

## MUA and individual crew members face legal action

7 April 2017

The Fair Work Ombudsman has commenced litigation against the Maritime Union of Australia (MUA) and nine shipping crew over alleged unlawful industrial action that prevented a ship from leaving a port in south-west Victoria for almost two months.

In documents filed in the Federal Court, the Fair Work Ombudsman alleges the MUA contravened the Fair Work Act by organising unlawful industrial action that prevented the MV Portland from leaving the Port of Portland between 14 November 2015 and 13 January 2016.

The Agency is also taking action against nine individual crew members of the MV Portland, alleging they contravened the Fair Work Act by also engaging in unlawful industrial action.

The crew members were employed by ASP Ship Management Pty Ltd.

Alcoa Portland Aluminium Pty Ltd owned the MV Portland and had engaged ASP Ship Management to operate the ship.

The industrial action took place following an announcement by Alcoa that the MV Portland would be sold and crew members would be made redundant.

Following the announcement, ASP Ship Management instructed crew members to sail the MV Portland to Singapore for handover to its new owner.

The Fair Work Ombudsman alleges the MUA was responsible for organising crew members to refuse directives to sail the vessel to Singapore on 10 separate occasions.

It is alleged the MUA was also responsible for organising crew members to refuse directives to move the MV Portland to an alternate berth or to anchorage within the Port of Portland on 14 separate occasions, and to refuse directives to attend for work.

It is alleged the conduct of the MUA and the nine crew members amounted to unlawful industrial action because the MUA and the crew were covered by an enterprise agreement that had not reached its nominal expiry date when the action took place.

It is alleged the MUA and the crew were aware the industrial action was unlawful as a result of orders made by the Fair Work Commission and the Federal Court of Australia.

Documents filed in Court by the Fair Work Ombudsman allege the MUA organised the industrial action through a range of activities, including regular contact with the crew before and during the period of industrial action; maintaining a presence in the Port of the Portland during the period of industrial action; providing crew members with speaking notes for media interviews; encouraging the crew in taking what the MUA described as a 'strong and principled stand'; sourcing donations and making payments to crew members involved in the industrial action; arranging for a crew member to attend an MUA press conference in Canberra, instead of attending for work; contacting potential replacement crew members, who then withdrew their agreement to work on the MV Portland; physically blocking a replacement crew member as he attempted to board the MV Portland; and arranging a protest, assembly, blockade and rally in support of the industrial action.

The MV Portland eventually sailed for Singapore in January 2016.

The Fair Work Ombudsman alleges the MUA contravened the Fair Work Act by organising unlawful industrial action and that it was an accessory to each of the contraventions by the nine crew members who allegedly engaged in unlawful industrial action.

The MUA faces maximum potential penalties of up to \$54,000 per contravention and the crew members each face maximum penalties of up to \$10,800 per contravention.

The Fair Work Ombudsman is also seeking a Court Order requiring the MUA to compensate Alcoa for losses it incurred as a result of the industrial action. The Fair Work Ombudsman is yet to make submissions on the amount.

Acting Fair Work Ombudsman Michael Campbell says a decision was made to commence legal action because enforcing compliance with laws outlining the process that must be respected when taking industrial action is fundamental to maintaining the integrity of Australia's system of industrial laws.

"Employers, workers and unions are all equal in the eyes of the law. They are entitled to the protections afforded to them, but they

are equally bound by its obligations." Mr Campbell said.

"The system only works if all workplace participants adhere to their obligations under the law. Anyone who would seek to deliberately flout the law can be assured that there are consequences for such actions."

"Industry representatives have a responsibility to lead from the front when it comes to compliance with workplace laws. They must exemplify the expectations they have of others."

The case is listed for a case management hearing in the Federal Court in Melbourne on May 8 2017.

Employers and workers seeking advice or assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

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