

SEAFARER SUBJECT GUIDE

ABANDONMENT IN NEW ZEALAND

This Guide deals with the situation where seafarers are abandoned in a port in New Zealand or on a New Zealand flagged vessel in a port outside New Zealand. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is abandoned, he is strongly advised to consult a lawyer qualified to practise in New Zealand.

*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

- 1. When is a seafarer considered abandoned according to national case law or legislation? Is there any special legislation concerning abandoned crew?**
 - 1.1 New Zealand has no definition of seafarer 'abandonment' in its domestic legislation or common law, and arguably no coherent legislative process for addressing instances of abandonment.
 - 1.2 Rather the seafarers' predicament is often dealt with by practical means. For example, claims for unpaid wages may be pursued by appointing a lawyer. Food and accommodation may be provided by the local community. Repatriation may occur consequent on agreement by the employer to meet the cost, via voluntary benefactors, or by the cost being met by the New Zealand government (who may then attempt to recover the cost from the employer or through a bond).
- 2. What is the immigration status of abandoned seafarers?**
 - 2.1 The immigration status of foreign seafarers is dependent upon their employment status.
 - 2.2 Any foreign seafarers who are abandoned, or who leave their employment, whilst in New Zealand, will generally be deemed to be in New Zealand unlawfully.
 - 2.3 A person unlawfully in New Zealand has an immediate obligation to leave New Zealand. Once a person is unlawfully in New Zealand they have no right to apply for a visa, or to work or study. Any application that is made for a visa by such person is a matter for the absolute discretion of the Minister of Immigration.
 - 2.4 Persons remaining in New Zealand unlawfully are subject to deportation. Deportation is governed by the processes contained in the Immigration Act 2009, which includes a 42 day period within which to submit an appeal on humanitarian grounds.

SEAFARER SUBJECT GUIDE

- 2.5 Depending on the circumstances, abandoned seafarers who are unable to leave New Zealand voluntarily and at their own cost may be repatriated, deported or permitted to remain in New Zealand temporarily. In certain, very limited, situations, a claim to protection or refugee status may be possible, in which case the policy governing that process will commence.
- 2.6 New Zealand may meet the cost of repatriation and deportation, but may also take steps to recover that cost, including costs associated with maintaining the person during their time in New Zealand.
- 2.7 Deportation will generally have the consequence of preventing the deported person from returning to New Zealand for a set period of time, or even indefinitely. It may also affect their ability to gain lawful entry into other countries. Repatriation does not normally carry these negative consequences.

3. Can an abandoned seafarer get shore leave?

- 3.1 In a situation where a foreign vessel was abandoned with foreign crew remaining on board the vessel, their immigration status would govern their freedom of movement. It is usual that it is a condition of their visa that they are accommodated on the vessel. However, foreign seafarers abandoned in New Zealand may be granted temporary visas allowing freedom of movement, although this would be entirely at the absolute discretion of the Minister of Immigration.

4. Is abandonment of seafarers considered a crime?

- 4.1 Abandonment of seafarers does not exist as a defined legal concept in New Zealand and hence it is not a crime per se.
- 4.2 However abuse/neglect of seafarers may, depending on the nature of the abuse, be a crime in New Zealand. Any serious abuse/neglect should therefore be reported to the police. New Zealand's criminal law contains offences pertaining to human trafficking which may apply in certain cases.
- 4.3 New Zealand's accident compensation regime provides cover for persons who have suffered abuse in New Zealand, regardless of whether they are a New Zealand citizen or resident. The accident compensation regime provides cover for a range of personal injuries, including physical injury and certain types of mental injury (for example, mental injury consequent on witnessing a traumatic event at work, or consequent on sexual abuse).

SEAFARER SUBJECT GUIDE

5. What entities and/or persons may be involved with or assist an abandoned crew?

5.1 Various entities and/or persons may be involved with or assist an abandoned crew.

5.2 Lawyers

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

5.2.1 In addition, reference may be made to the Guide on Using Lawyers and Fact File available on the SRI app and at

https://www.seafarersrights.org/seafarers_subjects/using_lawyers/

5.3 ITF Inspectors and union officials

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

5.4 Welfare agencies

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

5.5 Governments and Embassies

Additionally the seafarer may need to access government official websites, including lists of embassies, to find an appropriate contact.