



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## Better Interpretation of MLC Urged for Returning Kiwi Seafarers

A Government interpretation that Section B of the Maritime Labour Convention (MLC) is “not binding” is “missing the bigger picture”, says McElroys senior associate Stacey Fraser.

References in the section include that “every possible practical assistance should be given to a seafarer stranded in a foreign port pending repatriation” by signatories to the MLC – of which New Zealand is one.

Those representing returning New Zealand seafarers have cited such reference to question the legality of the Government’s current Managed Isolation and Quarantine (MIQ) settings, which effectively leave them disadvantaged when competing with others for MIQ spots.



*McElroys senior associate Stacey Fraser*

Ms Fraser acknowledges the pandemic has been a “global game changer and governments rightly needed time to develop their response”, but believes it is no time for a new perspective.

“It is great that agencies like Maritime New Zealand (MNZ) are assisting seafarers on a case by case basis, but the current situation is not sustainable and a long-term solution for seafarers is required,” says Ms Fraser.

“The issues for seafarers, and by extension the global supply chain, are only going to be exacerbated the longer this goes on – and there is no clear end in sight.

“It is correct that Part B of the MLC is only guidance, which is not binding. But that is to give states some flexibility as to how they give effect to their obligations under the mandatory requirements of the regulations and Part A.

“So, approaching the issue on that basis, I think is missing the bigger picture.”

Ms Fraser says seafarers have long been recognised as having a special status, which is expressly referred to in the preamble to MLC, which states: “Considering that, given the global nature of the shipping industry, seafarers need special protection.”

The framework of the MLC is for states to implement laws that create minimum employment standards for seafarers, so it sets down the requirements in employment contracts with owners/employers, emphasises Ms Fraser.

“And in particular, the MLC ensures that if a seafarer’s employment agreement expires while they are abroad, they are entitled to repatriation – the MLC has provision to make sure owners meet obligations

in this respect to repatriate at no cost to the seafarers. The purpose of Reg 2.5 (mandatory) that deals with repatriation is ‘to ensure that seafarers are able to return home’.

“Standard A.25 (also mandatory) then includes provisions for where the shipowner fails to make arrangements or to meet the costs of repatriation of seafarers who are entitled to be repatriated.

“First, the obligation falls to the state party of the ship who flies that flag and, if that is unsuccessful, ‘the state from which the seafarers are to be repatriated or the state of which they are a national may arrange for their repatriation and recover the cost from the member state whose flag the ship flies’.

“So, New Zealand has an obligation to get New Zealand seafarers – who are subject to the MLC – home if the owner and/or flag state has failed to make arrangements.

“Essentially, if you think about what the purpose of the MLC is – and what New Zealand has signed up to deliver – we need to make sure it is being delivered, irrespective of technical legal arguments.”

Ms Fraser says it could also be argued that very legal obligation is triggered where domestic policies prevent shipowner’s from discharging their obligations under the convention and seafarers from having the benefit of the protections that have been specifically agreed by the international community.

“But in any event, the purpose of the MLC should be central to decision making. New Zealand has signed up to MLC, recognising the special protections seafarers need, and specifically, the need for them to be able to return home from foreign ports.

“This cannot be treated as simply an employment issue. New Zealand needs to actively facilitate a means for seafarers to be repatriated when their employment ends in a foreign port.”

The consequences of seafarers not being able to repatriate have been discussed at length by the International Maritime Organization (IMO) and there have been resolutions by the United Nations, IMO and International Labour Organization on this issue, adds Ms Fraser.

Such discussion can be found [here](#).

“For ships to be sailing safely internationally, including those in New Zealand waters, states need to be ensuring the special protections for seafarers are given effect.

“New Zealand has a well-deserved reputation as a responsible international citizen, and its response to COVID-19 has been recognised globally. As a state that relies on international shipping, we must not turn a blind eye to the welfare of the seafarers that make it possible.”

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