



INTERNATIONAL  
TRANSPORT  
WORKERS'  
FEDERATION

## ITF AUSTRALIA INSPECTORATE



**NOWHERE  
TO HIDE**

**Every State. Every Region. Every Port.**

**CAMPAIGN REPORT**  
**2ND WEEK OF ACTION: SOUTHERN STATES**  
**&**  
**UPDATED WAGE THEFT FINDINGS**  
**IAN BRAY ITF COORDINATOR AUSTRALIA**  
December 2023

# 1. Introduction

The Nowhere to Hide Campaign was launched in June 2023 to raise awareness of the treatment of overseas seafarers on foreign-registered ships and the urgent need for legislative and regulatory change.

The Flags of Convenience ships upon which the overseas seafarers work choose operating arrangements to avoid obligations. Their overseas seafarers mostly come from the poorest countries and are exposed to exploitation through an inability to negotiate fair treatment and/or lack of awareness of their rights.

The need for Australian Government intervention was identified in the *Robbed at Sea: Endemic Wage Theft from Seafarers in Australian Waters* report, commissioned by the International Transport Workers' Federation (ITF) Australian Inspectorate and published by the Australia Institute/Centre for Future Work in 2022. This report made ten recommendations for changes.

The Campaign consists of both a political and on the ground campaign involving targeted weeks of action (WoA). The WoAs are aimed at gathering further evidence to support the Robbed at Sea report recommendations.

During the WoAs, ship inspections are undertaken by teams of Australian and international ITF coordinators, inspectors and trained ITF volunteers reviewing the pay and conditions of overseas seafarers.

Specific attention is paid to compliance to the requirements of the Maritime Labour Convention (MLC) to which Australia is a signatory with Australian coastal trading, navigation and fair work legislation picking up this convention.

## 2. First Week of Action (WoA)

The Inspectorate undertook a first WOA from 13-20 June 2023 at New South Wales ports, with group inspections of foreign-registered vessels.

This WOA in June 2023 identified in just one week at three New South Wales ports:

- \$USD 4.5 million in unpaid overseas seafarers' wages – which suggests a staggering amount of wage theft is occurring under Australia's watch on an annual basis
- the wage theft included failure to pay \$USD 3,000,070 of Australian Seagoing Industry Award payments on ships licensed to engage in coastal trading
- and a range of other exploitation was identified including the need for medical treatment and repatriation

### 3. Second WoA findings

Following the success of the first WoA, a second WoA was held from 19-25 November 2023, targeting all ports in the southern states of Victoria, Tasmania and South Australia.

74 inspections were undertaken during the WoA and these identified:

- \$USD5.4 million in stolen wages.
- The wage theft included failure to pay \$USD4.2 million of Australian Seagoing Industry Award payments on ships licensed with a Temporary Licence to engage in coastal trading.

### MLC contraventions

The above wage theft is a breach of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) and *Fair Work Act 2009* (Fair Work Act), which refer to the MLC and make it applicable in Australia . A range of other MLC contraventions were identified, as outlined below.

|                              |                 |
|------------------------------|-----------------|
| <b>Repatriation</b>          | <b>23 cases</b> |
| <b>Provisions</b>            | <b>7 cases</b>  |
| <b>Shore leave</b>           | <b>3 cases</b>  |
| <b>Contract issues</b>       | <b>14 cases</b> |
| <b>Wages rolled over</b>     | <b>22 cases</b> |
| <b>Employment conditions</b> | <b>4 cases</b>  |
| <b>CBA not on board</b>      | <b>2 cases</b>  |
| <b>Living conditions</b>     | <b>9 cases</b>  |
| <b>Bullying</b>              | <b>1 case</b>   |

**Table 1: MLC contraventions**

## 3.1 Findings of 2nd Week of Action & recommendations to the Australian Government

### 3.1.1 Coastal trading and cabotage

The investigations found significant issues relating to wage theft on ships licensed to engage in coastal trading off the Australian coast. In particular:

- **an unawareness of the correct pay calculations** – approximately 50 per cent of the failure to pay correct wages appears attributable to a lack of awareness about correct pay calculations, rather than a deliberate miscalculation.

**Recommendation 1: The Fair Work Ombudsman (FWO) develop a calculation tool to supplement its Pay Guide – Seagoing Industry Award [MA000122].**

**Recommendation 2: The FWO publishes a step-by-step guide identifying how the Australian seagoing industry award is to be paid.**

- **confusion (accidental or willful) on the application of the Seagoing Industry Award**
  - the Inspectorate observed wage theft occurring due to confusion (accidental or willful) over when the Australian award system applies to voyages off the coast of Australia. This includes confusion over what constitutes a voyage and what happens when a ship owner switches charterers.

This unfair treatment of overseas seafarers is compounded with the current inequity in the legislative regime established via the CT Act and *Fair Work Regulations 2009* (Fair Work Regulations).

This regime allows payment of overseas seafarers at wage rates lower than the Australian safety net award rate for the first two voyages and, even after the first two voyages, Australian pay rates only apply on the laden leg of the voyage.

Recommendation 1 of the Robbed at Sea report addresses the inequity by calling for the loophole in the Fair Work Regulations to be closed. It recommended that to remove uncertainty about the application of the Fair Work Act and the Seagoing Industry Award 2020 to foreign-registered ships, authorised by a temporary license under the CT Act to operate in coastal trading, the current two voyage exemption loophole should be removed.

**Recommendation 3: The Inspectorate repeats its call for recommendation 1 of the Robbed at Sea report to be addressed and legislative reform to ensure overseas seafarers are entitled to fair pay when working off the coast of Australia.**

### **3.1.2 Reform to address powers of customs officers to deny clearance of ships**

Once the wage theft is identified, the Inspectorate enters into negotiations with relevant entities for back pay. These negotiations can take months to resolve and for the crew to receive their pay.

To ensure the crew receive their entitlements in reasonable time and are not further exploited, it is recommended legislative amendments are made to the powers of Australian Border Force (ABF) officers to provide the ability to not clear a ship unless the officer is satisfied all wages have been paid to crew prior to a ship being granted clearance for an international voyage.

The repealed *Navigation Act 1912* (replaced by the *Navigation Act 2012*) contained Section 289(2) (Payment of Australian rates of wages), which stated:

*(2) In the case of ships trading to places beyond Australia, the wages to which a seaman is entitled under this section shall be paid before the departure of the ship from Australia, and the master of such a ship shall produce to the officer of Customs to whom application is made for a clearance under the Customs Act for an international voyage from a port in Australia evidence to the satisfaction of that officer of such payment, and the officer of Customs may refuse to grant the clearance, and the ship may be detained, until such evidence is produced to him or her.*

The ability to have payments made prior to a vessel being given clearance would reduce the burden of long-winded enquiries and prosecution/defence costs, which are very complex matters, often drawing in internationally based employers to the proceedings.

It is critical that a provision similar to Section 289(2) is reinstated into an appropriate Act so that ABF officers, utilising their customs clearance powers in the *Customs Act 1901*, have the authority to not issue a customs clearance if there is evidence that all wage payments in accordance with the Fair Work Act and seafarers' employment agreement have been paid.

**Recommendation 4: Legislative amendments are made to require satisfactory evidence of payment of wages before clearance of a ship for an international voyage.**

## 4. Conclusion

**The ITF Australian Inspectorate identified and recovered a total of \$USD 19,924, 658 from 650 inspections in 2023.**

Half of this wage recovery was achieved in the two WoAs conducted separately in NSW in June 2023 and Victoria, South Australia and Tasmania in November 2023.

The total amount of wage recovery of **\$USD 19,924, 658** is comprised as follows:

- approximately half of the total is from avoidance or underpayments of the seafarers' employment contracts (Seafarers Employment Agreements) which is a requirement under the MLC.
- the other 50% of underpayments and wage theft was a result of non-compliance to Australia's current legislative provisions in accordance with the CT Act and the Fair Work Act.

The ITF is concerned that the regularity in which employers are underpaying or avoiding payment altogether under existing Australian legislation identifies an industry that either fails to understand its responsibility to adhere to the legislative instruments or chooses to ignore the law altogether because the risk of being caught and prosecuted is dwarfed by the reward.

The ITF identified a series of recommendations that were presented to the Australian Federal Government in the report it commissioned, titled "Robbed at Sea".

**Recommendation 5: The ITF Inspectorate calls on the Federal Government to implement the recommendations in the Robbed at Sea report and the subsequent recommendations in this report - refer to the following section full a full list of recommendations.**

If the Federal Government is committed to a legislative framework to put the country on a path of eradicating wage theft:

- it needs to consider implementing the recommendations in the Robbed at Sea report and this report to act on the unacceptable amounts of wage theft occurring on the Australian coast.
- it also needs to consider that, if nothing is done to address wage theft occurring under Australia's existing legislation, this wage theft will exceed the wage theft occurring under the MLC within the next 12 months.

## 4.1. Report recommendations

### Robbed at Sea report

The report recommendations are summarised below. It is recommended that the [full report](#) is read, as it covers the complexities of the legislation.

- Close the loophole in the Fair Work Regulations (recommendation 1) – this allows the first two voyages of a ship authorised under the CT Act to engage in coastal trading under a TL to be award free – that is, it allows the shipowner to pay at international rates, often well below Australian pay standards.
- Strengthen the Fair Work Act and CT Act to regulate conditions of employment of seafarers (recommendation 2)
- Amend the Seagoing Award to level the playing field for all seafarers in coastal trading (recommendation 3).
- Make wage theft unviable – to prevent and criminalise wage theft (recommendation 4).
- Amend the licensing applications process under the CT Act to require applications to lodge a bond when applying for a TL (recommendation 5).
- Expand and enforce modern slavery commitments – to enhance the Modern Slavery Act 2018 (recommendation 6).
- Advocate to national governments and the International Labour Organisation for the establishment of a network of regional shipping industry labour tribunals to address seafarer labour grievances (recommendation 7).
- Include shipping industry labour trade standards in trade agreements (recommendation 8).
- Advocate that the Australian and Consumer Competition Council fulfil the object of the Competitive and Consumer Act 2010 and require that Australian flag shipping is not hindered from commercial participation in liner cargo shipping (recommendation 9).
- Enhance information sharing and coordination among compliance bodies (recommendation 10).

### Recommendations in this report

- Recommendation 1: The FWO develop a calculation tool to supplement its Pay Guide – Seagoing Industry Award [MA000122].
- Recommendation 2: The FWO publishes a step by step guide identifying how the Australian seagoing industry award is to be paid.
- Recommendation 3: The Inspectorate repeats its call for recommendation 1 of the Robbed at Sea report to be addressed and legislative reform to ensure overseas seafarers are entitled to fair pay when working off the coast of Australia.
- Recommendation 4: Legislative amendments are made to require satisfactory evidence of payment of wages before clearance of a ship for an international voyage.
- Recommendation 5: The ITF Inspectorate calls again on the Federal Government to implement the recommendations in the Robbed at Sea report and the subsequent recommendations in this report.

# Further information

## References

Australia Inspectorate (2023). *Nowhere to hide: Campaign report & updated wage theft findings: June 2023*.

Pickett, Rod, Raynes, Lily and Stanford, James (2022). Robbed at sea: endemic wage theft from seafarers in Australian waters. The Australia Institute Center for Future Work.

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