



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Kiwi Cruise Initiative Beached by INZ

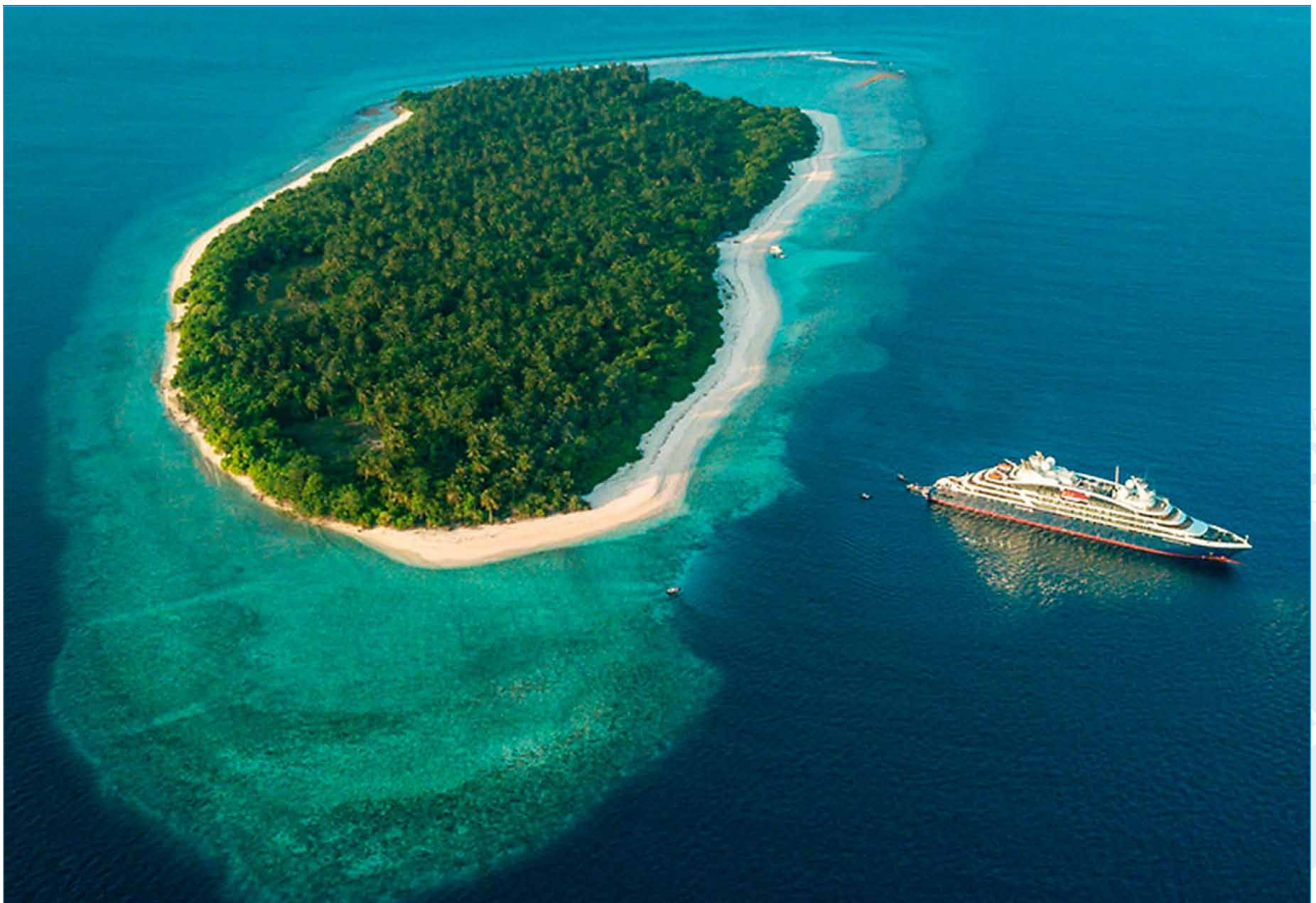
A late-January decision by Immigration New Zealand (INZ) to decline 61 of 90 visa applications for crew onboard the-then Auckland-bound Ponant cruise ship *Le Laperouse* still leaves the affected parties baffled.

The decision effectively served to prevent the 131-metre vessel's cruise programme which was expected to have generated NZ\$7 million-plus for the local tourism economy.

ISS-McKay managing director Craig Harris, whose firm acted as shipping agent to Ponant, cannot fathom the eleventh-hour approvals breakdown, given the "numerous communications" with various New Zealand Government agencies throughout an about two-month process.

He provided *Semaphore* with a response to specific points raised in INZ statements on the matter of January 29 and subsequently, commencing with the agency appearing to view the operational component of the *Le Laperouse's* visit as an addendum item instead of a fundamental reason for the vessel's visit.

"INZ were advised of the full schedule of cruises and intentions which was similarly supplied to other Government departments," said Mr Harris.



“This information was initially relayed to the Ministry of Health/Maritime New Zealand who used this information as part of the approval process. Everyone had approved it, going down through the process.

“The Ministry of Health had a whole team attached and waiting for it to come in. There was no reason for us to think we weren’t following due process.”

Mr Harris took issue with INZ’s viewpoint that those crew who were denied visas were “not considered to be essential in the operation of the vessel” as well as the agency’s apparent determination that such positions could be readily filled with New Zealanders.

“All crew members carry a Standards of Training, Certification and Watchkeeping (STCW) qualification. INZ advised that STCW was not required for coastal cruises – inferring that the crew were non-essential. [However], passenger ship crews all have lifesaving, firefighting training etc.

“When New Zealand crewing agencies were contacted for what INZ considered as non-essential crew, and by [placing] New Zealand advertising, it was not possible to fill these roles with qualified and experienced New Zealand candidates.

“Superyacht crewing agencies in New Zealand had the same issue and, at the time, the earliest you could book in to get a STCW qualification was May.”

He believes INZ also failed to properly appreciate the financial benefits to “NZ Inc” of permitting the Le Laperouse’s local cruise programme, which was another key criteria consideration available to the agency.

“The work would be considered to ‘have significant benefit to the national or regional economy’ given over NZ\$6 million was estimated in regional and rural tourism expenditure, over NZ\$1 million in commission to New Zealand travel agents and wholesalers, NZ\$150,000 in repairs and maintenance, not to mention the additional expenditure for food, alcohol and other items.

“This was overlooked by INZ who claimed the vessel was only coming to New Zealand for the NZ\$150,000 agreed repairs, which was a stipulation as part of the general approval process.”

Furthermore, Mr Harris is critical over the apparent lack of consistency demonstrated by INZ, given other recent border exceptions granted.

“[Other] exceptions were made – visas granted and managed isolation and quarantine (MIQ) space made available for The Wiggles, RuPaul, America’s Cup crew members etc, etc, just to name a few.

“Why did INZ allow the Heritage Expeditions (Russian) cruise vessel into New Zealand to conduct coastal voyages in December? Le Laperouse followed exactly the same processes.

“And, as approved by the Ministry of Health, Le Laperouse met all of the required COVID-19 border regulations as agreed as a key element of being allowed into New Zealand. Also, MIQ was aboard – not ashore taking up hotel space.”

Mr Harris answered other concerns raised by INZ during the approvals process, such as what he explained as being an unavoidable late-filing of the full crew list and border exemption request.

“The crew had to come through a process in Jakarta where they went through isolation and were tested – one was rejected – and then they came onboard. You can’t fill the forms in until the crew actually board – they are very definitive – and before that we did not know who they would be because of maritime border issues.

“On January 12 we told INZ the ship was coming over and we needed to get these things done quickly as the first cruise was on February 8.”



With both Ponant and other stakeholders such as travel agents understood to have incurred “significant expense” as a consequence of the situation, New Zealand Cruise Association chief executive Kevin O’Sullivan expressed concern over the potential long-term damage to the country’s reputation as a cruise destination.

“This should never have happened and this has, sadly, badly tarnished our country’s previous cruise-friendly reputation,” said Mr O’Sullivan.

“We do believe the INZ decision will have consequences for future deployment by cruise lines.

“We must start working together to provide a pathway for resumption. It can be done.”

Shipping New Zealand president Keith Thompson, who organisation represents ship agents, shared a sentiment expressed by Mr O’Sullivan that potentially a “political decision” had presided over due process.

“It is a concern that it got so advanced in its organisation only to get turned away at the last hour,” said Mr Thompson.

“It makes you wonder where are the holes. It makes you wonder if these Government agencies are working together.”

INZ Position

On January 29, Immigration New Zealand (INZ) provided a statement attributable to INZ border national manager Peter Elms, outlining the rationale for its decision to refuse over two-thirds of visa applications from crew onboard the *Le Laperouse*.

According to INZ, the timeline entailed:

- December 18 – the foreign-flagged cruise ship *Le Laperouse* was granted permission (subject to certain conditions) by the Director-General of Health under the Maritime Border Order to travel to New Zealand for the dual purposes of delivering the vessel to a business and to carry out refit or refurbishment of the vessel

“The permission was on the explicit condition that Le Laperouse ‘obtain any requisite visas from INZ before arrival in New Zealand’,” commented Mr Elms.

“This condition was made clear twice in the approval letter from the Ministry of Health together with a link to the relevant INZ webpage for maritime exceptions. It is, and has always been, a legal requirement that all persons onboard must meet current immigration requirements.”

- December 21 – a New Zealand shipping agent representing the owners of Le Laperouse [ISS-McKay] contacted INZ for the first time, seeking information about the immigration process. INZ advised the shipping agent of the process for requesting an immigration exception for the crew onboard Le Laperouse to come to New Zealand. No further contact was made by the agent with INZ until January 8 when the border exception request was lodged
- January 8 – INZ received a border exception request for the 90 foreign crew members onboard Le Laperouse. This request included a full crew list with names, nationalities and roles
- January 10 – Le Laperouse departed Jakarta and started its journey to New Zealand without having been granted the necessary immigration approvals, despite this being a condition of entry into New Zealand as outlined in the permission granted by the Director-General of Health
- January 12 – INZ was advised by the shipping agent that Le Laperouse was en route to New Zealand. INZ asked the shipping agent to communicate to all parties that the crew on the ship cannot enter New Zealand without the appropriate visas and that this may take longer than usual due to the large number of crew requesting border exceptions
- January 22 – 29 foreign crew members were granted border exceptions for New Zealand and 61 were declined

“For foreign crew to be granted an exception to enter New Zealand under these circumstances, they must be considered essential for the operation of the ship to travel to New Zealand for the purpose it was granted permission – ie, refit or refurbishment of the vessel. Immigration instructions specifically exclude anyone on a ship who is not essential for the purpose.

“From the information provided, INZ determined that the 61 individuals who were declined are primarily employed to provide passenger services during the course of operating a cruise service (such as bar and restaurant staff, a masseuse, a hairdresser and housekeepers) and are not considered to be essential in the operation of the vessel to travel to New Zealand for the purpose of refit or refurbishment. Therefore, they do not meet the relevant immigration instructions and were declined.”

- January 21 – [meanwhile] INZ received a separate request for a border exception, this time under the “other critical worker” category, even though a decision had not yet been made on the earlier request.

“Once a decision on the earlier request was made on January 22, INZ considered the other critical worker request only in relation to the 61 workers who had been declined. As stated on INZ’s website, border exception requests under the other critical worker category are generally decided within two weeks

“INZ considers all requests for a border exception against the relevant immigration instructions and individuals must meet the specific criteria to be granted an exception.

“The ‘other critical worker’ criteria are based on whether the skills or experience the person has are readily obtainable in New Zealand or whether the worker is undertaking a time-critical role in specific areas (such as for work which brings significant wider benefit to the national or regional economy).

“INZ was not satisfied that the skills, experience and qualifications of the individuals included in the request (such as bar and restaurant staff, a masseuse, a hairdresser and housekeepers) are not readily obtainable in New Zealand. INZ was also not satisfied that,

based on the detail provided, there was a significant wider benefit to the national or regional economy.

“Therefore, the 61 crew members were also declined an exception under the other critical worker category. This decision was communicated to the shipping agent on January 27.”

In the late-January statement, Mr Elms emphasised that the New Zealand border remained closed to all-but New Zealand citizens and residents and foreign nationals who are determined to have a critical purpose for coming to New Zealand.

“This applies to all arrivals into New Zealand whether it is by air or sea.

“The owners of Le Laperouse have utilised the services of a third-party shipping agent to represent their interests. INZ has been in frequent communication with the shipping agent throughout the process.

“It is, however, [the] ship owner’s responsibility to ensure they fully understand the immigration process, their legal obligations and allow sufficient time to secure all of the necessary approvals before seeking to enter New Zealand.

“INZ would like to reinforce that anyone wanting to come to New Zealand must make sure they have the appropriate immigration approval before making any plans or beginning their journey to New Zealand.”

March 2021

