

The Chair

Cabinet Economic Growth and Infrastructure Committee

PROPOSED RATIFICATION TO THE MARITIME LABOUR CONVENTION, 2006

Proposal

1. We propose that this Committee agrees to New Zealand ratifying the Maritime Labour Convention, 2006. Ratification will be subject to satisfactory completion of the parliamentary treaty examination process and the passage of minor amendments to Maritime Rules and an Order in Council under the Maritime Transport Act 1994.

Executive summary

2. The Maritime Labour Convention, 2006 (the Convention) sets internationally agreed minimum standards for the provision of decent working and living conditions on ships. The Convention applies to all foreign commercial ships (excluding fishing vessels) entering New Zealand ports, and around 31 New Zealand flagged ships.
3. New Zealand has only a small merchant shipping fleet, which operates almost exclusively within New Zealand waters. As a result, New Zealand is reliant on foreign shipping to carry its imports and exports. Most of New Zealand's Asia-Pacific neighbours have ratified the Convention, or are in the process of ratifying it.
4. Ratifying the Convention would give New Zealand jurisdiction to inspect and verify crews on foreign ships carrying New Zealand's goods are treated fairly, and in accordance with internationally accepted standards. Consequently, it would provide protection from potential allegations of the mistreatment of labour on foreign ships carrying New Zealand goods, that could harm the reputation of, demand for, and value of New Zealand exports.
5. The costs, impacts and risks of ratifying the Convention are assessed as minimal, as New Zealand law is largely consistent with the Convention. Should Cabinet agree to ratify the Convention, only minor and technical amendments to Maritime Rules, and an Order under the Maritime Transport Act 1994, will be required. These minor changes are not expected to have any material impact or costs.
6. All submissions during the consultation period on the Convention were in favour of New Zealand ratifying the Convention and no significant issues were raised. Business New Zealand and the New Zealand Council of Trade Unions strongly support the Government becoming party to the Convention.

Decision sought and process for ratifying the Convention

7. This paper seeks Cabinet agreement to ratifying the Convention, subject to the satisfactory completion of the Parliamentary treaty examination process and the passage of implementing legislation.
8. Cabinet indicated support for ratification of the Convention in May 2014. Cabinet agreed to public consultation on a proposal to ratify the Convention [CAB Min (14) 10/11 refers] and noted that the Minister of Transport and Minister of Labour would report back to Cabinet with advice and a National Interest Analysis recommending whether or not New Zealand should ratify the Convention. This paper, supported by the National Interest Analysis (attached), recommends that New Zealand ratify the Convention.
9. If Cabinet agrees to New Zealand's ratification of the Convention, the Ministry of Foreign Affairs and Trade will present the Convention and the National Interest Analysis to the House of Representatives.
10. The Convention and National Interest Analysis will be referred to the Foreign Affairs, Defence and Trade Committee of the House, which will either review the Convention or refer the Convention to another committee. The Select Committee will report back to the House.
11. If Cabinet agrees to New Zealand's ratification, Maritime Rules and an Order in Council under the Maritime Transport Act 1994 will be amended to align domestic law with the obligations of the Convention, before formal ratification can occur.
12. The Convention would enter into force in New Zealand twelve months after the date of which New Zealand's ratification of the Convention is registered with the International Labour Organization (ILO).

Background to the Maritime Labour Convention, 2006

Purpose of the Convention

13. The Convention was adopted by the ILO on 23 February 2006 and came into force internationally on 20 August 2013. It provides internationally agreed minimum standards for the provision of decent working and living conditions on ships. The Convention does not cover fishing vessels (which are dealt with in a separate Fishing Convention¹, which is not yet in force).
14. The Convention is intended to provide worldwide protection of the rights of seafarers, and to ensure a level playing field for ship owners that protects against unfair competition from substandard ship operators.
15. The Convention outlines minimum standards for:
 - working on a ship, including minimum age, health and fitness, and training requirements for seafarers

¹ Work in Fishing Convention, 2007 (No. 188).

- conditions of employment, including having written employment agreements, at least monthly pay periods, rest periods, annual leave, provisions for the repatriation of seafarers, and for minimum safe manning levels
 - the provision of accommodation, recreational facilities, food and drinking water on a ship
 - the provision of health and safety protection and accident prevention, medical care, and compensation for work-related injuries or illnesses.
16. Almost all of the largest shipping nations, representing almost 90 percent of the world's fleet, have either ratified the Convention or are working towards ratification.

Who will the Convention apply to?

17. The Convention only applies to commercial vessels. It does not apply to small vessels, vessels that operate exclusively in restricted limit areas (enclosed water and inshore limits)², or to fishing vessels.
18. In practice, it would apply to all foreign ships (excluding fishing vessels) entering New Zealand ports, and around 31 New Zealand flagged ships. These include container ships, Cook Strait ferries and other ships.

Benefits of ratification

Ratifying the Convention will protect the reputation of New Zealand's exports and trade by allowing New Zealand to inspect and verify the labour conditions on foreign ships servicing New Zealand

19. New Zealand has only a small merchant shipping fleet, which operates almost exclusively within New Zealand waters. With the majority of New Zealand's export goods transported by ship³, New Zealand is reliant on foreign shipping to carry its imports and exports.
20. Respect for international labour standards is a recognised part of international trade, with free trade agreements now commonly containing specific provisions on labour rights and conditions. Global supply chains have also seen firms and consumers become increasingly conscious of the conditions under which goods are produced and transported to market. Without ratifying the Convention, New Zealand has limited oversight or jurisdiction over working conditions on foreign ships serving New Zealand trade and will have little ability to challenge criticism or defend the general treatment of seafarers on ships servicing New Zealand.
21. Ratifying the Convention will give New Zealand jurisdiction to inspect and verify that foreign ships carrying New Zealand's goods treat their crew fairly and in accordance with internationally accepted standards. This will provide protection from any allegations of the mistreatment of labour on foreign ships carrying New Zealand goods that could harm the reputation of, demand for, and value of New Zealand exports.

² As defined and explained in Maritime Rule Part 20 – Operating Limits

³ 99.7 percent by volume, and 85.2 percent by value.

22. The potential for negative consequences has been demonstrated in the New Zealand fishing industry. The 2012 Ministerial Inquiry⁴ on foreign owned or crewed fishing vessels found that international criticism of the employment conditions on foreign fishing vessels chartered in New Zealand was not limited to the foreign owners and operators, but also targeted the New Zealand companies using them. The report stated that such publicity has the potential to damage New Zealand's reputation, the demand for New Zealand exports, and continued access to markets.
23. While action is being taken to address poor conditions on foreign charter fishing vessels, New Zealand has no legal ability to ensure that foreign vessels transporting New Zealand goods do not do so under poor or exploitative conditions. This may subject New Zealand exporters to the same criticisms faced by the fishing sector.

New Zealand will be out of step with other nations if it does not ratify the Convention

24. The Convention is being strongly championed by international groups, such as the ILO and the International Maritime Organization, and regional groups, such as the Tokyo Memorandum of Understanding on Port State Control in the Asia Pacific Region Committee.
25. New Zealand's state of non-ratification is becoming increasingly visible, and would be further highlighted in the event of any incidents, or allegations of the mistreatment of labour on foreign ships in New Zealand waters.
26. Local attention was drawn recently to New Zealand not having ratified the Convention, when the Liberian-flagged but German-owned container ship, the *Vega Auriga*, docked in Tauranga in September 2014. The ship was banned from entering Australian ports, under the Convention, by authorities who cited repeated seafarer welfare and ship maintenance problems. Maritime New Zealand inspected the ship and raised 14 issues. However, New Zealand, as a non-member of the Convention, was unable to inspect the ship's labour and welfare practices.

Additional Benefits

27. Ratifying the Convention will allow New Zealand authorities to issue certificates of compliance to any New Zealand ships that travel internationally, or New Zealand businesses that provide seafarer placement services on international ships. The certificates would allow these few ships and businesses to easily demonstrate compliance to foreign authorities bound by the Convention, should this be required. This may result in some time and cost savings to ship operators through avoiding the need for foreign authorities to undertake inspection and authorisation, which may be material to some New Zealand businesses.
28. The Convention is also intended to reduce the risks of human errors resulting from crews being fatigued, malnourished, or under other undue pressures that may lead to maritime accidents. Adherence to the Convention standards could also assist in minimising the number of accidents and incidents in New Zealand waters and the cost of responding to emergencies.

⁴ Report on the Ministerial Inquiry into the use and operation of foreign chartered fishing vessels, February 2012

Legal obligations of ratifying the Convention

29. The Convention comprises three different but related parts: the Articles, the Regulations and the Code.
- The Articles set out the fundamental rights and principles.
 - The Regulations set out the minimum standards.
 - The Code provides mandatory (part A) and non-mandatory (part B) guidelines for their implementation.
30. New Zealand law is consistent with the fundamental rights and principles contained in the Articles. The National Interest Analysis provides detail on the obligations of the Articles, the Regulations and the Code.

Regulatory changes to implement the Convention and regulatory impact

31. There are a few areas where New Zealand law, or practice, is not consistent with the more technical minimum standards set out in the Regulations and the mandatory parts of the Code (part A).
32. Should Cabinet agree to ratify the Convention, minor and technical amendments to Maritime Rules and an Order in Council under the Maritime Transport Act 1994 would be required to ensure that New Zealand meets its obligations under the Convention.
33. The required regulatory changes do not create any material costs for New Zealand ships that the Convention would apply to, or on shipping rates for exporters and importers, because:
- the Convention was developed in partnership with shipping interests to ensure that the Convention's minimum standards reflect current industry practice and can be easily met by most shipowners
 - New Zealand law, which applies to New Zealand registered ships, is already largely consistent with the Convention with only minor or technical changes required for compliance
 - as most foreign vessels that service New Zealand will travel to countries that are party to the Convention, they will be required to comply with the Convention in any case
34. The following table outlines the seven changes that are required to implement the Convention in New Zealand and comments on the regulatory impact of the changes.

Regulatory change	Impact of the change
Prohibiting night work for seafarers under the age of 18 (with the exception of training that must be undertaken at night).	Consultation identified that industry would not find this regulation restrictive.

Regulatory change	Impact of the change
<p>Extending the requirement for medical certificates to a broader range of seafarers "undertaking work on account of the ship", rather than just for duties requiring a qualification for working on larger ships, and for young persons.</p>	<p>Additional medical certificate requirements may result in small additional cost, and time cost to affected seafarers, or their employers. Medical certificates are current for two years, at a cost of around \$220, and take around one hour.</p> <p>The development of the Maritime Rule amendment will identify the appropriate seafarers to require a medical certificate in consultation with industry.</p>
<p>Regulating the minimum hours of rest and providing for record-keeping for a broader range of duties "undertaken on account of the ship", rather than just engine room and watchkeeping duties.</p>	<p>Additional minimum requirements for hours of rest would reflect operating best practice and so are not expected to impact on productivity or labour requirements for most New Zealand vessels.</p> <p>The development of the Maritime Rule amendment will identify the appropriate seafarers to require minimum hours of rest and record keeping, in consultation with industry.</p>
<p>Prohibiting deductions for board and lodgings for seafarers.</p>	<p>New Zealand practice is consistent with the intent of the Convention but a regulatory change may be required to make this explicit. This is not expected to have any material costs or impacts.</p>
<p>Minor or technical changes relating to repatriation, guidance on food preparation and the inspection of food preparation areas, and the construction design of new ships.</p>	<p>These changes are not expected to have any material costs or impacts.</p>
<p>Expanding inspection and enforcement requirements to include certification and inspection in accordance with the Convention.</p>	<p>There would be additional inspection and enforcement requirements, including of employment rights, but these would be undertaken in parallel with existing inspection regimes and would only require marginal additional time or cost for ship owners or operators.</p>

Regulatory change	Impact of the change
Ensuring Maritime New Zealand has the authority to enforce the Convention on foreign ships entering New Zealand.	Foreign ships would be inspected in parallel with the existing port state control regime. As most foreign vessels that service New Zealand will travel to countries that are party to the Convention, they will be required to comply with the Convention in any case.

Government agency and implementation costs

35. There will be some minor implementation costs for government agencies, primarily Maritime New Zealand, but these costs are expected to be low and will be managed from existing funding.

Risks of ratifying the Convention

Review of New Zealand's compliance with the Convention and the International Labour Organization's supervisory system

36. If New Zealand ratifies the Convention it will become subject to the International Labour Organization's (ILO) supervisory system for this Convention. The ILO's Committee of Experts on the Application of Conventions and Recommendations requires New Zealand to report, two years after ratification of the Convention, on the measures taken to implement the Convention and whether New Zealand's national laws aligns with the Convention. The Committee of Experts may seek further information from Government, suggest further regulatory changes, or (although very unlikely) make a formal complaint if it considered there were serious concerns that are unanswered.
37. Officials are confident that the proposed changes will meet the obligations under the Convention. Officials have consulted with the International Labour Office of the ILO on the technical issues associated with the Convention to ensure that our interpretation of New Zealand's compliance of the Convention aligns with the ILO's interpretation.

Consultation

38. The Minister of Transport has agreed to the submission of this paper.
39. Cabinet agreed to public consultation on a proposal to ratify the Convention [CAB Min (14) 10/11 refers]. Public consultation in June 2014 examined the background, risks, legislative implications and potential costs and benefits of New Zealand becoming party to the Convention.
40. Seven submissions were received from key maritime sector representatives, including ship-owner, operator and employer interests, union, employee and professional society interests and port interests. All submissions agreed that New Zealand legislation broadly aligns with the Convention, and supported ratification of the Convention.

41. Business New Zealand and the New Zealand Council of Trade Unions strongly support the Government becoming party to the Convention.
42. The Ministry of Transport has consulted with the following agencies on this paper: the Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade and Maritime New Zealand. The Department of the Prime Minister and Cabinet was informed.

Financial implications

43. The proposal in this paper has no material financial implications for Government expenditure.

Human rights implications

44. The proposal in this paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

45. New Zealand law, which applies to New Zealand registered ships, is already largely consistent with the Convention and only minor or technical changes to Maritime Rules and an Order in Council under the Maritime Transport Act 1994 are required, which are not expected to have any material impact or cost.
46. Should Cabinet agree that New Zealand ratify the Convention, this will create binding legal obligations on New Zealand.

Gender implications and disability perspective

47. There are no gender or disability implications of New Zealand becoming party to the Convention.

National Interest Analysis

48. An extended National Interest Analysis is required with respect to the proposal to ratify to the Convention because of the legislative changes expected.
49. The National Interest Analysis has been assessed by the Ministry of Transport Regulatory Impact Assessment Panel as meeting the quality assurance criteria.
50. We have considered the analysis and advice of our officials, as summarised in the attached National Interest Analysis. We are satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper are required in the public interest and will deliver the highest net benefits of the practical options available.

Publicity

51. The discussion document, *Have your say – Should New Zealand become a party to the Maritime Labour Convention, 2006* examined the Convention and is publicly available on the Ministry of Transport's website.

52. Following Cabinet's decision, the Minister for Workplace Relations and Safety and the Associate Minister of Transport will consider opportunities for publicity.
53. As ratification to the Convention will be of public interest, we intend to make this Cabinet paper publicly available on the Ministry of Transport's website after the Cabinet Minute is finalised.

Recommendations

54. We recommend that the Committee:
1. **note** that ratification of the Maritime Labour Convention, 2006 (the Convention) will allow New Zealand to inspect and verify that foreign ships carrying New Zealand's goods treat their crew fairly, and in accordance with internationally accepted standards; bring New Zealand into line with its major regional trading partners and protect New Zealand from potential harm to its international reputation and export trade
 2. **note** that the Convention will be brought into effect by the deposit of an instrument of ratification following notification that the necessary procedures to give effect to the Convention have been fulfilled
 3. **agree** that New Zealand ratify the Convention subject to satisfactory completion of the Parliamentary treaty examination process, by lodging an Instruction of Ratification with the International Labour Organization.
 4. **note** that the Associate Minister of Transport intends to approve amendments to the Maritime Rules and an Order in Council under the Maritime Transport Act 1994 to align domestic law with the obligations of the Convention, without further reference to Cabinet, unless in the course of their development a significant policy issue or risk emerges
 5. **approve** the contents of the National Interest Analysis (NIA) attached to this paper
 6. **agree** to present the Convention and NIA to the House for the purposes of the parliamentary treaty examination process, under Standing Order 397
 7. **note** that the Convention will enter into force for New Zealand 12 months following the date of deposit of the instrument of ratification
 8. **note** that this Cabinet paper will be made publicly available on the Ministry of Transport's website after the Cabinet Minute has been issued



Hon Craig Foss
Associate Minister of Transport
Date: 16/11/14



Hon Michael Woodhouse
Minister for Workplace Relations and Safety
Date: 20/11/14

