



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



NZ Branch Report

Kia ora. I sit here in another COVID-19 lockdown. Aotearoa is now experiencing what our Australian colleagues have been enduring for many months.

The honeymoon is definitely over and it has been a bit of a shock to us Kiwis having had it so good for the past nine months. Feeling fortunate though, that we have a “Go Hard” strategy and very compliant citizens.

This morning of writing – Thursday September 2 – however, was a bright light in these difficult times, with our New Zealand Branch monthly meeting on Zoom. It was fantastic to see familiar faces and to share experiences and get a break from work and the quietness of lockdown. It’s at times like this that you really appreciate the friendships and collegiality you get from being a member of MLAANZ.

With our strict lockdown policies, our economy has been doing well and overall New Zealand is in relatively good shape. However, there are challenges affecting our shipping supply chains. Our exporters, especially those moving food in refrigerated containers, are struggling to move their produce and stock overseas due to a shortage of boxes in the South Pacific. We are at the mercy of the large container shipping companies who are treating the South Pacific poorly. Supply of all goods coming in from offshore is also slow and we are likely to experience this for at least a couple of years. Additionally, our ports are busy and some of the larger ones are overwhelmed with the backlog, while others thrive.

We are also experiencing significant issues in bringing seafarers, including ships engineers, into the country to man vessels and work on vessels needing five-year surveys. The cause being our MIQ (Managed Isolation and Quarantine system for incoming travellers). The demand is so high that there simply are not enough beds in these facilities to cope. The Government is doing an admirable job in fast-tracking immigration for these critical workers so they get visa border exemptions so they can arrive and work. But the issue is, they can’t come in until they have a MIQ room – a catch 22.

So, from a legal perspective, immigration lawyers and maritime law firms are extremely busy trying to get these seafarers into New Zealand.

The Government has tightly enforced its policy that seafarers returning home to New Zealand from overseas are no different to any other New Zealander wanting an MIQ bed. So, these seafarers are needing to resort to applying for limited emergency MIQ room allocations on the basis their visa has expired and they are illegal aliens in the country they are departing. This is causing significant stress amongst seafarers who find themselves in the position of breaching their visas to secure passage home. A rethink is required of Government policy for international critical workers, as we are a part of the global economy.

This also contrasts to the different treatment of foreign seafarers who are arriving on a plane from overseas and getting straight onto a ship that is immediately departing New Zealand waters. These seafarers do not even have to quarantine in MIQ.

The seafarers’ supporters are throwing down the challenge to Government to refine its policy and rules given how they affect returning seafarers – many who are returning home after over a year on a ship and needing not only physical rest but also mental health rejuvenation.

We can't be too critical of the Government though, as no one wrote a rule book for a pandemic! Overall, our Government and its departments, including Maritime New Zealand and the Ministry for Primary Industries, are doing a sterling job in very challenging and uncharted waters!

Maritime Legal Update in New Zealand

Genera Sentenced in First HSWA Prosecution for Injuries on a Foreign Ship Outside New Zealand Waters

Biosecurity and fumigation company Genera has been fined NZ\$245,000 and ordered to pay NZ\$66,089.96 in reparation to the victim and NZ\$25,135.75 in costs to Maritime New Zealand (MNZ), after pleading guilty to breaching its duties under the Health and Safety at Work Act 2015 (HSWA) by exposing an employee to a risk of death or serious injury. The case was the first in which MNZ has prosecuted a New Zealand employer for injuries on a foreign ship outside New Zealand waters.

On January 27, 2019 a Genera fumigant technician was working onboard a Panamanian-flagged logging ship, the Bunun Justice, when he fell about two metres off a log stack and sustained serious injuries, including a severely-broken leg. He was not found for nine hours. His injuries have required ongoing rehabilitation and the pain from them has limited his ability to work. He has also suffered depression and experienced recurring visions of the accident.

Judge Cameron found that Genera had failed to:

- provide training on working at heights
- require that its employee be accompanied by a crew member when carrying out work or carry a radio to communicate with crew
- provide an effective means of communication with its employees
- provide a fully-equipped first aid kit

MNZ central region compliance manager Michael-Paul Abbott said: "This decision shows how the Health and Safety at Work Act protects New Zealand-employed workers, wherever they are working across the globe."

Rule Change After Report Finds Storm Coverings Might Have Prevented Sinking

MNZ has released a report into the sinking of the New Zealand yacht *Essence*. On October 14, 2019 the yacht sank in heavy seas off the east coast of Northland while on a voyage from Fiji to New Zealand. The skipper died, but the other crew were rescued by helicopter from the sea after abandoning ship. The report found that the skipper's actions, including pulling out a crew member who submerged under the desk and helping two others into a liferaft, were instrumental to the survival of his crew.

The report concluded that the sinking might have been avoided if storm coverings had been fitted to the cabin windows. The Yachting New Zealand Safety Regulations of Sailing required that storm coverings be carried on international voyages for all windows more than 1852 square centimetres (two square feet) in area, but not that they be fitted. The Safety Regulations have now been amended to require storm coverings to be fitted.

Minister Considering Coroner's Recommendation About Lifejackets

Transport Minister Michael Wood is considering whether to make the wearing of lifejackets compulsory on boats six metres or less in length. Coroner Robin Kay recommended the change after an inquest into the drowning of a teenager in a 5.3-metre aluminium boat off New Plymouth in 2016. The coroner observed that several inquests had recommended this measure.

Minister Wood noted that some regional councils have bylaws requiring the wearing of lifejackets. In 2010, MNZ proposed making lifejackets compulsory on small boats, but the Government decided not to proceed with the proposal.

Nga mihi

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