

## Chapter 2

### Australian shipping reviews and regulations

2.1 This chapter examines previous reviews and reports into Australian shipping, and the findings of those reports. The chapter considers the 1992 and 1995 *Ships of Shame* reports into ship safety, and the 2008 inquiry into the revitalisation of the Australian coastal shipping industry.

2.2 The chapter discusses the legislation governing the movement of vessels in Australian waters, primarily the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and considers the efficacy of the general and temporary licence schemes.

2.3 The chapter also considers the wages paid to international seafarers, how the *Fair Work Act 2009* applies to maritime crew on FOCs, and the welfare services available to Australian and international seafarers.

#### Maritime Labour Convention

2.4 The Maritime Labour Convention 2006 (MLC) is an international convention developed under the International Labour Organization (ILO), and ratified by Australia in December 2011. The MLC determines the working rights and living conditions for seafarers at sea, on public or private commercial vessels. It aims to 'achieve decent work arrangements for seafarers and secure economic interests in fair competition for quality shipowners'.<sup>1</sup>

2.5 The MLC contains five main subject areas:

- Minimum requirements for seafarers to work on vessels: sets minimum age requirements, health and training conditions and the regulation and audit of seafarer recruitment and placement services;
- Conditions of employment: determines minimum requirements in relation to wages, hours of work and rest, leave, compensation and access to training;
- Accommodation, recreational facilities, food and catering: relates to on-board living conditions and standards, including room sizes, heating and cooling, laundry and sanitary facilities, and hospital accommodation;
- Health protection, medical care, welfare and social security protection: to ensure the prompt access to medical care on-board, including dental care, by appropriately trained personnel, and access to shore-based welfare facilities; and

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1 Australian Maritime Safety Authority, *Maritime Labour Convention, 2006: A Guide to the implementation of the MLC in Australia*, Version 3, March 2016, p. 1.

- Compliance and enforcement: details flag state responsibilities for implementation and enforcement, and port state responsibilities for enforcement on foreign vessels (such as inspections, investigations and detention).<sup>2</sup>

2.6 The MLC also provides that seafarers, or their representatives, should be given clear direction on how to make complaints about the working and living conditions on a vessel. Owners must ensure that seafarers can make a complaint 'without recourse or concern'. Seafarers can make a complaint directly to AMSA or any other organisation involved with seafarer welfare, and cannot have any actions taken against them for making a complaint.<sup>3</sup>

2.7 In its submission to the inquiry, the ICS argued that the standards developed by the ILO through the MLC showed that shipping was 'the only industry with a comprehensive framework of detailed employment regulations that is enforced on a global and uniform basis'.<sup>4</sup>

2.8 In 2016, AMSA received 133 complaints about 179 alleged breaches of the MLC, with regards to living and working conditions on vessels. The main category of complaint was wages, followed by food and catering. AMSA advised that:

Of the complaints received, 52 were through the International Transport Workers Federation (ITF), 38 directly from seafarers, 20 from various welfare groups, 13 from government agencies and 10 from other sources.

A total of 68 complaints were substantiated, nine were forwarded to the Fair Work Ombudsman for investigation and four were unable to be investigated due to the vessel departing and not returning to Australian waters. No evidence could be found to substantiate the remaining complaints.<sup>5</sup>

## 1992 and 1995 Ships of Shame reports

2.9 FOC vessels in Australian waters were first seriously considered by the House of Representatives Standing Committee on Transport, Communications and Infrastructure, in its 1992 report *Ships of Shame: Inquiry into Ship Safety*. This was

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2 Australian Maritime Safety Authority, *Maritime Labour Convention, 2006: A Guide to the implementation of the MLC in Australia*, Version 3, March 2016, pp. 2-3.

3 Australian Maritime Safety Authority, *Maritime Labour Convention, 2006: A Guide to the implementation of the MLC in Australia*, Version 3, March 2016, p. 19.

4 International Chamber of Shipping, *Submission 8*, p. 7.

5 Australian Maritime Safety Authority, *Port State Control – 2016 Report*, p. 8.

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followed by the same committee's follow-up report in 1995, *Ships of Shame: A Sequel*.<sup>6</sup>

2.10 The 1992 report was triggered by the loss of six bulk carriers off the coast of Western Australia between January 1990 and August 1991, with increased awareness during the inquiry that the loss of bulk carriers was a significant problem. The report focused on the minority of foreign ships that endangered the lives of all crew on board, as well as the environment and the marine facilities in the countries they visited.<sup>7</sup>

2.11 The *Ships of Shame* inquiry heard evidence of:

- unseaworthy ships in operation;
- the use of poorly trained crews, some with false qualification papers;
- flag states failing to carry out their responsibilities under international maritime conventions;
- inadequate, deficient and poorly maintained safety and rescue equipment, and seafarers being denied medical treatment;
- beatings of sailors by ships' officers, sexual abuse of young sailors and crews being starved of food;
- crew being forced to sign false statements indicating a higher rate of pay than actually received, and crew being forced to work excessive overtime hours for no pay; and
- seafarers not being paid for several months and/or remittances not being made to families at home.<sup>8</sup>

2.12 The inquiry found that this and other evidence came as no surprise to industry participants, who all seemed aware that such events were occurring. Yet 'almost no one was trying to assist the unfortunate seafarers', with the exception of seafarer unions and the Missions to Seamen. However, their 'limited efforts were hampered by

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6 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: Inquiry into Ship Safety*, December 1992; House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: A Sequel*, December 1995. Both reports can be found at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=report\\_register/bycomlist.asp?id=120](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bycomlist.asp?id=120)

7 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: Inquiry into Ship Safety*, December 1992, pp. ix, xv.

8 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: Inquiry into Ship Safety*, December 1992, p. ix.

threats of seafarers being blacklisted and intimidated by crewing agencies, ship officers, managers, owners and operators'.<sup>9</sup>

- 2.13 The 1992 report presented a number of recommendations, that were aimed to:
- reduce the level of risk to which the lives of seafarers, the Australian marine environment and property were subject to;
  - improve the level of compliance with international convention standards by flag states, ship owners and managers; and
  - improve the efficiency and effectiveness of the ship safety regulatory regime both internationally and in Australia.<sup>10</sup>

2.14 The *Ships of Shame* reports, and an additional progress report completed in 1994, were considered by the committee's May 2016 interim report, as was evidence received by the committee as to the progress made since the 1992 and 1995 reports. The interim report detailed a number of positive developments that had been made, including the International Safety Management Code, the Port State control system, the 2006 MLC and improved monitoring of and communication with foreign vessels in Australian waters.<sup>11</sup>

2.15 However, the committee went on to note the continued areas of concern with regards to the operation of FOC vessels, including new issues that have arisen since the reports of the early 1990's. Some matters raised by *Ships of Shame* do not appear to have been rectified and in some instances are just as bad, as use of flags of convenience has become more prevalent.

## **2008 inquiry into rebuilding Australia's coastal shipping industry**

2.16 In October 2008, the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government tabled its report, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation* (the shipping inquiry).<sup>12</sup>

2.17 The inquiry identified an increase in foreign-flagged vessels, a 'skills crisis' and port infrastructure as key issues directly impacting the growth of the Australian coastal shipping industry, alongside a growth in freight movements by road and rail,

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9 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: Inquiry into Ship Safety*, December 1992, p. x.

10 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: Inquiry into Ship Safety*, December 1992, p. 76.

11 Discussion on the *Ships of Shame* reports, and evidence as to the progress made since their completion, can be found in Chapter 1 of the committee's interim report.

12 The final report can be found at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=itrdlg/coastalshipping/report.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=itrdlg/coastalshipping/report.htm). A Government Response was not received for this inquiry.

but not shipping. For shipping to increase its share of the national freight task, it would need to become more competitive when compared with rail and roads.<sup>13</sup>

2.18 Evidence reviewed by that shipping inquiry found that a number of developed countries, particularly in Europe, had taken steps to address the decline in their shipping fleets. The fiscal incentives and measures taken by these countries included favourable tax regimes for ship-owners, cost-offsets in employing domestic seafarers and the encouragement of training and career development.<sup>14</sup>

2.19 The shipping inquiry acknowledged that many recommendations had already been made, primarily by industry stakeholders, to reform the maritime sector. However, it noted that 'much of the hard work and analysis required to reform Australia's shipping policy and regulation has been completed without a clearly articulated policy'. Government announcements made in 2008 about fostering a viable shipping industry went some way to develop policy, and the shipping inquiry also made a number of recommendations to guide a new policy framework for coastal shipping.<sup>15</sup>

2.20 The shipping inquiry recommended the establishment of a single, national maritime training authority, to help attract and retain new seafarers, address the prohibitive cost of maritime training and to harmonise the disparate training standards found across Australian jurisdictions.<sup>16</sup>

2.21 Overall, the shipping inquiry found that:

The strongest argument for revitalising Australia's coastal shipping industry is an economic one. A strong domestic shipping industry can assist in the alleviation of land transport bottlenecks, infrastructure constraints and environmental impacts, as well as provide economic benefits derived from the creation of local employment and the growth of maritime services. Australian defence, maritime safety and security could also benefit from an expanded coastal shipping sector.<sup>17</sup>

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13 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, pp. 6-7, 11.

14 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, p. 10.

15 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, pp. 20-22.

16 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, pp. 56-67.

17 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, p. v.

2.22 As a result of the shipping inquiry's recommendations, a Shipping Policy Advisory Group was established in 2009, comprising of union and industry representatives. In 2010, this Group provided advice on how to implement the shipping inquiry's recommendations, via its report *Reforming Australia's Shipping – A Discussion Paper for Stakeholder Consultation*. Following this, between February and May 2011, three industry reference groups met and advised on key reform areas.<sup>18</sup>

### **Coastal Trading (Revitalising Australian Shipping) Act 2012**

2.23 In 2012, the then Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, introduced a suite of legislation aimed at revitalising the Australian shipping industry, as part of the 'Stronger Shipping for a Stronger Economy' package. The package included the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the CT Act). The CT Act sought to regulate the operation of vessels in Australian waters and carrying cargo between Australian ports, updating outdated provisions of the *Navigation Act 1912*. Its primary purpose was to promote a viable local shipping industry and its long-term growth, by maximising the use of Australian-flagged vessels.<sup>19</sup>

2.24 The CT Act established the Australian General Shipping Register, for domestic vessels and Australian vessels with international certification to have access to the coastal trade. It also established the Australian International Shipping Register (AISR), for ships engaged in international trade and who meet specific criteria, in order to 'put Australian companies on level footing with their international competitors'.<sup>20</sup>

2.25 Prior to the implementation of the CT Act, vessels operated in Australian waters under a permit system. The CT Act replaced the permit system with a three-tiered licence system:

- General licences: for Australian-flagged vessels to have unrestricted access to coastal trade, and access to various tax incentives;
- Temporary licences: for foreign-flagged vessels or vessels registered under the AISR to have restricted access to coastal trade; and
- Emergency licences: to provide restricted coastal access in response to major emergencies and natural disasters.<sup>21</sup>

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18 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp. 2-3.

19 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, p. 4.

20 Les Nielson and Michele Brennan, Coastal Trading (Revitalising Australian Shipping) Bill 2012 [and] Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012, *Bills Digest No. 151*, 2011-12, Parliamentary Library, Canberra, 2012, p. 14.

21 The Hon Anthony Albanese, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 22 March 2012, p. 3935.

2.26 Foreign vessels can apply for temporary licences, but this may be subject to negotiation with general licence holders. General licence holders are all notified of a temporary licence application and have the right to respond and negotiate or compete for the transport of the cargo as proposed by the foreign vessel.<sup>22</sup>

2.27 As with the legislation in place prior to the CT Act, this allows operators of foreign registered vessels to 'apply for a permit to carry Australian domestic cargo and passengers on the basis that there is no licenced vessel available [or] adequate', and it is in the public interest to allow the licence.<sup>23</sup>

2.28 This 'notice and response' process between general and temporary licence holders was explained further by the department. Ms Judith Zielke, of DIRD, explained that:

currently, each time a [foreign or ASIR] ship wants to carry goods, that voyage—no matter what the circumstance—is advertised to all general licence holders, even when we are aware that they do not actually have any ships that could carry those goods.<sup>24</sup>

2.29 In looking at coastal shipping reform, DIRD has suggested streamlining this licence process. Reforms would remove the need to consult general licence holders, if there are no general licence holders who wish to be consulted or are able to carry the product. For example, consultation is currently still required on all applications for temporary licences to carry fuel, despite knowing 'there are no Australian flagged vessels capable of carrying petroleum products'.<sup>25</sup> Ms Zielke further explained that:

In effect, we are undertaking a step in the process where we know that there is no Australian ship to carry those goods. [The reforms] would—only in the circumstances where we know that there are no Australian ships to carry those goods—remove the need for us to go out and advertise it to all of the general licence holders.<sup>26</sup>

### ***Five voyage minimum***

2.30 Temporary licences are valid for 12 months, but may be renewed or varied an unlimited amount of times. A temporary licence can only be issued for a minimum of five voyages, potentially requiring applicants to provide voyage information well in

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22 Anne Holmes and Jaan Murphy, Shipping Legislation Amendment Bill 2015, *Bills Digest No. 53*, 2015-16, Parliamentary Library, Canberra, 2015, p. 23.

23 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp. 6-7.

24 Ms Judith Zielke, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, p. 118.

25 Department of Infrastructure and Regional Development, *Coastal Shipping Reforms: Discussion Paper*, March 2017, p. 5.

26 Ms Judith Zielke, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, p. 118.

advance of a voyage taking place. Any new voyages undertaken during the period of the temporary licence requires variations to the original licence (but any application to increase the number of voyages must have a minimum of five voyages).<sup>27</sup>

2.31 As part of Budget Estimates, the Rural and Regional Affairs and Transport Legislation Committee (legislation committee) heard that stakeholders were raising concerns over the minimum five voyage requirement. The OTS advised the legislation committee that:

We have a range of stakeholders, companies, who would like to move goods for which their needs are infrequent and therefore ships cannot actually allocate what those five voyages will be for and therefore are unable to apply for a [temporary] licence. We have had situations in that particular circumstance where that has led to companies having to move goods by truck, because they are not able to move them on a ship.<sup>28</sup>

2.32 On its website, DIRD has published examples of where the five-voyage minimum does not work as originally intended:

For example, a piece of heavy machinery was unable to be shipped as a single voyage and, therefore, a Temporary Licence could not be granted. The machinery was moved by road, which required a police escort due to the over-size load and removal of overhead power lines. This was more complicated and costly than a voyage by ship.<sup>29</sup>

2.33 As discussed later in this report, the government is looking at a number of coastal shipping reforms, including the removal of the five voyage minimum for temporary licences.

### **Wages for seafarers**

2.34 It has been repeatedly argued that the current coastal shipping regulatory environment has increased costs and administrative burdens, while decreasing competition. The concerns around costs often involve discussion of payment of seafarers operating in Australian waters.

2.35 The ILO has determined a minimum monthly wage for international seafarers. The MLC provides that 'the basic pay or wages for a calendar month of service for an able seafarer should not be less than the amount periodically set by the [Joint

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27 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp. 23-24.

28 Ms Judith Zielke, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, p. 116.

29 Department of Infrastructure and Regional Development, *Factsheet: Coastal Shipping Reform*, 7 January 2015, <https://infrastructure.gov.au/maritime/publications/factsheets.aspx> (accessed 6 July 2017).

Maritime Commission] or another body authorized by the Governing Body of the ILO'.<sup>30</sup>

2.36 The minimum monthly basic wage for able seafarers was set at US\$592 as of 1 January 2015, rising to US\$614 as of 1 January 2016.<sup>31</sup>

2.37 Ships operating in Australian waters under temporary licences must, under certain circumstances and pursuant to the *Fair Work Act 2009* (Fair Work Act), pay Australian wages to the crew, regardless of their nationality. The Fair Work Act applies when a foreign-flagged vessel undertakes a voyage in Australian waters under a temporary licence and:

- made at least two other voyages under either a temporary licence or single voyage permit in the last 12 months; or
- held a continuous voyage permit in the previous 15 months.<sup>32</sup>

2.38 Once an FOC vessel makes at least three voyages in Australian waters, it is required to pay award wages as specified by the law. However, temporary licences specify a five voyage minimum. It has been noted that:

Whilst it is theoretically possible that a ship could apply for a temporary licence and only undertake two voyages in a 12 month period (and hence not be required to pay Australian wages), this appears unlikely to occur on a regular basis.<sup>33</sup>

2.39 Accordingly, all FOC vessels undertaking regular interstate voyages along the Australian coast should, in theory, be paying award wages. However, there are apparent loopholes being exploited in the CT Act to avoid proper wage payment, and a lack of regulatory oversight verifying the wages paid in Australian waters.

2.40 The legislation committee brought to the attention of OTS claims that foreign vessels with foreign crew were loading freight onto vessels in Australian ports, leaving Australian waters and then returning after visiting another country. OTS confirmed that under temporary licensing, vessels are:

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30 International Labour Organization, *ILO body adopts new minimum monthly wage for seafarers*, [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_236644/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_236644/lang--en/index.htm) (accessed 7 July 2017).

31 International Labour Organization, *ILO body adopts new minimum monthly wage for seafarers*, [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_236644/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_236644/lang--en/index.htm) (accessed 7 July 2017).

32 Fair Work Ombudsman, *Maritime industry – workplace rights and entitlements*, <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/maritime-industry-workplace-rights-and-entitlements> (accessed 3 July 2017).

33 Anne Holmes and Jaan Murphy, *Shipping Legislation Amendment Bill 2015, Bills Digest No. 53, 2015-16*, Parliamentary Library, Canberra, 2015, p. 19.

only required to seek approval for voyages where they are actually coming on-coast, and actually dropping off and picking back up again on-coast. So yes; they can come into port, allow their passengers to visit – noting they will have passports and those sorts of things to come onshore – and then they can depart Australia again and continue. Our permits and licensing system is in relation to coastal shipping – where they are continuing around the coastline.<sup>34</sup>

2.41 The committee's interim report presented evidence that FOC vessels were using temporary licences on permanent domestic routes, and that it was possible for vessels to leave Australian waters after two voyages to avoid paying Australian wages from the third voyage onwards. Likewise, vessels could be interchanged for regular voyages to ensure the three-voyage wage threshold was not reached.<sup>35</sup>

2.42 Under current arrangements and the temporary licence scheme, there is nothing to prevent shipping companies and operators cycling vessels and their movements, in an attempt to avoid higher levels of regulatory scrutiny and the payment of award wages to crew, under temporary licensing. The committee remains concerned that this loophole continues to expose workers to substandard conditions and wage payments, and Australia to unnecessary security risks.

### ***Case Study – MT Turmoil***

2.43 The *MT Turmoil*, an oil and chemical tanker flagged to Panama and owned by Norwegian company Transpetrol, was chartered by BP and Caltex while in Australian waters between 2013 and 2015. The ship travelled interstate between ports in 'Perth, Adelaide, Burnie, Melbourne, Sydney, Brisbane, Darwin' and other areas.<sup>36</sup>

2.44 It was alleged that the 61 workers on board, mostly from India or the Philippines and as young as 21, were paid the equivalent of \$1.25 an hour, in addition to allowances and overtime rates. The Fair Work Ombudsman (FWO) commenced legal action against Transpetrol, following a request for assistance from a crew member. The FWO stated that:

Transpetrol allegedly paid the foreign crew rates that were the equivalent of as little as \$1.25/hour in relation to base rates, in addition to industry specific allowances and overtime amounts...However, it is alleged that under the Fair Work Act the crew were entitled to the minimum entitlements that applied under Australia's Seagoing Industry Award and National Minimum Wage Order.

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34 Ms Judith Zielke, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, p. 117.

35 Mr Ian Bray, Maritime Union of Australia, *Committee Hansard*, 3 February 2016, p. 14.

36 'Shipping company allegedly underpaid crew', *The West Australian*, 8 April 2017, <https://thewest.com.au/news/wa/shipping-company-allegedly-underpaid-crew-ng-b88440741z> (accessed 29 June 2017).

Transpetrol was allegedly obligated to pay 58 of the crew minimum hourly rates of between \$15.95 and \$30.66 and overtime rates of between \$19.94 and \$38.32 per hour under the Seagoing Industry Award.

It is alleged that the other three foreign crew members were entitled to be paid base rates of up to \$16.87/hour under the National Minimum Wage Order.<sup>37</sup>

2.45 The underpayments to workers totalled more than \$255,000. The underpayments for individuals ranged from \$374 to \$10,390. It was reported that all crew members had been back-paid in full, but the FWO decided to pursue legal action 'because of the significant amount involved for vulnerable foreign workers'.<sup>38</sup>

#### *Fair Work Ombudsman*

2.46 At Budget Estimates in May 2017, the Senate Education and Employment Legislation Committee (employment committee) heard evidence that confirmed the FWO actions in relation to the *MT Turmoil*, and its awareness that foreign seafarers were being paid as little as \$1.25 an hour. The FWO advised that it became aware of the wage breaches after notification from a number of crewmembers.<sup>39</sup>

2.47 However, the FWO also confirmed that although the ships were chartered by BP and Caltex, there was no legal obligation for these two companies with regards to workplace relations regulation; this rested with Transpetrol. And, while the FWO may have in the past investigated vessels on an ad hoc basis, it did 'not have a coastal shipping campaign planned' to investigate other claims of underpayment.<sup>40</sup>

2.48 The employment committee was informed that the shipping sector does not generate 'a lot of complaints' to the FWO, and that there was not 'some issue to address in this sector that warrants a greater investment by [the FWO]'. The FWO went on to state that:

There is a very strong union in that sector that is very capable of enforcing the rights and entitlements of [workers] should they wish to and who would support them to do that. I know that we have discussions with the MUA about issues in their sector and other bodies that represent the interests of the seafarers. It is something that we consider important and that we investigate accordingly when those issues come to hand.<sup>41</sup>

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37 'Shipping company allegedly underpaid crew', *The West Australian*, 8 April 2017.

38 'Shipping company allegedly underpaid crew', *The West Australian*, 8 April 2017.

39 Senate Education and Employment Legislation Committee, *Proof Estimates Hansard*, 30 May 2017, pp. 44-45.

40 Senate Education and Employment Legislation Committee, *Proof Estimates Hansard*, 30 May 2017, p. 45.

41 Mr Michael Campbell, Fair Work Ombudsman, *Proof Estimates Hansard*, 30 May 2017, p. 46.

2.49 The case of the *MT Turmoil*, and the evidence provided by the FWO, highlight the issues involved with ensuring the payment of fair and legal wages to foreign crews, working on vessels operating under temporary licences.

2.50 In its interim report, the committee recommended that the temporary licencing scheme be immediately tightened for FOC vessels that undertake permanent coastal freight routes, and should therefore be paying crew Australian award wages. The Government did not support this recommendation, stating that the temporary licence scheme was overseen by DIRD, AMSA and the FWO, providing 'an appropriate level of assurance' and therefore changes were unwarranted.<sup>42</sup>

2.51 Additionally, the interim report recommended that the government continue to work with the ILO to improve the rates of remuneration for international seafarers. The government noted this recommendation, stating that the government works closely with the ILO to 'ensure seafarers globally are afforded minimum rights and conditions of employment when engaged in international shipping'. The government also highlighted the ratification of the MLC, the work of the MLC in providing 'fair terms of employment', and the role of AMSA in monitoring and enforcing compliance with the MLC.<sup>43</sup>

### **Welfare for seafarers**

2.52 The committee's interim report discussed evidence that there were insufficient support and welfare services for crew on foreign vessels, and a lack of shore-based assistance and funding for that assistance.<sup>44</sup>

2.53 A number of organisations provide assistance to seafarers through ship visits, drop-in centres and emergency support services. Services are also provided to improve on-board standards, health and wellbeing, to establish social networks and access to financial planning, and to address issues of isolation and depression. Organisations include the ITF Seafarers' Trust, the Mission to Seafarers, the Australian Seafarers' Welfare Council and SeafarerHelp.<sup>45</sup>

2.54 Hunterlink, an Employer Assistance Provider, provides welfare services to international seafarers visiting Australian waters, via a free, 24-hour counselling helpline. A team of Hunterlink employees attended the *MV Sage Sagittarius* in the Port of Newcastle, following the death of Hector Collado. A member of the team

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42 *Proof Senate Hansard*, 10 May 2017, pp. 101-102.

43 *Proof Senate Hansard*, 10 May 2017, pp. 102-103.

44 Further discussion on seafarer welfare assistance can be found in Chapter 3 of the committee's interim report.

45 ITF Seafarers' Trust at <http://www.seafarerstrust.org/>; Mission to Seafarers at <http://www.mts.org.au/what-we-do/>; Australian Seafarers Welfare Council at [http://www.amsa.gov.au/seafarers\\_welfare/index.asp](http://www.amsa.gov.au/seafarers_welfare/index.asp); SeafarerHelp at <http://www.seafarerhelp.org/?ref=iswan>

described the crew on board as intimidated, very fearful and very distressed about the events on board. They were also fearful at remaining on board with someone who may have participated in some way to the deaths of their crewmates.<sup>46</sup>

2.55 DIRD advised that the government does not have the capacity to ensure the safety and wellbeing of seafarers, once they leave Australian waters.<sup>47</sup>

2.56 The Merchant Navy Association advised the committee that it promotes the welfare of serving and ex-Merchant Navy seafarers, and seafarers generally, through social events and memorial attendance. The Association also advised that:

All too often we receive reports of exploitation and ill treatment of seafarers on FOC ships. It is essential that AMSA, the ITF and the unions are allowed to continue to monitor the safety and well being of seafarers employed on flag of convenience ships. Our concern is that not enough support and resources are given to these organisations to enable them to increase the scope of their inspections and necessary scrutiny.<sup>48</sup>

2.57 The International Seafarers' Welfare and Assistance Network (ISWAN) is an internationally-supported seafarer welfare association. ISWAN provides global assistance 24 hours a day to seafarers, and administers an emergency welfare fund for seafarers in need. ISWAN summarised the key issues with seafarer welfare on its website:

Seafarers, who are responsible for transporting 95% of the world's goods, are frequently overlooked and forgotten about. With the fast turnaround of ship in ports, being on board for 10 months, reduced crew numbers and increased workloads, the lives of seafarers are often tough and hard. Seafarers face long periods away from family and friends with limited or no communication for weeks on end. Shore leave can be severely restricted, particularly for certain nationalities.<sup>49</sup>

2.58 The work of these organisations and others is to be commended in improving the wellbeing of Australian and international seafarers. However, the ability of seafarers to access these services likely depends on the atmosphere and working conditions on a vessel.

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46 Hunterlink National Employee Assistance Provider, <http://hunterlink.org.au/#> (accessed 5 July 2017); Owen Jacques, 'Death Ship: "They didn't want to be killed on board"', *Fraser Coast Chronicle*, 2 July 2017, <https://www.frasercoastchronicle.com.au/news/death-ship-they-didnt-want-be-killed-board/3195698/> (accessed 5 July 2017).

47 *Proof Estimates Hansard*, 23 May 2017, p. 113.

48 Merchant Navy Association, *Submission 10*.

49 International Seafarers' Welfare and Assistance Network, 'About ISWAN', <http://seafarerswelfare.org/about-iswan> (accessed 5 July 2017).

2.59 Additionally, and as highlighted by the committee's interim report, a lack of ongoing financial support for these organisations make it increasingly difficult for them to provide the necessary services to crew members in need.

## **Committee view and recommendations**

### ***Ships of Shame reports***

2.60 The committee agrees with the evidence before it that a number of important developments have been made in the shipping industry since the *Ships of Shame* reports and in response to FOC vessels. However, the committee remains very concerned that there continues to be new and unresolved issues around the operation of FOC vessels in Australian waters.

2.61 It is arguable that the aims of the 1992 *Ships of Shame* recommendations remain just as important today in ensuring the safety and wellbeing of Australian and international seafarers, and in progressing effective regulatory reforms for dealing with FOC and other vessels in Australian waters. The evidence received by the 1992 inquiry parallels evidence received by this committee during its current inquiries, particularly in relation to seafarer work conditions.<sup>50</sup>

2.62 In particular, the committee notes the continued occurrences of Australian and international seafarer underpayment, insufficient training, mistreatment and death at sea, as will be discussed later in this report. The committee also notes the continued negative environmental impacts and security concerns of deficient FOC vessels.

### ***Temporary licences***

2.63 The committee heard evidence that the temporary licence scheme was open to abuse by FOC vessels. The committee also understands that in some sectors of the industry, the five voyage minimum was potentially introducing administrative and cost burdens.

2.64 The committee appreciates that the licence scheme is being reviewed as part of coastal shipping reform. The committee encourages the government to ensure that, if any amendments are made to temporary licensing, appropriate safeguards are provided to ensure the ongoing viability of the Australian-flagged shipping industry and its employees.

2.65 It will always be challenging to balance the competing interests of different stakeholders in the industry, and to this end the committee encourages extensive stakeholder consultation and engagement prior to any further legislative amendments to shipping.

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50 Discussion of incidences in and around Australian waters is in Chapter 3 of this report.

2.66 The committee was very concerned to hear that FOC vessels are exploiting loopholes in the temporary licensing scheme, particularly in order to reduce wages. Any amendments to the scheme should not further jeopardise the health, wellbeing and remuneration of international seafarers.

### *Payment of seafarers*

2.67 The committee has been presented with numerous examples of where foreign seafarers have not been paid Australian award wages, despite the legal requirements stipulating that they should be. The government's response to the interim report stated that there is 'an appropriate level of assurance' in the oversight of wage payments, but the evidence does not support such a claim.

2.68 While the FWO is to be commended in prosecuting the owners of the *MT Turmoil* and ensuring appropriate wages were paid to the crew in full, the committee is concerned that there is no dedicated program to review the wage conditions on FOC vessels. The committee considers that seafarers working on vessels with poor conditions and authoritarian management and supervision would be unlikely to report instances of wage underpayment and mistreatment, despite workplace protections under the MLC that should support such actions.

2.69 The committee is very concerned that there appears to be no regular oversight of foreign vessels operating along the Australian coast, to ensure that foreign workers in particular are paid the appropriate wages. The case of the *MT Turmoil* highlights these concerns and is a new low in the payment of seafarers, with \$1.25 an hour far below what anyone would reasonably expect employees to be paid, in any industry.

2.70 Indeed, at Budget Estimates the Minister for Employment, Senator the Hon Michaelia Cash responded specifically to questioning over the *MT Turmoil*, stating that:

the government expects all employers or people who employ Australians or all those who are employed under Australian law to comply with the law. In the event that they do not, they should feel the full force of the law.<sup>51</sup>

2.71 While the committee is in full agreement with the Minister, it is not apparent to the committee that there is a clear policing of wage rates, or a system in place for workers to report wage underpayments, or lack of payments, to authorities. This lack of transparency makes it difficult to see how legal action can be progressed to rectify such issues.

2.72 The committee takes the view that an ongoing program that oversees the payment of wages on foreign vessels operating in Australia, is required as an important step in ensuring the health and wellbeing of seafarers and their families, and ensuring compliance with the law.

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51 Senator the Hon Michaelia Cash, Minister for Employment, *Proof Estimates Hansard*, 30 May 2017, p. 46.

2.73 To this end, the committee recommends that the Fair Work Ombudsman undertake such a program.

**Recommendation 1**

**2.74 The committee recommends that the Fair Work Ombudsman implement a program of inspection for ships with foreign seafarers, to verify that the wages paid on board accord with Australian legal requirements.**

**Recommendation 2**

**2.75 The committee recommends that the Australian Government provide adequate funding to the Fair Work Ombudsman to implement an inspection program of ships with foreign crews, to assess the payment of wages.**