

# Chapter 6 Crew welfare

## Introduction

6.1 Attention to the human factor is crucial if shipping is to be made safer. As Mr MacGillivray noted, a ship is not just a means of transport and a workplace. It is also a social system (MacGillivray 1997, p. 5).

6.2 The abuse and neglect of crew members is of concern for two reasons. As a violation of human rights, it warrants international attention and condemnation. It also constitutes a significant risk factor for ship safety.

6.3 Whereas clear improvements have been noted in the other focus areas, the committee is concerned that crew welfare is not being adequately addressed. It may even be deteriorating (Sub 7, *Submissions* p. 92).

6.4 The committee was told of the abuse and neglect of seafarers, buttressed by a culture of fear, intimidation and economic desperation.

6.5 To a degree, violations of crew welfare are commercially driven. Costs associated with crew welfare are to some extent discretionary. Therefore, this expenditure is vulnerable to reduction when margins are slim. With low freight rates and the impact of the Asian crisis on world trade, it is unlikely that crew welfare will improve in the absence of concerted efforts by the world shipping community.

6.6 Ultimately, however, the abuse and neglect of crews is a value-driven phenomenon. Much of it (for example, racial and sexual abuse) does not even provide a short term commercial advantage. Even where there is a commercial advantage, it is inexcusable that human lives should be treated with contempt.

6.7 Factors facilitating the abuse and neglect of crew include the jurisdictional 'cracks' through which seafarers can fall, and the absence of an adequate framework of legal responsibility in the shipping industry. The Australian Maritime Safety Authority (AMSA) referred to the 'corporate legal walls' behind which companies can protect themselves from responsibility for their actions (*Transcripts*, p. 98). For example, the owner of the *MV Glory Cape* appears to no longer exist (*Transcripts*, p. 97).

6.8 This chapter begins with a discussion of the significance of social factors for ship safety and an outline of the findings of previous parliamentary reports. It goes on to discuss developments and continuing issues in crew welfare, and to recommend measures to address these problems. The main focus of the chapter is on the abuse and neglect of seafarers. Also discussed are access to services and piracy.

## Significance of social factors for ship safety

6.9 Social casualties (such as suicide, drug overdose and homicide) were reported to account for over 50 per cent of fatalities at sea (MacGillivray 1997, p. 1). Social factors include '...low status, lack of education and training, and insecure social relationships.' (MacGillivray 1997, pp. 2–3)

6.10 The committee heard evidence that crew welfare had a direct impact on ship safety. Mr MacGillivray argued that if the International Safety Management (ISM) Code is to engender a *culture* of safety (rather than merely a new set of regulations), crew members will need to be treated with respect (*Transcripts*, pp. 90–1).

## Previous parliamentary reports

6.11 The 1992 report, *Ships of Shame—inquiry into ship safety* heard evidence of the following breaches of crew safety.

- beatings
- sexual abuse
- denial of food
- denial of telephone contact with home on the death of a family member
- denial of medical attention
- denial of toilet and laundry materials
- underpayment of wages and overtime, including being forced to sign a dummy pay book indicating they had been paid more than they had actually received (HORSCTCI 1992, p. ix)

6.12 The 1995 report, *Ships of Shame—A Sequel: Inquiry into ship safety* also noted disturbing instances of abuse (HORSCTCI 1995, pp. 5, 8–12). These included underpayment and withholding of wages, inadequate food and water, denial of medical assistance and beatings (HORSCTCI 1995, pp. 8, 11).

6.13 The 1995 report noted that AMSA used International Labour Organization (ILO) 147 standards in assessing crew conditions. The report argued that Australia's actions would carry more weight if it were to ratify the convention (HORSCTCI 1995, p. 10).

## Developments

6.14 Developments in the area of crew welfare have been limited. In fact, the committee received evidence that crew welfare had continued to decline (Sub 7, *Submissions* p. 92).

## **International agreements**

6.15 At the November 1997 joint meeting of the ILO and the World Health Organization, international guidelines on seafarers' medical examinations were developed. These guidelines recommend that governments regulate maritime medical examiners. This is expected to reduce the number of unsuitable mariners being declared fit for service (Exhibit 1a, p. 19).

6.16 The 1996 ILO Maritime Conference agreed to the following new conventions (Sub 16, *Submissions* p. 153).

- No. 179 Convention concerning Recruitment and Placing of Seafarers (setting down conditions for the operation of crewing agencies)
- No. 180 Convention concerning Seafarers' Hours of Work and the Manning of Ships (expected to apply to all ships entering European Union ports)

## **Information flows**

6.17 Stella Maris informed the committee that it would be initiating a national survey on shipping accidents. Its purpose would be to identify the following (*Transcripts*, p. 89):

- type of ship
- type of accident
- how the accident occurred
- how the accident could have been prevented
- what action was taken

## ***MV Glory Cape***

6.18 The committee received evidence relating to a death which occurred in Australian waters in 1995. An Indonesian radio officer and his crew mates jumped overboard after allegedly being beaten with iron bars.

6.19 The radio officer, Santoso Budi, died from his injuries. The crew members were rescued after five hours (Exhibit 10). No criminal charges were laid in Australia and no investigation was undertaken by the ship's flag state, Panama.

6.20 The seafarers have mounted a civil case but the owner of the vessel 'no longer exists' (*Transcripts*, p. 97). [See discussion under *Responsibility* in this chapter.] The issue of perpetrators being able to evade accountability for the abuse of crew members is of serious concern to the committee.

## 6.21 Recommendation 11

**The committee recommends that the Commonwealth evaluate and, where appropriate, address deficiencies in the existing regulatory framework and related processes with particular reference to the *MV Glory Cape* incident.**

## 6.22 Recommendation 12

**The committee recommends that the failure of the flag state (Panama) to investigate the circumstances surrounding the death of the radio operator of *MV Glory Cape* off Port Hedland on 1 November 1995 be referred by the Commonwealth to the International Maritime Organization's Flag State Implementation subcommittee for information and investigation.**

## Continuing issues

6.23 Where statistics are provided in the following discussion, they refer to a survey which was conducted by the International Transport Workers' Federation (ITF) and the MORI research agency (an independent research organisation based in Great Britain). A total of 6504 questionnaires were completed in April and May 1996. For some welfare problems, the overall incidence is low. However, this can obscure a high incidence for particular national groups.

## International Labour Organization conventions

6.24 Previous parliamentary committees recommended that the Commonwealth Government ratify International Labour Organization Convention 147, Merchant Shipping (Minimum Standards) 1976. This convention sets out a basic level of working and living conditions, safety standards and social security measures. Australia has not ratified this convention.

6.25 The ITF argued that, as an enlightened country, Australia should be setting an example to other countries by ratifying ILO 147 (*Transcripts*, p. 92). Similarly, the Maritime Union of Australia (MUA) argued that:

The simple fact of our being a signatory to it would encourage other countries in our region to become signatories. That is the way this ILO convention issue works. This is how they defend their non-compliance: 'Australia's not a signatory, so why should Indonesia, the Philippines or Korea become a signatory?' (*Transcripts*, p. 97)

## 6.26 Recommendation 13

**The committee reaffirms the recommendation in *Review Inquiry into ship standards and safety—Progress Report (1994)* and *Ships of Shame—A Sequel: Inquiry into ship safety (1995)* that Australia ratify International Labor Organization Convention 147.**

### Abuse

6.27 *Physical abuse* was experienced by 10 per cent of seafarers in the year preceding the survey. Of South American and Caribbean seafarers, 39 per cent reported physical abuse. The highest incidence was reported on Romanian and German flag state vessels (Exhibit 5, p. 10).

6.28 *Mental abuse* (not defined in the survey) was experienced by 18 per cent of seafarers in the year preceding the survey. The highest incidence was on North American and Russian vessels (Exhibit 5, p. 10).

6.29 *Unfair treatment on the grounds of religion* was reported by 8 per cent of seafarers. For seafarers in the Asia Pacific region, the incidence was 13 per cent. The highest incidence was on Greek, Panamanian, Vanuatu and Japanese vessels (Exhibit 5, p. 10).

6.30 *Unfair treatment because of race or nationality* was experienced by 25 per cent of seafarers in the year preceding the survey. The incidence was higher for Filipino (43 per cent) and Indonesian (42 per cent) seafarers. The highest incidence was reported on German, Panamanian, Greek and Japanese flag state vessels (Exhibit 5, p. 10). Stella Maris reported that mixed race crews can have 'political overtones' (*Transcripts*, p. 88).

6.31 *Threats to family* were reported by 4 per cent of seafarers (Exhibit 5, p. 10).

6.32 *Sexual abuse* was another issue that was raised in evidence (*Transcripts*, p. 105). The ITF survey did not deal with this issue.

### Living conditions

6.33 Stella Maris recommended that AMSA should pay particular attention to food requirements and refrigeration.

6.34 Mr MacGillivray noted that '...there was a 2-percent increase in the number of accommodation deficiencies between 1996 and 97.' (Sub 4, *Submissions* p. 76)

### Financial exploitation

6.35 The *withholding of wages* was reported by 6 per cent of respondents. For seafarers on Russian flag vessels this figure was 66 per cent. While 1 per cent of respondents reported that a false wage account was kept on their behalf, 12 per cent of Indonesian seafarers made that claim (Exhibit 5, p. 8).

## **Freedom of association**

6.36 Seafarers have been warned *not to contact a trade union* (14 per cent) and encouraged to *give up union membership* (9 per cent). The incidence was highest on Romanian and Maltese flag state vessels (Exhibit 5, p. 11).

## **Access to medical care**

6.37 Access to *medical care* is crucial for the welfare of seafarers. Of respondents, 58 per cent were satisfied with the level of on board medical care (Exhibit 5, p. 51). This is a low figure.

6.38 The committee was informed of a seafarer whose hand was crushed by a hot iron for five minutes. The captain refused an offer to airlift the seafarer to medical treatment and a request by harbour authorities for the ship to berth ahead of schedule. The seafarer subsequently had four fingers amputated (Sub 17, *Submissions* p. 164).

6.39 The provision of prompt, professional medical care is an area of crew welfare that requires close attention and improvement. There has been a range of reports of medical neglect in the industry and the media.

## **Access to services**

6.40 Respondents in the survey were asked to rate services in order of importance. The four most important services were access to an international telephone line, access to postal services, transport to and from the ship, and access to shore based medical facilities (Exhibit 5, p. 12).

6.41 Captain Hay argued that crews were often treated as a nuisance by harbour authorities. He suggested that, at the very least, telephones should be installed on the wharves (Sub 5, *Submissions* p. 79).

6.42 Stella Maris argued that there was a need for improved recreational facilities on board ships, including affordable access to communication facilities. He noted that a telephone call could cost up to US\$12 per minute (*Transcripts*, p. 89).

## **Funding of seafarers' advocates**

6.43 Along with the maritime unions, seafarers' advocates, such as Stella Maris and the Missions to Seamen fulfil a vital role in the protection of this often vulnerable group of workers. They are largely funded through donations and bequests and by the shipping industry (*Transcripts*, p. 109).

6.44 This situation raises two issues. First, while it is appropriate that the shipping industry contributes to groups that uphold the welfare of seafarers, the committee notes the importance of such groups maintaining their independence. Second, as Lloyd's Register commented, '...it is getting more and more difficult to actually provide that range of services based on donations' (*Transcripts*, p. 109).

6.45 Jurisdictional sensitivities make it difficult for Australia to prevent the suffering of seafarers. However, the committee believes that Australia has an obligation as a civilised community to assist organisations that provide material, legal, emotional and spiritual support to seafarers who are far from home and, at times, subjected to degrading and exploitative treatment.

#### **6.46 Recommendation 14**

**The committee recommends that the Commonwealth:**

- **provide interim financial assistance on an annual basis for approved seafarers' welfare organisations, and**
- **investigate the establishment and annual funding of a National Seafarers' Welfare Network, and report the findings to Parliament by June 1999.**

#### **Placement fees**

6.47 The payment of a *placement fee in return for employment* is prohibited under ILO conventions 9 and 179. Nevertheless, 11 per cent of seafarers have paid such a fee. Among Indonesian seafarers, the figure is 43 per cent (Exhibit 5, p. 6). Along with sanctions for union membership, this could be a significant factor in discouraging seafarers from pursuing their rights.

#### **Piracy**

6.48 According to the International Shipping Federation, violent attacks on ships and their crews are occurring with increasing frequency and intensity. In 1997 some 229 vessels were attacked. The figure was the same in 1996, but only 90 in 1995. In 1997 some 631 crew members suffered violence in these attacks, with 51 crew members reported killed. This was a substantial increase from 290 in 1996 (Exhibit 1b, p. 20).

6.49 The chairman of the Asian Shipowners Forum has called for police and naval surveillance in areas frequented by pirates (*Daily Commercial News* 27 May 1998).

#### **Navigation Amendment (Employment of Seafarers) Bill 1998**

6.50 If passed, the Navigation Amendment (Employment of Seafarers) Bill 1998 would amend the *Navigation Act 1912*. Chapter 5 of this report outlined some of the competency issues raised by the Bill.

6.51 Also, the MUA told the committee that the proposed changes could have deleterious consequences for the welfare of Australian seafarers, and that this could indirectly impact on the welfare of foreign seafarers (*Transcripts*, p. 98).

6.52 The MUA argued that the Marine Council has provided '...an effective mechanism to check on the standard of accommodation and the welfare of seafarers on Australian ships.' (*Transcripts*, p. 98)

6.53 The MUA further argued that it should be Australia's goal to lift international standards for the treatment of seafarers to the Australian level. It urged Australia to: 'Try and formulate and implement change on the basis of not losing sight of the objective of having the rest of the world come up to our standard.' (*Transcripts*, p. 98)

6.54 As noted in chapter 5, the issues in the Bill will be debated in Parliament.

## **Jurisdiction**

6.55 The area of crew welfare was described by AMSA as a 'jurisdictional nightmare' (*Transcripts*, p. 90). While AMSA, the ITF and seafarers' welfare organisations are free to attempt moral persuasion, this is limited in its effects.

6.56 AMSA informed the committee that it would intervene in the event of '...an issue of a socio-cultural nature which we believed interfered with the safety performance of the vessel' (*Transcripts*, p. 100).

6.57 AMSA informed the committee that overseas shipowners commissioned agents to oversight AMSA's activities. Should AMSA step outside its jurisdiction, it would be sanctioned in the Federal Court (*Transcripts*, p. 92).

6.58 It was put to the committee by Stella Maris that Australia should have jurisdiction over the welfare of seafarers in Australian waters (*Transcripts*, p. 99). AMSA informed the committee that there were examples where Australia had implemented legislative requirements in excess of international requirements. It argued that crew welfare might be a matter which would benefit from further attention by the Government (*Transcripts*, p. 101).

## **Responsibility**

6.59 The abuse and neglect of seafarers is facilitated by the ability of perpetrators to evade responsibility. Gaps in jurisdictional cover constitute one source of the problem. Another source is the 'corporate legal walls' constructed to protect the beneficial owner from the consequences of their (or their agents') actions (*Transcripts*, p. 98). According to AMSA, this is a common problem (*Transcripts*, p. 98).

6.60 One example of this phenomenon was the case of the *MV Glory Cape*. [See discussion under *Developments* in this chapter.] While the ITF expected to receive a judgement in favour of the seafarers, it doubted that the judgement would be enforced. According to the ITF:

The owner no longer exists. It was a one-ship company. It now has gone, and the vessel is plying the world under a different name. (*Transcripts*, p. 97)



## Conclusion

6.61 The committee is disturbed by the extent and severity of breaches of crew welfare. There should be no tolerance of such a culture of fear and intimidation. The abuse and neglect of seafarers constitute both a violation of human rights and a serious risk factor for ship safety. Attention should be paid to a ship as a social system as well as a means of transport and a workplace.

6.62 The committee believes that the abuse and neglect of seafarers is rooted in a callous indifference to human life and facilitated by an inadequate international legal framework.

6.63 The committee notes that continued downwards pressure on freight rates has provided the drive to cut the key variable costs—maintenance and crew costs. The suffering of seafarers subjected to abuses and exploitation can provide financial reward to the beneficial owners of vessels and charterers and cargo owners. The committee believes that freight owners should recognise and accept that those who own, operate or work in international shipping are entitled to a fair reward for their investment or labour.

6.64 The committee urges the Commonwealth to take what steps it can to enhance the well being of seafarers. In all the focus areas before the committee in this inquiry, crew welfare appears to have progressed the least in the 1990s, and much remains in need of improvement.

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Chair

