



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Kiwi Seafarers Query Legality of MIQ Settings

New Zealand seafarers who finish their contracts in overseas countries and then face difficulties getting home, are questioning the legality validity of the Government's Managed Isolation and Quarantine (MIQ) settings.

The core issue is that the Government views Kiwi seafarers no differently from other New Zealanders who live, work or are travelling overseas, and makes no special provision for them in its MIQ rules.

The seafarers, however, argue that they are a special case because:

- a) their working conditions disadvantage them from competing with others when booking MIQ spots
- b) they believe they have legal right on their side because New Zealand is a signatory to the Maritime Labour Convention (MLC)

Looking first at the disadvantages they face, New Zealand seafarers who sign off overseas may well have been forced to work considerably-longer periods onboard than their contract stipulated.

They often cannot predict the date of sign off because this can change due to weather, employer demands on the ship's movements or port requirements – such as waiting for a berth. This means that they may not be able to join the queue trying to book MIQ spots until within a couple of days of crew change.

Even then, onboard Wi-Fi tends to be low bandwidth which creates problems with refreshing MIQ pages – there is a need for speed to grab a slot.

Stories are emerging of New Zealand mariners overseas who, having failed to book an MIQ spot, give up the fight and re-sign for another tour of duty with their vessel – which, in reality, means they are adding to the problem of seafarers working months past their normal contracts and being unable to repatriate.

For those who are successful in finding flights and booking an MIQ spot, the problem can then work in reverse. Once in New Zealand, they may be concerned about going offshore again and resuming their normal overseas employment, for fear that they may not be able to get home again in future.

Home-based jobs for mariners are scarce, so they may end up being an unemployment statistic. Seafarers argue they have to make decisions about whether to carry on with their careers or spend time with their families because they cannot do both.

However, the seafarers believe they also have a legal right to special treatment.

New Zealand is a signatory to the MLC. Under that convention, Guideline B2.5.2 – Implementation by Members states that: "Every possible practical assistance should be given to a seafarer stranded in a foreign port pending repatriation" and that "Each Member should have regard to whether proper provision is made ... for the return of seafarers employed on a ship that flies the flag of a foreign country who are put ashore in a foreign port for reasons for which they are not responsible."

With the Government declining to give seafarers any special recognition, the mariners have formed support groups among themselves and sought explanations under the Official Information Act as to why the MLC is not being observed.

Documentation released under the Official Information Act shows advice given by Maritime New Zealand of its interpretation of New Zealand's obligations under the MLC.

It states that the material provided in Section B of the Convention is not binding on states. Section 4 notes that the Code contains the details for the implementation of the regulations. It comprises Part A (mandatory standards) and Part B (non-mandatory guidelines). The arguments quoted by Kiwi seafarers as required to be met by New Zealand are all in Part B – so, non-mandatory. This is the basis for saying that legally, New Zealand is not in breach of the Convention.

The Government could choose to implement or follow non-mandatory guidelines but at the time of writing had not. In response, some New Zealand seafarers are turning to human rights legislation to argue their special case.

In terms of what would solve the current impasse, the seafarers believe that a solution would be found by reserving for them a small number of spaces within the allocation that the Ministry of Business, Innovation and Employment holds for air and maritime crew operating in and out of New Zealand. Given that the number of Kiwi seafarers working overseas is not huge, and that only a few will probably be coming to the end of their contracts each week, the number of reserved slots would be relatively small.

In the meantime, the MIQ allocation system considers applications on a case-by-case basis, and the threshold is very high. Criteria includes New Zealand citizens or residents who are unable to legally remain in their current location and have no other option but to return to New Zealand.

Because of this, the advice being given by seafarers' groups to individual mariners is that, when signing off their vessel, remain in the country where they sign off and insist to the agent that the visa in their passport is stamped as "seafarers transit". Most countries issue this type of visa for seafarers signing off a vessel – valid for either 48 or 72 hours – to enable them to get out of the country for repatriation.

Importantly, they should not get a tourist visa. By remaining in that country with only a seafarers transit visa, they can no longer legally stay there, which improves the chances of them being issued with a 2c emergency allocation by MIQ New Zealand staff.

Seafarers are also being advised not to be tempted to fly to Dubai or any other halfway-home safe country, as they will then no longer be deemed a seafarer in transit, but just another Kiwi tourist stranded in a safe country.

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