



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



NZ Mariners Challenge MIQ Settings

New Zealand mariners stranded overseas by the inability to obtain spots in managed isolation and quarantine (MIQ) facilities have been to the fore in driving legal challenges to the country's MIQ booking system.

In spite of designating seafarers as essential workers in accordance with International Maritime Organization resolutions, the New Zealand Government has refused to grant MIQ priority access to returning New Zealand seafarers working internationally.

This creates an unintended anomaly in that a foreign seafarer is able to enter New Zealand to join or disembark a vessel, utilising the "maritime allocation" corridor reserved for seafarers within MIQ, whereas a New Zealand seafarer is denied similar access when signing off their vessel in a foreign port.

While the New Zealand Bill of Rights Act 1990, section 18(2) states: "Every New Zealand citizen has the right to enter New Zealand," the seafarers argue that they have a special case because:

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

The Convention 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".

However, the Government interprets section B of the Convention as not being binding on member states. It therefore treats 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, in spite of the MLC stating that seafarers need special protection.

In response, New Zealand mariners have formed support groups and thrown their weight behind "Grounded Kiwis" – a group of New Zealand citizens living overseas that has initiated a legal challenge to the Government.

The group has brought a claim for judicial review (CIV-2021-485-556) against the Minister for Health, the Minister for COVID-19 Response and the chief executive of the Ministry of Business, Innovation and Employment (MBIE).

The claim challenges the Isolation and Quarantine Order and the Air Border Order, as well as the various systems that have been used for allocating the limited number of managed isolation places. It says the decisions were unlawful or unreasonable for a number of reasons and particularly that the right of New Zealanders to enter New Zealand in s18(2) of the Bill of Rights Act 1990 was breached.

The case is set down for hearing in the High Court at 10am on January 25 next year for two days.

There is precedent for a successful legal challenge to MIQ decisions. In September a pregnant woman, Bergen Graham, was granted a space in MIQ after launching an action against the Minister for Health and MBIE.

Ms Graham had been trying to get home to New Zealand from El Salvador via the United States. She was living with her husband Oscar in his home country of El Salvador when she became pregnant in February.

He immediately applied for a New Zealand visa, but it was June by the time it was approved, and they could not get MIQ spots through the voucher system. As Ms Bergen's El Salvador visa was about to expire, the couple started the journey home without guaranteed MIQ.

Ms Bergen's pregnancy was deemed high risk, with three specialists providing letters of confirmation. After six unsuccessful applications online for an MIQ spot, and three complaints, a legal challenge was filed in the High Court by Francis Joychild QC.

Within 24 hours Ms Bergen was offered an MIQ voucher, upon which Ms Joychild filed a notice of discontinuance of the legal claim.

New Zealander Alexandra Birt, who is a London-based lawyer and part of Grounded Kiwis, has estimated there could be hundreds of people who would fit the profile to take legal action.

Ms Birt has also filed a petition to Parliament with 22,888 signatures which asks "the House of Representatives urge the Government to change MIQ to create an equitable booking system, increase capacity and consider alternatives to 14-day MIQ requirement for vaccinated returnees, to enable all Kiwis to return, consistent with the New Zealand Bill of Rights Act".

Kiwi master mariner Kevin Judkins, who has taken a leading role in co-ordinating the actions of seafarers in this country, has joined forces with Dr Sofia Galani, assistant professor of public international law at Panteion University in Greece, who also sits on the non-executive board of advisors of the Human Rights at Sea organisation. They have co-authored the following [article](#) outlining the peculiarities of the New Zealand situation.

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