

## Senate Standing Committee on Education and Employment

### QUESTIONS ON NOTICE Additional Estimates 2016 - 2017

**Agency - Fair Work Ombudsman**

**Department of Employment Question No. EMSQ17-001516**

**Senator Marshall provided in writing.**

#### **Question**

##### **FWO - Maritime industry**

The Fair Work Ombudsman put out the following media release on February 27, 2017. It raises more questions than answers. The agency won't name the vessel to either the media or unions representing international seafarers (please see below).

FWO Media Release 27 February

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170227-maritime-mr>

What is the name of the ship mentioned in the press release?

Why won't you tell journalists or unions the name of the ship, given you put out a media release?

Which flag does the vessel sail under and is it a Flag Of Convenience?

Who is the owner of the vessel?

Who is the Australian charterer and were they involved?

Who holds the Temporary Licences (TLs) for these voyages?

Can you provide a breakdown of the back pay in this case?

How was it paid to the crew?

What measures have you taken to ensure the money isn't taken straight back from seafarers?

How many ships do FWO inspectors visit each year?

How does the FWO police Temporary Licenced vessels?

How many notices of non-compliance have been issued by the FWO?

How many cases has the FWO prosecuted in international shipping?

#### **Answer**

1 and 2. The Fair Work Ombudsman (FWO) publicly identifies non-compliant employers only in situations where formal enforcement action is commenced, such as litigation or entering into an enforceable undertaking. Where businesses or individuals fully co-operate with inspectors and promptly repay money owed, without the need for enforcement action, the FWO's approach is not to publish information which may lead to those involved being identified.

This is consistent with the agency's *Compliance and Enforcement Policy*. The FWO publishes information when that publication will support compliance with Commonwealth workplace laws by:

- enhancing general and specific deterrence;
- informing and educating the community, or people in the same and similar industries, of the nature and outcome of enforcement activities; and
- providing advice about to how to prevent similar breaches.

These aims can be achieved without publishing the names of employers in matters where employers have voluntarily complied and specific deterrence is unnecessary.

Disclosing the names of employers can prejudice compliance activities and the effectiveness of our enforcement model by creating disincentives for individuals or employers to engage with the agency. Co-operation and engagement on the part of employers assists the FWO in identifying underpayments and returning monies to workers quickly.

Identifying employers could discourage others from co-operating with the FWO's investigations or directly approaching the FWO and seeking advice on rectifying any non-compliance.

3. The vessel was registered in Italy.
4. See response to question 1 and 2.
5. See response to question 1 and 2.
6. See response to question 1 and 2.
7. \$100,649 was repaid voluntarily to 10 employees for work performed between 1 January 2016 and 30 June 2016. Individual back payments ranged from \$621.33 to \$12,354.01. Payments included entitlements due under Part B of the *Seagoing Industry Award 2010* including base rates and overtime penalties.
8. Outstanding amounts were paid by bank transfer.
9. The employer was issued with a letter of caution, placing the employer on notice that future breaches of Australian workplace laws may trigger enforcement action, including litigation.
10. The number of visits made to vessels per year varies, depending on how many requests for assistance are received by the FWO.
11. Seafarers can make enquiries and raise concerns by writing to the FWO's dedicated Maritime inbox, which can be accessed via a specific webpage for maritime industry workplace rights and entitlements at [www.fairwork.gov.au](http://www.fairwork.gov.au).

The FWO considers information provided by employers, crew members, unions and others regarding compliance on board vessels via this inbox in accordance with the FWO's *Compliance and Enforcement Policy*. Where the FWO attends a vessel for on board educative and/or investigative activities, compliance is typically assessed by observing work practices, making inquiries of persons on board and requesting or requiring the production of employment records.

The FWO also has a Memorandum of Understanding (MoU) with the Australian Maritime Safety Authority (AMSA) which provides for referrals between the two agencies.

12. From 1 July to 31 December 2016, the FWO has investigated seven matters involving seafarers and issued four letters of caution. In the 2015/16 financial year, the FWO investigated five matters involving seafarers and issued four letters of caution.
13. The FWO has commenced legal proceedings against three shipping companies/operators in the last four years.