry out inspections and audits in relation to the provision of food and water.

Maritime rule 31.21 requires the owner and master to:

- Ensure there are sufficient crew and sufficient qualified crew to supply provisions for and prepare nutritious meals aboard the ship
- Take into account the provision of proper food and water
- Maritime rule 51.107 requires the owner of a ship to ensure that ship is equipped with a galley for the preparation of food for seafarers and sets minimum standards for galleys. A similar provision exists for non-MLC ships under subpart A of Part 51.
- Maritime rule 51.108 requires ships to be equipped with a dry provisions store and sets minimum standards for such stores. A similar provision exists for non-MLC ships under subpart A of Part 51.

Maritime rule 51.109 requires ships to be equipped with refrigerating equipment and cold-store rooms for the storage of perishable provisions and sets minimum standards for such stores. A similar provision exists for non-MLC ships under subpart A of Part 51.

On ships where the master and crew are 10 or more in number, a ship's cook holding a qualification is required by the Convention. In addition, Rule 31.43(1)(c) requires ships over 1000 GT that operate in the unlimited area to have a qualified ship's cook.

The cook must hold either a New Zealand Ship's Cook Certificate or an MLC-compliant Ship's Cook Certificate issued by an administration that has ratified the MLC.

What do ship owners need to do to meet the MLC requirements in relation to food and catering?

1. Employers of seafarers must comply with the requirements of the Maritime Transport Act section 23(1)(a) i.e. sufficient for the crew and duration of the voyage and suitable in respect of quantity, nutritive value, quality and variety. They may be subject to inspections and audits in accordance with section 24. Provisioning of a ship should also take into account emergency situations.

6 MLC compliance for New Zealand ships (continued)

2. The owner and master of a ship must comply with maritime rule 31.21 in relation to crewing and the provision of food and water.
3. Ship owners must meet the requirements of rules 51.107 to 51.109 as regards the provision and equipping of a galley(s), dry-provisions stores, refrigerating equipment and cold-store rooms.
4. Ship owners must meet the requirements for ships' cooks and ensure that all people who handle food are suitably trained.

The Food Act 2014 also applies to certain New Zealand ships in New Zealand waters and covers some of the same matters as the Convention. However the Act is primarily concerned with food safety and does not cover items 1 or 2 above. The Food Act is administered by New Zealand territorial authorities (local councils). More detail on the Act is provided in the next section.

Where the ship owner has a Food Control Plan or Deemed Food Control Plan registered under the Food Act, Maritime NZ will generally accept this as meeting the requirements of item 3 above for the provision of food preparation and storage facilities.

While a Food Control Plan will include requirements for qualifications and training of cooks and food handlers, the requirements of the MLC must still be met if these are more onerous. Conversely, a territorial authority may not necessarily accept a Maritime NZ Ships Cook certificate in all cases, if the holder does not have the appropriate New Zealand shore-based qualification.

For item 4, Maritime NZ has determined that in respect of the MLC training, requirements in relation to food handling will apply in any situation where an allocated crew member prepares food for crew.

Standards for food storage, preparation and handling

The MLC does not prescribe explicit standards for food storage, preparation and handling. These are covered in the template Food Control Plan above and supplementary information available from the Ministry of Primary Industries (MPI).

Where such a plan is not currently required to be registered, standards should be consistent with MPI guidance. Where there is any doubt, contact MPI for advice. Guidance on food safety standards is also available from P&I Clubs.

Qualifications for ships' cooks and food handlers (caterers)

Ships' cooks

The MLC requires that a person employed as a cook on board a ship must be over 18 years of age and suitably qualified.

Part 31 requires that ships' cooks hold a National Certificate in Hospitality (Cookery) (Level 3) or equivalent or a New Zealand Certificate in Cookery (Level 3) or equivalent.

Ship's cooks can apply to Maritime NZ for a New Zealand Ship's Cook Certificate (NZSCC) that confirms compliance with the requirements of the MLC. The requirements for obtaining an NZSCC can be found on the Maritime NZ website.

6 MLC compliance for New Zealand ships (continued)

Other persons handling food

Where a crew member prepares food for crew or others in the ship's galley as part of their work duties, they must be trained and qualified as follows, irrespective of whether the ship has a qualified cook:

1. Food handling supervisors must hold NZQA 168 or equivalent, or equivalent company training as part of an approved programme.
2. Any other on-board food handlers must hold NZQA 167 or equivalent, or equivalent company training as part of an approved programme.

Food Act 2014

The Food Act 2014 came into force on 1 March 2016. New 'food businesses' established after 1 March 2016 are required to have a new Food Control plan registered, and all 'food businesses' in New Zealand must be operating under the new Act by 28 February 2019.

The provisions of the Food Act apply to New Zealand ships operating within New Zealand waters. The coverage of the Act is wider than previous food safety legislation, and some ship operators may not be aware that it applies to them. They have until 28 February 2019 to meet the requirements.

The regulator for the purposes of the Food Act is the Ministry of Primary Industries (MPI). Ship owners should contact MPI to find out if the Food Act applies to them, and what they need to do.

The Act applies to food for sale, which includes supplying food to an employee or other person in accordance with an employment agreement or agreement for services. Under the Act the primary duty of a person who trades in food is to ensure that it is 'safe and suitable' (which are defined in the Act). Food businesses must have Food Control Plans registered with and verified by the territorial authority, who will also audit those plans on a regular basis.

The Act includes transitional arrangements allowing businesses with food safety programmes approved under the previous legislation to be issued a Deemed Food Control Plan on the basis of their existing arrangements.

The Act and associated regulations are administered by territorial authorities. In the case of ships this is the territorial authority in the home port of the ship e.g. for a ship registered in Wellington, Wellington City Council.

The Act exempts certain sectors from the requirement to operate under a food plan or a national programme. The exemption includes fishing vessel operators who serve food for crews.

6.11 Health and safety and accident prevention (Regulation 4.3)

The Convention sets standards to ensure that seafarers' work environment aboard ships promotes occupational safety and health.

The Health and Safety at Work Act 2015 and associated regulations provide the regulatory framework for

6 MLC compliance for New Zealand ships (continued)

health and safety in the workplace including for those living and working on-board New Zealand ships, wherever they are. Maritime NZ is the designated regulator in respect of the Act on board ships.

6.12 On-board medical care (Regulation 4.1)

The Convention sets standards to protect the health of seafarers and ensure they have prompt access to medical care on-board ship and on shore.

The Maritime Transport Act section 23(1)(b) requires every employer of seafarers on a New Zealand ship to ensure that any seafarer requiring medical attention while overseas receives all necessary medical attention at the employer's expense.

Maritime Rules Part 50 prescribes the medical stores and medical guides that must be carried on-board New Zealand ships. This includes medicines and medical equipment on survival craft and rescue craft. Medicines, equipment and medical guides must be suitable for first aid and the medical care of seafarers on-board who become ill or suffer injury.

Part 50 (rule 50.18) also requires a standard medical report form to be completed for any person who receives medical treatment on-board and prescribes the format and content of such reports. Such reports are required to be provided to the person receiving treatment and any doctor or hospital that treats that person when they subsequently go ashore.

Ships carrying more than 100 persons beyond the Exclusive Economic Zone of New Zealand must carry a registered medical practitioner.

Maritime Rule 51.110 requires the owner of any ship operating in the unlimited area with more than 15 seafarers on-board engaged on a voyage of more than 72 hours duration to ensure that the ship is equipped with a permanent hospital for the treatment of ill and injured seafarers.

Requirements for training in medical care for New Zealand seafarer STCW certificates of competency and certificates of proficiency are as follows:

1. Masters and mates must hold a certificate of proficiency in medical care that meets the standards of STCW Medical Care Table A-VI/4-2
2. Other deck officers, chief engineers and engineer officers must hold a certificate of proficiency in first aid that meets the standards of STCW medical First Aid Table A-VI/4-1.
3. All others must hold STCW Elementary First Aid, Table A-VI/1-3 (this is one of the 4 modules of STCW basic training).

6.13 On-board complaints procedure (Regulation 5.1.5)

The Convention requires that ships have on-board complaints procedures to ensure that seafarer complaints alleging breached of the Convention are handled fairly, effectively and without delay.

The Employment Relations Act sections 54(3)(a)(iii) and 65(2)(a)(vi) require employment agreements to contain a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days in section 114 within which a personal grievance must be raised.

6 MLC compliance for New Zealand ships (continued)

The ship must have an on-board complaints procedure for seafarers that meets the above requirements and those of Standard A5.1.5 of the Convention.

The procedure should aim to resolve complaints at the lowest possible level, but in any case the seafarer has a right to complain directly to the master. The seafarer has a right to be accompanied or represented during the complaints procedure. The procedure should also include safeguards against the possibility of victimisation of the seafarer for filing a complaint.

Seafarers should be provided with a copy of the on-board complaints procedure for the ship, in addition to a copy of their Seafarer Employment Agreement.

6.14 Payment of wages (Regulation 2.2)

The Convention requires that seafarers are paid for their work regularly and in accordance with their employment agreements.

The Wages Protection Act section 4 requires employers when any wages become payable to a worker to pay the entire amount of those wages to that worker without deduction except in certain circumstances set out in section 5. Section 7 requires that wages be paid in money only.

Maritime Rule Part 52.62 requires the owner and master to ensure that seafarers are paid in full the wages due at no greater than monthly intervals.

Maritime Rule 52.63(1) requires the owner and master of a ship to provide each seafarer working on the ship with the option and means to transmit all or part of their wages to a nominated person.

Maritime Rule 52.63(2)(a) provides that where the seafarer opts to transmit all or part of his or her wages the owner must ensure that the proportion transmitted is remitted to the nominated person at the intervals requested and by bank transfer or similar means directly to the nominated person.

Part 52 defines the term nominated person which is broadly limited to the seafarer's family, current or former spouses or partners, dependants and legal beneficiaries of the seafarer.

Maritime Rule 52.63(2)(b) provides that any charge for this service must be reasonable, and where the currency transmitted is to be exchanged, the rate of currency exchange, unless otherwise agreed must be the prevailing market rate or official published rate and not unfavourable to the seafarer.

Complaints received by Maritime NZ in relation to the payment of wages on New Zealand ships will be directed to Employment New Zealand.

6.15 Financial security for repatriation (Regulation 2.5)

The Convention requires member states to ensure that seafarers on ships under their flag are entitled to repatriation in the following circumstances:

- If the seafarer's employment agreement (SEA) expires while they are out of the country
- When the SEA is terminated by the ship owner, or the seafarer for justified reasons

6 MLC compliance for New Zealand ships (continued)

- Where the seafarer can no longer carry out their duties under their SEA or be expected to in those specific circumstances.

Maritime rule 52.65 requires the owner and master of a ship to make provision for repatriation. This is wider than requirements on employers of seafarers on New Zealand ships of overseas voyages under section 22 of the Maritime Transport Act. Ship owners must provide evidence of financial security for this purpose as required by Standard A2.5.2 of the Convention.

6.16 Financial security relating to ship owner's liability (Regulation 4.2)

This provision relates to financial security to assure compensation in the event of the death or long-term disability of a seafarer due to an occupational injury, illness or hazard.

The New Zealand Accident Compensation Corporation (ACC) provides comprehensive, no-fault personal injury cover for all New Zealand residents and visitors to New Zealand. However, this scheme may not provide complete cover for all the situations specified in Standard 4.2 of the Convention, or cover all seafarers on New Zealand flagged ships as required by that standard.

The Convention requires the ship owner to provide a certificate or other documentary evidence of financial security from a third party provider. For SOLAS ships this security will usually be covered by the P&I Clubs and they will provide the necessary documentation.

7 MLC complaints

Under the Convention all seafarers have a right to decent working and living conditions on board a ship, fair terms of employment and a safe and secure workplace.

As noted above, the Convention requires that all ships have an on-board complaints procedure that allows seafarers to make a complaint without fear of recourse. The on-board complaints process should be the starting point for any seafarer wishing to make a complaint.

7.1 Shore-based complaints resolution (Reg. 5.2.2)

As a party to the MLC, New Zealand has an on-shore complaints procedure that seafarers can use to make complaints.

Seafarers can make a complaint about the living and working conditions on a New Zealand ship or a foreign-flagged ship in New Zealand waters, where there is a breach of requirements of MLC.

Complaints can be made directly to Maritime NZ, or to any other organisation directly involved in the welfare of seafarers. The MLC states that no action can be taken against a seafarer because he or she has made a complaint.

Maritime NZ will make every effort to ensure that the details of the source of the complaint are not revealed during any enquiry.

How to make a complaint

Seafarers are encouraged to use the ship's on-board complaints procedure as a first step in resolving complaints. However if a complaint is not able to be resolved on board then seafarers can contact Maritime NZ:

- By using the on-line MLC complaints form on the Maritime NZ website
- Call toll free on 0508 22 55 22 or ring the local Maritime NZ office
- Talk to a Maritime Officer in person in the port, or on the ship

A complaint may be made to Maritime NZ directly by a seafarer, a professional body, an association, a trade union or any person with an interest in the safety and welfare of seafarers.

How Maritime NZ will deal with complaints

When Maritime NZ receives a complaint, we will:

- Undertake initial enquiries, which may include a visit to the ship
- Determine whether the on-board complaints procedure has been used and examine the records
- Promote resolution of the matter at a ship board level where possible
- For foreign ships, notify the flag State if the complaint has not been resolved, seeking resolution, advice or corrective action within an agreed timeframe.

If the complaint is about employment matters on a New Zealand ship, Maritime NZ will refer the matter directly to Employment NZ.