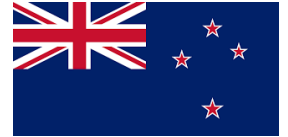




HUMAN RIGHTS AT SEA



Human Rights at Sea Independent Report & Case Study

New Zealand: Under-Funding of Seafarers' Welfare Services and Poor MLC Compliance



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“It is not something we can sustain into the future. We desperately need the shipping companies, port authorities and all those who profit from the maritime sector to make some financial contribution to the care of crews coming ashore in New Zealand.”



Human Rights at Sea

NEW ZEALAND: UNDER-FUNDING OF SEAFARERS' WELFARE SERVICES
AND POOR MLC COMPLIANCE

RESEARCHERS

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EXECUTIVE SUMMARY

In New Zealand, there appears to be a broken system of gross underfunding and poor support in respect of the role and responsibility of the State and pertinent commercial maritime entities, towards the assured provision and sustainability of seafarers' shore-based welfare facilities and services directly supporting seafarers and in-turn, the international maritime trade that the country so heavily relies upon.

This independent report concludes, that at the time of writing, the New Zealand Government has seemingly failed to support the Maritime Labour Convention ("MLC"), its intent and specifically, the reasonable and necessary welfare provisions for seafarers. Further, the Government has apparently not engaged with the International Labour Organisation ("ILO") as per its State reporting requirements.

Despite significant and exhaustive charitable efforts on the part of New Zealand based seafarers' welfare organisations and its citizen volunteers there has been a surprising lack of engagement at Government level and therefore, a failure to safeguard seafarers' welfare provisions, (as well as their wider human rights), under the MLC.

OVERVIEW

From evidence disclosed to Human Rights at Sea ("HRAS"), the responsibility of the State has ostensibly been outsourced to the maritime charitable sector, first, without apparent due regard for the implications this has on New Zealand meeting its State obligations under the Maritime Labour Convention 2006, as Amended ("MLC")¹ and second, thereby compounding a more basic abuse of charitable actions by New Zealand citizens who are voluntarily subsidising and plugging gaps in the country's maritime welfare support structure.

Among other welfare organisations, the Mission to Seafarers ("MtS") New Zealand, has worked tirelessly attempting to remedy the current state of play, though the team in-country are consistently challenged by a lack of supporting legislation, which itself could be relied upon to trigger access to essential funding and therefore much needed social welfare provisions for seafarers on a consistent basis. Consequently, there is a lack of access to sustainable sources of medium-long term income to provide the reasonable and necessary welfare services expected by international convention.

Since 2017, this specific welfare issue has regularly been brought to the attention of those in Government but, to this day, to no avail. Seafarers' welfare organisations are therefore left to self-fund the provision of shore-based welfare to both domiciled and visiting seafarers. Yet, concurrently, the New Zealand Government is seemingly raising considerable sums of money through maritime levies² placed on shipping but nonetheless, giving little in return to the very seafarers who crew the ships that support the global multi-billion-dollar maritime industry and seaborne trade to and from the country.

By way of example, in some ports it is reported that visiting seafarers are left without basic access to a warm, safe and secure buildings with essential core welfare facilities that are staffed by reasonably paid staff, not citizens giving up their own resources on a charitable basis. This includes not having foreign seafarers abused by being subject to the likes of extortionate exchange rates and in today's connected world, finding only a limited, or poor Wi-Fi connection, itself a vital means of communication for those working on vessels often thousands of miles away from home and their dependants.

¹ https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/normativeinstrument/wcms_090250.pdf (accessed on 20/02/20)

² https://www.maritimenz.govt.nz/fees/default.asp#ml_rates (accessed on 26/02/20)

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CRUISE SHIPS PRESSURES: A LOCAL INSIGHT FROM THE MARITIME WELFARE PERSPECTIVE



"NZ is becoming a very popular destination for cruise ships. Our centres are generally designed to handle the smaller crews of container and bulk carriers not the kind of numbers who come ashore on a cruise ship day."

"Dunedin, Lyttelton and Wellington all report they are stretched to capacity on cruise ships days:

- Wellington centre's capacity inside is 15, but there will be 40-60 crew coming on a cruise ship day.
- Lyttelton is 18, with 30-40 on a cruise ship day; and
- Dunedin is similar with 50 people when a cruise ship is in, with crew sitting on the floor and stairs."

"It will be impossible for the Lyttelton Centre which only has a capacity for 18 people, and is only a temporary building anyway, to provide services for 70 cruise ships scheduled for 2020/21 season, or the 100 projected in the future."

"Akaroa harbour will get 100 ships next season. This used to be a sleepy little tourist town, and was never a port, yet there is a steady stream of crew wanting to come ashore but no seafarers centre for them at all. They end up congregating outside the local library. The NZ government is actively encouraging the cruise industry, completely oblivious to MLC directives regarding the care of their crews."

Meantime, seafarers' welfare organisations continue to do what they can to support these basic welfare provisions, but the simple fact of the matter is they do not have the assured funds, national legislative support or the numbers of volunteers to man the centres to the standard one would hope for or expect if it was in respect of one's own family members and their work.

The New Zealand Government, in failing to meet its obligations under the MLC, is failing the very seafarers upon whom the island nation so heavily relies for the success and continuity of its international trading relationships. This is an example of a failure in State-led human rights and welfare protections, and a concurrent lack of basic business and human rights provisions in commercial ports by commercial entities effectively putting profit before people.



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BACKGROUND

New Zealand ratified the MLC on the 9 March 2016³ with Regulation 4.4 concerning seafarers' access to shore-based welfare facilities. The purpose of the Regulation is to ensure that seafarers working on board a ship have access to shore-based facilities and services to secure their health and well-being.

Under Standard A4.4, where welfare facilities exist on their territory, **member States are required** to make such facilities available to seafarers **on entirely non-discriminatory grounds**.

Member States are **obliged to promote the development of welfare facilities** and encourage the establishment of welfare boards which in turn, are **vested with responsibility for regularly reviewing welfare facilities and services** in the light of changes in the needs of seafarers arising from industry developments.

SEAFARERS WELFARE BOARD

The Seafarers Welfare Board ("SWB") is the government recognised National Seafarers' Welfare Board designated under the MLC (A4.4.3) and it coordinates seafarers' welfare within New Zealand. The role of the SWB is to ensure that New Zealand domiciled and visiting seafarers are provided with the appropriate standards of welfare care.

As Chair person of the SWB and indeed in his roles as the MtS Port Chaplain and parish priest in Lyttelton, the Reverend John McLister has been at the vanguard of promoting a system of shore-based welfare provision for seafarers commensurate with New Zealand's obligations under the MLC. It was the outreach from the Reverend McLister to HRAS that has prompted the publishing of this independent review and case study.

EXAMPLE: The Costs of Running New Zealand's Seafarers' Welfare Facilities

- In 2017, it cost New Zealand seafarers' welfare charities over \$700,000 to finance New Zealand's shore-based welfare centres.
- Apart from a small grant of \$5,000 from Maritime New Zealand, two \$5,000 grants from port authorities, and one \$5,000 grant from the Christchurch Council, funding of shore-based welfare facilities is primarily shouldered by the seafarers' welfare charities.
- The New Zealand Government, shipping companies, most port authorities and entities that own ports make little or no financial contribution to the care of seafarers visiting New Zealand ports.
- The cost of running welfare centres would be much higher if it were not for the reliance on voluntary labour to staff seafarers' centres.
- It is estimated that in 2017, using the independent volunteer sector rate of \$23.00 per hour, volunteers contributed \$600,000 to staffing New Zealand's shore-based welfare centres.
- Lyttelton centre has the capacity for only 18 seafarers, but there can be 30-40 per cruise ship per day.

"This is a significant financial burden for the welfare charities to bear," says the Revd. John McLister, chairperson of the SWB. **"It is not something we can sustain into the future. We desperately need the shipping companies, port authorities and all those who profit from the maritime sector to make some financial contribution to the care of crews coming ashore in New Zealand"**.

³ https://www.ilo.org/dyn/normlex/en/f?p=1000:80021:0::NO:80021:P80021_COUNTRY_ID:102775 (accessed on 19/02/20)

⁴ Maritime NZ is the national regulatory, compliance and response agency for the safety, security and environmental protection of coastal and inland waterways. Its chief functions are funded via a levy on commercial ship-ping: <https://www.maritimenz.govt.nz/about/our-funding/maritime-levy.asp> (accessed on 19/02/20).

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GOVERNMENT ENGAGEMENT

At the end of April 2018, the SWB wrote to the Minister of Transport outlining the role and contribution of the SWB in respect to seafarers' welfare and emphasised the shortfall in funding seafarers' welfare charities were experiencing. It also drew the Minister's attention to the international obligations New Zealand has under the MLC.

As part of its correspondence, the SWB requested to take part in the forthcoming Maritime New Zealand ("MNZ")⁴ funding review. This review would provide MNZ with the ideal opportunity to look at the maritime safety sector as a whole, including the work of the SWB under the MLC.

Shortly afterwards, in May 2018, the SWB wrote to the Deputy Director of MNZ. In its letter, the SWB raised its main concerns with respect to the chronic underfunding of seafarers' welfare organisations in New Zealand.

In particular, the examples of funding and staffing shortfalls in Lyttelton Seafarers' Centre and the extortionate annual rent of NZ\$30,000 the Seafarers' Welfare Centre has to pay to the Port of Tauranga were highlighted.

The letter outlined the difficulty faced by the charitable organisations in providing the level of shore-based facilities that the MLC envisions. It also suggested that the previous government, in ratifying the Convention, underestimated the full implications of the MLC in relation to shore-based welfare. That said, a solution was proffered based on established practice elsewhere in the world, namely a compulsory levy system on shipping to ensure a reasonable level of funding in ports for seafarers.

The Minister replied in June advising that he had asked officials from both MNZ and the Ministry of Transport to consider the SWB's request and that as part of the funding review process, the SWB would be consulted.

In October 2018, after a period of consultation, the Director of MNZ wrote to the SWB advising the Board of the outcome of the funding review and its consideration of the issue of funding. **It advised that the Maritime Transport Act 1994 ("MTA94")⁵ does not include any functions, duties or powers in relation to the welfare of seafarers, in respect of the MLC. Consequently, it is not possible to fund seafarer welfare services through levies or fees under the MTA94.**

Further, the letter stated that there was no other legislation that provided a mechanism or requirement for the funding of seafarers' welfare services.

The SWB were advised that the question of whether funding could be provided to support the function of the SWB under the MLC was 'a policy question for Government'. **This advice overlooked the international legal obligations of New Zealand as a state party to the MLC and the role performed by MNZ as the national regulatory, compliance and response agency.**

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SWB LEGAL OPINION

The SWB sought further advice on the MNZ interpretation of the law. An academic legal opinion offered an alternative perspective and relatively simple remedy to the case in point. **Essentially, the advice suggested that New Zealand add the MLC as a convention under the list of conventions to the MTA94.**

Under s5 MTA94, one of the objectives of the Minister is to "ensure that New Zealand's obligations under the conventions are implemented". Further, s5A includes as a function of the Minister to "administer New Zealand's participation in the conventions and any other international maritime or marine protection convention, agreement, or understanding to which the Government of New Zealand is a party". The term "conventions" is defined in s2 with reference to a declaration by order in council, currently the Maritime Transport Act (Conventions) Order 1994. The conventions in that list currently include a number of older ILO agreements that have been superseded by the MLC, some of which touched on seafarer welfare.

The advice suggested amending the list to include the MLC, so that administering New Zealand's obligations under the Convention becomes a part of the functions and objectives of the Minister, and by extension MNZ, under the MTA94. Indeed, the policy work already undertaken showing that the MLC would not have a major impact on NZ law supports such a measure.

As the country was deemed to be largely in compliance with the provisions of the MLC at the time of ratification, amendments to the Maritime Rules would be relatively few and the limited work required to implement reflected this fact.

GOVERNMENT FAILURES

By neglecting to implement the requirements under Regulation 4.4 MLC into New Zealand law, **the Government has seemingly materially failed in its obligations to seafarers with respect to the provision of shore-based welfare facilities and services.** Pursuing the suggested measure would therefore seem a logical, short and tidy means of enabling funding for welfare centres to meet New Zealand's obligations under the MLC.

Despite the logical remedy proffered by the SWB, the situation remains the same to this day. Attempts at garnering support for a change in the funding model via the MP for Port Hills have so far proved unsuccessful.

MNZ have since raised the Maritime Levy on commercial shipping to fund its operations whilst overlooking the desperate funding situation seafarers' welfare organisations find themselves in fulfilling what should be a State supported responsibility.



5 <http://www.legislation.govt.nz/act/public/1994/0104/76.0/DLM334660.html> (accessed on 20/02/20)

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MLC OBLIGATIONS AND IMPLEMENTATION

The MLC specifies, in no uncertain terms, the responsibilities of signatories/member States/States party in respect of shore-based seafarers' welfare provision. Regulation 4.4 sets out both mandatory standards and non-mandatory guidance as to how the standard may be met.

Advice on how States' party can meet their obligations under the convention is not in short supply. The Convention itself sets out guidance as to how members can implement measures to fulfil their duties vis-à-vis seafarers' shore-based welfare: Guideline B4.4.2 sets out the expectation of welfare facilities and services in ports whilst Guideline B4.4.4 provides practical guidance on how to finance such welfare facilities and services.

Such guidance is further supported by publications commissioned by the International Transport Workers' Federation (ITF) and the International Chamber of Shipping (ICC)⁶, and the International Seafarers' Welfare and Assistance Network (ISWAN)⁷. Their publications offer practical advice on implementing the welfare aspects of the MLC through the introduction of port levies.

OTHER STATE ACTIONS AND COMMENT

Other State signatories have tackled their maritime welfare obligations under the MLC by raising a compulsory levy on shipping and using the proceeds to fund the provision of seafarers' welfare centres. Where such compulsory levies are in place, implementation has required enabling legislative amendment, or alteration to national legislation.

To name two examples, France, and Singapore have implemented the welfare aspects through the introduction of ports levies, while in a number of ports world-wide compulsory levies are in place.

In cases where the levy is not compulsory, seafarers' welfare centres often rely on the voluntary payment of such levies. This is far from ideal. In some cases, however, member States have neither a compulsory, nor voluntary levy payment system in place.

Reliance on the provision of seafarers' welfare in such cases is therefore left to the charitable sector to self-fund and manage, and is neither in-keeping with the spirit of the MLC, nor the international legal obligations of States' party to it.

EXAMPLE: The Voluntary Levy. A Local Insight into Limited Scale of Levy Support

"In September, 2019, the port of Lyttelton put a voluntary levy on ships, a very modest sum of \$40. In six months, it only generated one donation of \$2,000. The port confirmed recently that unfortunately the shipping agents were actively opposing this voluntary levy and refusing to pay it. This summer, we had 10 cruise ships in Lyttelton (it will be considerably more when the new cruise berth is built). We opened from 11am to 4pm for their crews. Yet their agents are refusing to pay a \$40 levy for our services."

HRAS COMMENT

The provision of shore-based welfare services to seafarers under the MLC is a matter of international duty in an international rules-based world for the Convention signatories. It should not be a matter of lightly-weighted or non-implemented government policy, while commercial entities which use and benefit from the welfare services should invest in the welfare infrastructure and its sustainability as a matter of beneficial commercial practice and basic moral standards at the very least.

The international law provisions are otherwise clear in relation to implementation of the MLC upon its ratification, while the means to achieve basic and necessary welfare standards should be simple in both their policy construct and national implementation, assuming that the will to do so exists for the benefit of seafarers.

⁶ <https://www.itfglobal.org/en/reports-publications/guidelines-implementing-welfare-aspects-maritime-labour-convention-mlc> (accessed on 20/02/20)

⁷ <https://www.seafarerswelfare.org/resources/publications/port-levies-and-sustainable-welfare-for-seafarers> (accessed on 20/02/20)

⁸ Regulation 4.4., p.67, New Zealand Government Response, 2017, International Labour Office, Report Form for the Maritime Labour Convention, 2006, As Amended (MLC, 2006)

⁹ The International Labour Office is the permanent secretariat of the International Labour Organisation ("ILO")

¹⁰ https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A22 (accessed on 26/02/20)

¹¹ <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang-en/index.htm> (accessed on 26/02/20)

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SUMMARY & CONCLUSION

In its 2017 Report⁸ to the International Labour Office⁹ on the measures it has taken to give effect to the provisions of the MLC, the New Zealand Government omitted to respond on matters relating to Regulation 4.4 of the Convention.

The ILO has its own system for checking compliance with the MLC. Under Article 22 of the ILO's Constitution, States that have ratified its Conventions must report to the International Labour Office on how they have implemented the provisions of the MLC¹⁰. These reports are considered by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO¹¹.

Questions Raised

1. Why has the CEACR therefore not identified the omission in respect of the relevant provisions in the report submitted by New Zealand?
2. Based on New Zealand's submissions, does the CEACR presume that no shore-based seafarers' welfare facilities and services exist on its territory?

Further, on ratification of the MLC, the amendments the New Zealand Government made to the Maritime Rules did not apparently expressly address the provision of shore-based welfare facilities. This raises additional questions.

Questions Raised

3. Was it assumed by the Government that responsibilities relating to shore-based welfare provisions were already fulfilled by the State or covered by other commercial entities such as port authorities? 4). In the alternative, was this matter omitted in neglect of State obligations to the provision of welfare functions to seafarers under the MLC?

In conclusion, the New Zealand Government has seemingly failed to support the MLC, its intent and specifically, the reasonable and necessary welfare provisions for seafarers. Further, the Government has apparently not engaged with the ILO as per its State reporting requirements.

Additionally, despite significant and exhaustive charitable efforts on the part of New Zealand based seafarers' welfare organisations and its citizen volunteers there has been a surprising lack of engagement at Government level and therefore, a failure to safeguard seafarers' welfare provisions, (as well as their wider human rights), under the MLC.



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RECOMMENDATIONS

Constructively, and based on the in-country evidence disclosed, Human Rights at Sea suggests the following recommendations:

1. Recommend that the New Zealand Government immediately review the funding mechanism, or lack thereof, for shore-based seafarers' welfare facilities and services under the MLC throughout the State;
2. Recommend that the New Zealand Government draft and propose relevant amendments to national legislation to support seafarer's welfare services, for example to the Maritime Transport Act 1994 in order to give effect to Regulation 4.4 of the MLC;
3. Recommend that the New Zealand Government introduce an updated compulsory port levy system in line with that advocated by the ITF ICC, and other maritime welfare organisations, which specifically focus on sustainably delivering seafarers' welfare services;
4. In the alternative, it is recommended that the New Zealand Government ring fence and allocate part of the current Maritime Levy currently in place to assure future funding and the protection of seafarer's welfare facilities and services;
5. Recommend that the SWB raise a formal complaint with the ILO for non-compliance with a Convention obligation should the New Zealand Government fail to subsequently act.



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Who We Are

BACKGROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **R**esearch, **E**ducation, **A**dvocacy and **L**obbying specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.

The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principal maritime welfare organisations.

OUR MISSION

To explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.



STAY IN CONTACT



We welcome any questions, comments or suggestions. Please send your feedback to:
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World Map: New Zealand








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Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment. Its aim is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

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