



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



NZ Branch Report

Kia ora, 2021 has started at a faster pace than the end of 2020 for our maritime colleagues both legal and non-legal. Our working environment is experiencing new challenges in terms of shipping, crewing, movement of goods and regulation all heavily impacted by the ongoing impact of COVID-19.

The New Zealand Branch is pleased to announce that we have set the date for our 2021 Branch Conference to be held at Parliament House in Wellington on May 13-14, 2021.

The theme will be the impact of COVID-19 and on our maritime sector including:

1. case studies of the challenges around repatriation of 650 foreign crew for the New Zealand fishing industry both from an industry and Government perspective
2. dealing with crisis in the supply chain
3. insurance implications
4. contract law: safety, force majeure and frustration

The event will address other topical issues that are at the forefront of our maritime minds, including:

5. will the Whakaari/White Island tragedy change adventure tourism in New Zealand?
6. iceberg ahead? Liability issues from shipping in Antarctica

So, we look forward to great attendance numbers in Wellington as we hold our first face-to-face conference since the onset of COVID-19.

Despite COVID-19, our maritime regulators – Maritime New Zealand, WorkSafe and the Ministry of Primary Industries (Biosecurity and Fisheries) – continue to be active and I set out below a snippet of the interesting activities in late 2020 and 2021.

I do ask that if anyone has any interesting cases or experiences they wish to share, please send to me so I can include in this New Zealand Branch Report, and I will note your contribution.

Wishing everyone a great first quarter and I look forward to seeing you at Wellington or on some of the great online seminars our Australian colleagues are operating, in particular Western Australian Branch.

Nga mihi

Maritime Activities in New Zealand October 2020-February 2021

No Fine Imposed on Cruise Operator for HSWA Breach

Fiordland Expeditions Ltd (FEL) has been ordered to pay NZ\$5000 in prosecution costs but no fine after pleading guilty to a charge under the Health and Safety at Work Act.

During a cruise in Doubtful Sound, the skipper of the vessel became distracted by questions from passengers and filleting fish. After four or five minutes, a passenger asked who was driving the boat.

Almost immediately the vessel struck a rocky outcrop. Hot water from an urn sitting unsecured on the bench in the galley splashed on to the arm of a passenger, burning her.

Judge RJ Walker concluded that FEL's culpability was at the lower end of the scale, accepting that the "incident was in large part a consequence of unexpected behaviour of the skipper" and noting the lack of any lasting injury. Judge Walker also gave FEL credit for an early guilty plea, remorse and remedial actions. The Judge additionally took into account "the devastating and almost fatal impact COVID-19 has had on the defendant's business", which had affected its financial capacity.

Chatham Islands Fisherman Discharged Without Conviction Under MTA

Murray Vincent Dix pleaded guilty to a charge under s 69A(1) of the Maritime Transport Act that he operated a ship in a manner that did not comply with his Maritime Transport Operator Certificate. This was because the certificate:

- did not include the vessel
- did not allow Mr Dix to carry out passenger charter operations
- did not authorise him to operate in the area in which he was operating the vessel

The defence submitted that Mr Dix thought that the necessary paperwork for him to operate the vessel had been completed and it came as a shock to him when he found out that it had not been.

Judge WK Hasting accepted that a conviction would be out of all proportion to the gravity of Mr Dix's offending and discharged him without conviction.

First-ever Maritime Enforceable Undertaking

Maritime New Zealand has accepted its first enforceable undertaking under the Health and Safety at Work Act. An enforceable undertaking is a binding agreement between the regulator and a person or corporation who has allegedly contravened the Act, whereby the alleged offender agrees to take various actions without admitting liability. The regulator may accept an enforceable undertaking proposed by the alleged offender instead of prosecuting, except where the alleged offending involved reckless conduct. WorkSafe has accepted a number of enforceable undertakings, but this was the first time Maritime New Zealand (as the regulator for health and safety in relation to work onboard ships and ships as places of work) had accepted one.

The enforceable undertaking was with ISO Ltd, one of New Zealand's largest stevedoring companies. It involved a near-fatal accident in December 2017 where a stevedore trying to get down from logs stacked above a ship's deck, fell eight metres onto a concrete wharf at the Port of Tauranga. While disembarking from the vessel, the stevedore held the handrail on a stanchion. The welding on the handrail gave way, causing him to fall and sustain serious injuries. The ship's operator, China Navigation Company Pte Ltd, had already pleaded guilty to a charge under the Maritime Transport Act. It was fined NZ\$24,000 and ordered to pay NZ\$30,000 reparation.

Under the enforceable undertaking, ISO agreed to:

- develop and deliver a national training programme for management personnel on working at heights in stevedoring operations. This will include risk management, the supply and maintenance safety equipment, ensuring the competency of all involved, delivering training to all ISO's 400 stevedoring staff and ensuring the injured worker is involved in developing and delivering the training
- research and develop solutions for access to and egress from above-deck cargo (getting on and off cargo stacked above decks is difficult and can be dangerous)
- research and develop alternative methods of descending from above-deck cargo in case of emergency

- develop a stevedores' ship safety database by working with the Port Industry Association to create a national online portal where stevedores can share and access information about ships and incidents, from which to identify problematic ships and identify solutions
- continue to provide the injured worker with ongoing support
- make suitable donations to the Philips Search and Rescue Trust, one of whose air ambulances transported the injured man between hospitals, and to the preschool the man's children attend

Manslaughter Conviction of Skipper

An intoxicated skipper has been sentenced to two years and seven months' imprisonment after pleading guilty to manslaughter in the Tauranga High Court. Clayton Patrick Graves died after the boat he was a passenger in collided with a beacon at Stoney Point. The boat's skipper, Guy Haydon Charles Appleton, had a blood alcohol level of between 110 to 220 milligrams per 100 millilitres of blood at the time of the crash.

The prosecution followed a joint investigation by Maritime New Zealand and the Police. Maritime New Zealand's Central Compliance Manager, Michael-Paul Abbott, commented: "As the skipper, Mr Appleton made a series of poor decisions which led to this tragic event. As this incident clearly highlights, boating and alcohol do not mix. Things can change quickly on the water. You need to stay alert and aware."

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March 2021

