



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Ombudsman Calls Out MBIE Over Seafarer Treatment

New Zealand's Chief Ombudsman Peter Boshier has determined the Ministry of Business, Innovation and Employment (MBIE) gave flawed advice to the COVID-19 Response Minister regarding offshore seafarers and the Managed Isolation Allocation System.

The Ombudsman's issued his findings on 28 March, having investigated a complaint from two seafarers who had difficulties booking places under the Managed Isolation Allocation System between November 2020 and March 2022.

"In my view, common sense, consideration of the seafarers' unique circumstances and a sense of humanity were needed in MBIE's decision-making and subsequent advice around how the Managed Isolation Allocation System affected these men," he stated.

While acknowledging the Managed Isolation and Quarantine (MIQ) system had to deal with "large numbers" during the pandemic, he criticised MBIE for failing to duly consider:

- implications for seafarer rights under the Bill of Rights Act, in particular the right to enter New Zealand
- the need for international co-operation on global trade
- relevant resolutions made by the International Maritime Organization and United Nations General Assembly
- the designation of seafarers as key workers

"An agency is expected to present all relevant information for consideration and not rely on a Minister to request further information.

"In addition, the Ministry did not sufficiently address the limitations of the offline emergency allocation process as a solution for offshore seafarers and drew an inappropriate comparison to other fly in, fly out [FiFo] workers."

In regard to his subsequent recommendations, the Chief Ombudsman stated:

1. while I acknowledge that MBIE did not make the decision, its advice formed the basis of the Minister's decision against having an offline allocation for offshore seafarers, which had a direct impact on the two complainants. I therefore recommend that MBIE considers apologising to the two complainants for the deficiencies in its advice
2. I recommend that, if the need to use the MIQ system arises again, MBIE provides fresh advice to the Minister on offshore seafarers in a manner that addresses the deficiencies I have identified. While significant changes have been made to MIQ, I consider it important, for any potential future closure of the borders, that the position of offshore seafarers be readdressed

Report and MNZ Response Welcomed

Having campaigned for New Zealand seafarers who were unable to repatriate during the height of the pandemic, Captain Kevin Judkins said the Ombudsman's report provided "total vindication of what we always knew was a slam dunk".

On May 11, Captain Judkins labelled subsequently-drafted Maritime New Zealand (MNZ) advice to MBIE as “the best news any of us could ever dared hope to believe”.

“All of the recommendations that Captain Glen Boyes and myself put to [a recent meeting of officials] have been accepted by MNZ and form the major body of the recommendations put forth,” he stated.

“Kudos to Peter Brunt of MNZ for having the patience to listen and understand all of the points we raised and to collate them into a very powerful document recommending substantive change in the way FiFo New Zealand seafarers should be professionally managed in any future border closures.”

However, Captain Judkins lamented that the “same information wasn’t promulgated voluntarily and unilaterally by MNZ to MBIE some 26 months ago”.

“Savour the moment of the victory, for a victory indeed it well is and well earned, albeit turned bittersweet over the years.”

Debate Over MBIE Position

Nonetheless, Captain Judkins has expressed reservations on the updated advice on MIQ allocation settings for New Zealand seafarers issued by MBIE MIQ general manager Shayne Gray on 30 May.

“It goes a very long way towards righting the wrongs they perpetuated against us, however, clause 26 pains me somewhat in its discriminatory nature,” stated Captain Judkins.

The below is an excerpt from a letter he has subsequently sent to MNZ deputy chief executive of regulatory frameworks Peter Brunt.

... point 26 “prioritising meeting New Zealand’s legal obligations under the MLC [Maritime Labour Convention] over the return of New Zealand Seafarers” demonstrates that they still don’t get it.

This language demonstrates that MBIE (and by default MNZ) are:

- 1. continuing their discriminatory practices against New Zealand FiFo seafarers, and*
- 2. appear unaware that New Zealand FiFo seafarers are equally covered by the real MLC, in the same manner as every other seafarer in the world.*

Therefore these statements by MBIE are discriminatory against us and diametrically opposed to the Ombudsman’s findings.

I urge you in the strongest possible terms to object to clause 26 and have it reworded along the lines of ... “we would recommend prioritising the return of New Zealand seafarers over foreign nationals. This would support the global continuation of maritime supply chains” ...

By giving New Zealand seafarers preferential access to the maritime allocation, the recommendations contained within the memo will thus be fully compliant with the Ombudsman’s findings.

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