



## **MLC UPDATE: AUSTRALIA IMPOSES LENGTHY BANS ON VESSELS FOR FAILURES TO PAY CREW WAGES**

**All vessels operating in Australian waters must comply with relevant international standards given effect under Australian law, including the Maritime Labour Convention 2006 (MLC).**

The Australian Maritime Safety Authority (AMSA) is the Australian authority responsible for regulation and implementation of the MLC's requirements. Marine Order 11 obliges AMSA to investigate any complaint alleging a breach of the MLC reported by seafarers or by any person with an interest in the living and working conditions on a vessel (for example professional bodies, associations and trade unions).

In the last three months two ships have been banned from returning to Australian ports for 12 and 6 months respectively, following AMSA investigations triggered by complaints reported by the International Transport Workers Federation.

#### **“DL CARNATION”**

On 14 September 2017 the Panamanian flagged bulk carrier DL CARNATION was detained for 7 days while an investigation into crew wage discrepancies was conducted by AMSA, which ultimately showed that the crew were being underpaid by more than US\$17,000 per month for a period of at least 6 months.

AMSA identified that the vessel had two sets of wage accounts: one set showed what pay the crew were actually receiving and the other the pay the crew should have been receiving under their Seafarer Employment Agreements.

AMSA regarded the existence of fake accounts and the intent to deceive authorities as particularly concerning and issued an immediate 12 month ban on the vessel returning to Australia after release from detention. AMSA also indicated that there would be increased inspections for all other vessels belonging to the owners.

#### **“RENA”**

In July 2017 the Bahamas flagged bulk carrier RENA was detained for a second time, having been detained on a previous visit to South Australia. On this occasion for failing to pay wages and other breaches. AMSA, working with the flag state detained the vessel in Queensland for 29 days until the crew's unpaid wages had been paid in full.

In addition to unpaid wages the owners were also in breach of the obligation to provide a safe workplace for the crew. A number of material deficiencies were identified with the emergency generator, lifeboat and safety management system deficiencies, each being a clear risk to the safety of the crew, the vessel and Australia's marine environment.

#### **AMSA's approach**

AMSA has been consistently clear that all vessel owners must ensure that their vessels are operated and maintained to meet or exceed mechanical and safety standards and that their crews are treated in line with their obligations under the MLC. AMSA has also indicated that substandard ships are not welcome in Australian ports and waters and that AMSA operates a zero tolerance approach to the mistreatment of crew.

The Rena demonstrates that a second breach will carry serious consequences. The DL Carnation ban should be seen as a clear message that a first or single breach will not be tolerated if the conduct is indicative of a systematic approach to breaching the MLC or otherwise sufficiently serious. In such circumstances AMSA will depart from their usual approach for a first breach of detaining a vessel until the specific issue is rectified.

For more information, please contact the author of this briefing:

#### **HAZEL BREWER**

Partner, Perth

**T** +61 (0)8 9422 4702

**E** [hazel.brewer@hfw.com](mailto:hazel.brewer@hfw.com)

**HFW has over 500 lawyers working in offices across Australia, Asia, the Middle East, Europe and the Americas. For further information about our shipping capabilities, please visit [hfw.com/shipping](http://hfw.com/shipping)**

[hfw.com](http://hfw.com)

© 2017 Holman Fenwick Willan LLP. All rights reserved.

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Souhir Jemai on +44 (0)20 7264 8415 or email [souhir.jemai@hfw.com](mailto:souhir.jemai@hfw.com)

Beirut Brussels Dubai Geneva Hong Kong Houston Kuwait London Melbourne Paris Perth Piraeus Riyadh São Paulo Shanghai Singapore Sydney