



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



NZ Branch Report

Kia ora

As we approach the Christmas Festive Season and a well-earned break for all of our members, it is a good opportunity to sit back and reflect on the past 12 months and check in as to what were our expectations and aspirations, and what turned out to be the reality.

In the MLAANZ space we were champing at the bit to hold in-person conferences and much planning, especially by our Queensland Branch, took place in preparing for the Federal Conference. The reality was we were pipped to the post by COVID.

The New Zealand Branch was very fortunate to hold its conference in Wellington earlier in the year but only by the skin of its teeth as COVID soon locked down our largest city for many months.

Online is great and some branches have excelled in this arena and a big congratulations. To be honest though, we crave the personal contact of our colleagues and friends – the conferences in the big Aussie cities and all the perks that go with that. So, we didn't get our conferences but I remain confident 2022 will bring the return of the Federal Conference and let's put a massive effort into not only putting on a great show but making the effort to attend.

What I have observed across both federal and New Zealand Branch meetings is the clear deterioration of the mental wellbeing of our people. In particular those experiencing elongated lockdowns have clearly had the spring taken out of their step as their personal and work worlds have been turned upside down.

It is extremely important that we take time to contact our colleagues, especially those having been in lockdowns, to keep in touch and keep conversing. Recently, one of my Outward Bound watch called me and said "how are you doing 'Hamie'?" and I said "I'm all good mate" – I wasn't, I was "stressed to the max" – and he had noticed I had not been as active as usual on our watches messenger page. He cared and took the time to touch base and squeeze out of me what was happening. I was so grateful he cared and our "real raw chat" got me talking and was a catalyst to me opening up rather than hibernating on my stresses.

So please take time to look after yourselves and get plenty of exercise, eat well and talk about and practice mental health wellbeing.

Great reads for Christmas are:

- "Red Blue" by Ceri Evans – which is about performing under pressure, so it applies for work but equally in our personal lives as to how we can be better people, with some really simple easy techniques to take our stressed "red mind" back into a more rational "blue mind" when required
- "Burnout" by Suzie McAlpine – which helps out try to avoid burnout

In the maritime world our ports are at record levels of shipping movements. Even here in Nelson, I watch the ships come and go everyday as we live opposite the shipping entrance to our port, and it just brings home to me the massive importance shipping and the maritime industry plays in our daily lives and economies.

With large backlogs worldwide and increased movements, we are seeing increased volumes of maritime-related legal work, including an increase in contract work around exporters, importers and shippers. I think it is great to be a maritime lawyer in these COVID times. Being agile will be a strength, as the legal work will be maritime-focused but may not be the traditional maritime law you have undertaken.

Maritime Legal Update in New Zealand

Since our last update, Government agencies have been busy reminding users of the importance of protecting our underwater cables.

Hefty fines have also been handed down by our courts for both a serious fall injury and a tragic death at sea, and we look back ten years to the Rena incident on the anniversary of one of New Zealand's largest and most complex maritime disasters.

Cables Guidelines

Maritime New Zealand (MNZ) has released enhanced guidance to ensure everyone enjoying water activities is aware of the submarine cable and pipeline protection areas (CPAs). The guidance explains the importance of ensuring submarine cables and pipelines are not damaged, for example, when anchoring or fishing, and how to make an application under the Submarine Cables and Pipelines Protection Act 1996 (SCAPPA).

Hefty Fine for Open Hatch Incident

An employee who was seriously injured falling through an open hatch on passenger vessel, The Spirit of Queenstown, has led to tourism company, Southern Discoveries, being fined NZ\$160,000 and ordered to pay costs by the Queenstown District Court.

The court also ordered Southern Discoveries to pay approximately NZ\$35,000 in reparations for emotional harm and consequential loss to the employee.

Southern Discoveries pleaded guilty to one charge under the Health and Safety at Work Act 2015 of exposing an individual to a risk of death or serious injury.

Southern Discoveries conducts tourism activities in Queenstown and the Milford Sounds. The Spirit of Queenstown is one of two passenger vessels that operates scenic cruises across Lake Wakatipu, between St Omer Wharf and Mt Nicholas Farm.

\$500,000 Fine and Reparation After Death on Sanford Fishing Vessel

The death of a crew member on the factory fishing vessel, San Granit, has led to fishing company, Sanford, being fined NZ\$375,000 and ordered to pay NZ\$121,860 in reparations to the family of the deceased and NZ\$35,000 in costs by the Timaru District Court.

Sanford pleaded guilty to one charge under the Health and Safety at Work Act of exposing workers to risk of death or serious injury, and the court has now released its reserved decision.

MNZ investigations manager Pete Dwen said the tragedy occurred in November 2018 when Steffan Stewart became caught in machinery in the ship's automated freezer system for processing fish.

"The need for machine guards to protect workers is a well-known issue on ships," said Mr Dwen.

When Sanford bought the San Granit in 2016 it had an "at sea safety report" completed to identify risks onboard and what could be done to fix them. Dangers in the automated freezer system were identified as "high risk".

This case highlights the heavy fines and reparations for health and safety breaches being ordered by New Zealand's courts.

Rena Grounding and Oil Spill – Ten-Year Anniversary

This October saw the ten-year anniversary of the Rena incident. Many of the New Zealand Branch will have been personally involved in this incident, for which the key facts entailed:

- Liberian-flagged Rena hit Ōtāiti/Astrolabe Reef off the Bay of Plenty coast in the early hours of October 5, 2011
- 350 tonnes of heavy fuel oil leaked into the sea
- coastlines were affected by oil, debris and shipping containers
- thousands of seabirds and coastal birds were affected by the oil, with 420 live, oiled penguins collected, cleaned and released into the wild by the National Oiled Wildlife Response Team – a further 60 dotterel were pre-emptively collected to prevent them from being oiled
- some remains of the 236-metre ship Rena were left at bottom of the sea – salvors removed the top sections of the vessel and most of the containers
- local residents, salvage operators and volunteers were exposed to possible health risks
- Government response efforts including a clean-up cost of NZ\$47 million, with over NZ\$27 million contributed by the ship's owners
- the salvage was carefully overseen by the Government but paid for by the ship's owners at a cost of NZ\$700 million
- MNZ led the complex and large-scale response, which involved most of its staff, many response partners, representatives of the local community and central and local government – a grounding and oil spill had not occurred in New Zealand on this scale previously, but the country is considered better prepared for the future as a result

Maritime Consultations – MNZ Maritime Rules Review

Design, Construction and Equipment

MNZ has reached the consultation phase in its 40-Series Reform project, which is a multi-year initiative to reshape the rules governing domestic commercial vessels' design, construction and equipment.

Project Overview

The intention is to reorganise the rules under 15 topics and harmonise them across vessel types as much as possible.

At present, the rules are defined by which vessel type they refer to – passenger, non-passenger, fishing and sailing. This causes duplication and inconsistencies and does not allow the rules to be easily updated to cater for new innovations.

Five Goals for the New Rules

The rules review goals entail:

- providing a clear rules structure – which is simple for the sector and regulator to follow
- developing outcome-based rules – which provide a framework for the sector to work within and which are flexible enough to sustain changes to technology and sector practice
- ensuring transport instruments contain detail – whereby specific requirements are contained in a set of transport instruments which are easier to amend and can be kept up to date with advances in technology

- delivering consolidation and harmonisation – rules being consolidated wherever possible across commercial passenger-carrying, non-passenger-carrying, sailing and fishing vessels to eliminate inconsistencies that currently exist, and to ensure the rules as a set cover all vessels, with specific detail included for different classes only where necessary
- providing a risk-based approach to setting standards – ensuring the rules are commensurate with the risk, so that MNZ does not over-regulate where it is not necessary but also does not under-estimate the risk for the conditions in which a vessel is operating

I wish you all a Meri Kirihimete and Happy New Year.

Nga mihi

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