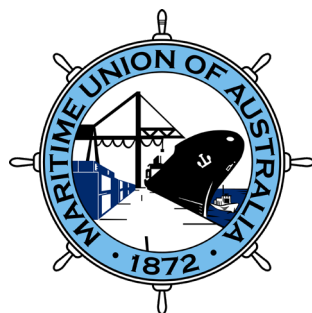




**Reform of the *Modern Slavery Act 2018*  
– essential to improving international  
shipping regulation**

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## **Introduction**

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The international shipping seafarer crew change crisis arising from the impact of the COVID-19 pandemic has focused the attention of the International Transport Workers Federation (ITF) and Maritime Union of Australia (MUA) on the issue of forced labour and modern slavery in the shipping industry.

The fact that up to 400,000 seafarers (at November 2020) have been unable to disembark their ship and be repatriated to their home nation at the end of the term of their engagement under a Seafarers Employment Agreement (SEA) – where, under the ILO Maritime Labour Convention, the maximum duration of an SEA is 11 months – has resulted in some seafarers exceeding this maximum duration by months, up to 6 months in some cases. The MUA regards this circumstance as constituting a form of forced labour. This is all the more so where seafarers are being coerced into signing contract extensions under duress.

As a consequence we have reviewed the *Australian Modern Slavery Act 2018* (MSA) to assess its utility in placing a stronger obligation on reporting entities under the MSA to report on forced labour risk and to take action to address those risks in accordance with section 16 (Mandatory criteria for modern slavery statements) of the MSA.

We believe the MSA requires amendment so it explicitly captures forced labour risk as it is exhibiting in the shipping industry.

## **The MUA proposal to reform the Modern Slavery Act 2018 (MSA)**

Modern slavery is defined in the MSA as conduct which would constitute an offence under Division 270 or 271 of the *Criminal Code Act 1995* (Criminal Code). The Criminal Code defines forced labour as being the condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free: (a) to cease providing the labour or services; or (b) to leave the place or area where the victim provides the labour or services.

Coercion is defined in the Criminal Code, but we think it needs broadening to capture forced labour on ships, so the circumstances of seafarers being detained on ships beyond the duration of their contract of employment as defined in the ILO Maritime Labour Convention (MLC) and laws giving effect to the ILO MLC e.g. Marine Order 11 made under the *Navigation Act 2012* (Cth), clearly constitutes forced labour on ships.

The MUA sought legal advice on options to strengthen the definition of forced labour. That legal advice recommended this could be achieved by an amendment to the Criminal Code as follows:

1: That a new section 270.6(1A) be inserted in the following terms:

(1A) For the purposes of this Division, forced labour, in the case of a seafarer on a ship, is the condition of a person (the victim) who provides labour or services if, because the victim is trapped at sea, a reasonable person in the position of the victim would not consider himself or herself to be free:

(a) to cease providing the labour or services; or

(b) to leave the place or area where the victim provides the labour or services.

2: That the following definitions be inserted as section 270.6(4):

(4) In this section:

Master means the person who has command or charge of a ship, but does not include a pilot.

Port includes a harbour.

Trapped at sea means:

- (i) a failure by the ship's master to dock at a port to enable a seafarer to disembark from the ship at the end of their agreed period of engagement; or
- (ii) a failure by the ship's master to dock at a port to enable a seafarer to disembark from the ship within 12 months of the seafarer commencing their period of engagement on board the ship.

The new offence created by proposed amendments 1 and 2 above is limited to the crime of forced labour under the MSA. It makes it clear that in the case of engagement of a seafarer for an indefinite duration or for a voyage, that the seafarer is to be allowed off the ship within 12 months. Beyond 12 months the engagement becomes forced labour.

The new offence is an offence for the purposes of Division 270 of the Criminal Code. The conduct that constitutes such an offence will fall within the definition of modern slavery for the purposes of the MSA. In turn the MSA will require reporting entities to include in their Modern Slavery Statements information about this new risk of forced labour in the entity's operations and supply chains; the actions that the entity has taken to assess and address this risk, including due diligence and remediation processes; and how the entity assesses the effectiveness of those actions.

Inclusion of such an amendment will our view provide a much greater chance of proving the existence of "forced labour" on a ship because it becomes a factual matter.

The proposal to amend the MSA is one of a number of reforms being advocated by the MUA to reform international shipping regulation. The particular areas where the MUA is advocating reform include:

- The work health and safety of seafarers, particularly on foreign ships trading with Australia and in Australian coastal trade;
- Seafarer rights under laws giving effect to the ILO Maritime Labour Convention (MLC), particularly relating to the safety and health of seafarers, shore leave, repatriation, medical attention and seafarer employment agreements (SEAs);
- Compliance with collective bargaining agreements (CBAs) approved by the ITF and labour provisions in seafarer employment agreements, compliance with the *Fair Work Act 2009* in domestic shipping along with the adequacy of minimum standards in international and domestic shipping;
- Seafarer vocational education and training (VET) qualifications and occupational licences;
- Maritime security;
- The Maritime Crew Visa system; and
- The interaction of the *Navigation Act 2012* and the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.