



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Ombudsman Report Fails to Satisfy Seafarer Complaint

A report by Chief Ombudsman Peter Boshier criticising Government officials' handling of New Zealand's pandemic Managed Isolation Allocation System (MIAS) has not satisfied the specific grievances of fly-in fly-out (FiFo) seafarer Captain Glen Boyes.

Captain Boyes first applied for an MIAS allocation when scheduled to sign off his vessel in Yangon (Myanmar) during last year's heightened period of civil unrest in the country.

With repeated requests for the allocation denied – which he claims is a direct breach of New Zealand's obligations under the Maritime Labour Convention – the Captain was forced to remain onboard for several months until the ship relocated to Batam (Indonesia).

Numerous Official Information Act (OIA) requests made following his return to New Zealand were reportedly met with either “non answers” or by being “passed from one Ministry to another”. This ultimately led him to lay a complaint with the Office of the Ombudsman.

“My objective with the Ombudsman process was to ensure this never happens again and highlight the total disdain shown to international conventions by New Zealand governing authorities,” Captain Boyes said at the time.

“No one country, I believe, trampled over seafarers' rights as much as New Zealand.”

However, following the release of Mr Boshier's report on December 12, Captain Boyes wrote back to Office of the Ombudsman two days later – content of which he has shared with *Semaphore*:

Good morning,

I have reviewed Ombudsman release and MBIE's response ...

However, still waiting for Mr Boshier's opinion/response to my complaint.

And in particular MBIE's advice to sign off vessel during a coup d'état, and apply for a Emergency Voucher 2C – which, quite possibly, ended up with me not being here today if I followed [the MBIE representative's] advice.

With that in mind, is Mr Boshier going to finalise an “opinion” regarding seafarers such as myself or is that release the final report?

Please advise.

Kind regards
Capt Glen Boyes

On December 15 Captain Boyes confirmed that no acknowledgement or response had yet been received.

“I'm hoping another report/opinion to follow,” he said.

“Otherwise if not, this would of been a huge waste of time, resulting in zero trust in the politicised system, which should be impartial.”



Captain Glen Boyes bringing the barge Triumph 5 into Singapore for use as quarantine accommodation during the height of the pandemic

A colleague of Captain Boyes, Captain Kevin Judkins – who also picked up on the campaign, claiming this case was “just the tip of the iceberg” – additionally expressed disappointment there was no reference to seafarers in the Chief Ombudsman’s report.

“All affected seafarers are hoping [for additional, official comment that] is significantly-more specific in nature than the general statement from the Ombudsman,” he said.

MBIE Advice Did Not Consider “Very Real Impact”

Mr Boshier’s investigation – driven by “hundreds of complaints” – found advice given to the Government on the MIAS by the Ministry of Business, Innovation and Employment (MBIE) “did not adequately take into account the very real impact it would have on people’s lives”.

“We ended up with a lottery – a system that did not fully allow for the consideration and prioritisation of individual circumstances of people trying to come home during the COVID-19 pandemic,” he stated.

“While Ministers made the final decisions on the shape of the system, I would have expected MBIE’s officials to provide free and frank, clear and sound advice and recommendations on the fairest options that considered the impact it would have on people.

“This would have allowed decisions to be made, not just with reason, but with sympathy and honour.”

Although acknowledging the “unprecedented set of circumstances” before MBIE, he did not accept those were sufficient to not implement a system which enabled consideration of individual circumstances.

“The impact on people was too severe. A fundamental human right was being limited and people’s lives were being significantly impacted.

“It is obvious that managed isolation and quarantine (MIQ) and MIAS caused a huge amount of stress and frustration for New Zealanders trying to exercise their right to enter the country.”

Mr Boshier found MBIE's advice to Ministers on MIAS design and operation failed to put sufficient emphasis on people's individual circumstances in the following ways:

- a virtual lobby was recommended over other options when a change in the online application process for spaces within MIAS was being considered
- while some spaces were set aside for people with special circumstances under the voucher system available offline, this did not cater for many New Zealanders who had a genuine or urgent need to travel nor those experiencing delays in returning to New Zealand
- it failed to fully ensure there was a way for disabled people to independently apply for vouchers

Mr Boshier also found MBIE acted unreasonably by failing to undertake an analysis under Te Tiriti o Waitangi when developing its online allocation and by not consulting with Māori sooner.

He has recommended MBIE address the issues raised in the design of any future national quarantine system.

While clarifying he has no jurisdiction over the Ministers involved, Mr Boshier added: "I will be following up with the complainants in this investigation to see whether they have been affected by the individual decisions made by MBIE that may be flawed, and if a personal apology from MBIE is appropriate."

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