

# **Foreign Fishing Crew Wages and Repatriation Bond Bill**

Member's Bill

## **Explanatory note**

This bill amends the Fisheries Act 1996 and provides a mechanism to ensure that foreign fishing crews are not stranded without money in New Zealand ports for months at a time following the collapse of the company that employs them.

The purpose of the bill is to create a fund from a bond, or a guarantee of the equivalent money by way of an insurance policy, so that financial assistance can be provided to members of crews stranded in New Zealand ports.

The need for this measure arises from the considerable number of foreign vessels and their crews affected by employers who have been unable to honour their obligations to pay wages.

The bond, or its guaranteed equivalent by way of insurance, will cover a crew's wages and cost of return-home air travel for the crew, in the event that the operator, or notified user of the vessel becomes, while the vessel is fishing in New Zealand fisheries waters, unable to continue paying the crew's wages, or to provide return transport for the crew.

The proposed section 103A allows the chief executive of the Ministry of Fisheries to pay wages to foreign crew members covered by these amendments at the minimum adult wage under the Minimum Wage Act 1983.

The stranded fishing crews of foreign fishing vessels have lived on their ships in New Zealand ports, often in unacceptable conditions, with little or no money. At the same time the crews' families at home are in forced separation, and are in most cases living in dire financial circumstances.

These crews have been living in ongoing uncertainty of court actions over the liabilities and assets of their employers, including the sale of their vessels to help pay for crew wages.

The bill will protect innocent fishing crews from the human consequences of employer-company failure.

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*Graham Kelly*

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**The Parliament of New Zealand enacts as follows:**

### **1 Title**

- (1) This Act is the Foreign Fishing Crew Wages and Repatriation Bond Act **2000**.
- (2) In this Act, the Fisheries Act 1996<sup>1</sup> is called the “principal Act”.

<sup>1</sup> 1996 No 88

### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

### **3 Purpose of Act**

The purpose of this Act is to ensure the availability of a fund, from a bond or equivalent sum by way of insurance, from which financial assistance can be provided to members of the crew of a foreign fishing vessel, covering wages and the cost of return-home air travel for the crew, in the event that the operator or notified user of that vessel becomes, while the vessel is fishing in New Zealand fisheries waters, unable to continue to pay the wages of the members of the crew or to provide them with transport back to the port at which they became members of the crew of the vessel.

**4 Interpretation**

Section 2(1) of the principal Act is amended by inserting, after the definition of **foreign allowable catch**, the following definition:

“**foreign crew member** means, for the purposes of section 103 and **section 103A**, a member of the crew of a vessel who is not a New Zealand citizen or a resident of New Zealand”.

**5 Fishing vessel must be registered**

(1) Section 103(1) of the principal Act is amended by adding to paragraph (c) the expression “; and”.

(2) Section 103(1) is amended by adding the following paragraph:

“(d) where that vessel has as a member of its crew any foreign crew member, that person has either—

“(i) paid to the Ministry of Fisheries the Foreign Fishing Crew Wages and Repatriation Bond; or

“(ii) provided evidence to the Ministry of Fisheries that that person holds valid insurance sufficient to meet that person’s obligations to pay that bond.”

**6 New section 103A inserted**

The principal Act is amended by inserting, after section 103, the following section:

**“103A Foreign Fishing Crew Wages and Repatriation Bond**

“(1) Every person registered in the Fishing Vessel Register as the operator of, or a notified user in relation to, that vessel (as the case may be) must, upon registration, either—

“(a) pay to the Ministry of Fisheries the Foreign Fishing Crew Wages and Repatriation Bond (the **bond**), calculated in accordance with **subsection (2)**; or

“(b) provide evidence to the Ministry of Fisheries that that person holds valid insurance sufficient to meet that person’s obligations to pay the bond (in this section called the **insured equivalent**).

“(2) The bond or insured equivalent (as the case may be) is to be calculated, in respect of each crew member for whom it is payable, in accordance with the following formula:

$$(a \times b) + c$$

where,—

- a is the number of weeks that the vessel is licensed to fish in New Zealand fisheries waters; and
- b is the adult minimum weekly wage as prescribed under section 4 of the Minimum Wages Act 1983; and
- c is the cost of an airfare for that crew member from New Zealand to the airport nearest the residence of that crew member at the time the application is made for a licence to fish in New Zealand fisheries waters.

“(3) For the purposes of **subsection (2)**, the crew members for whom a bond or insured equivalent is payable includes any foreign crew member who is contracted to join the crew of the vessel during its operations in New Zealand fisheries waters, whether or not that person is, or will be, a member of the crew when the vessel first enters New Zealand fisheries waters.

“(4) The Ministry of Fisheries is to hold any bond payments received under **subsection (1)** in an interest bearing account to be called the Foreign Fishing Crew Wages and Repatriation Bond Account, in the name of the operator or notified user (the **account holder**) until the vessel, on which foreign crew members covered by the payments are employed ceases operations in New Zealand fisheries waters.

“(5) Where a vessel on which foreign crew members covered by bond payments are employed ceases operations in New Zealand fisheries waters, the Ministry will—

- “(a) repay to the account holder the net bond amount; or
- “(b) at the request of the account holder, apply the net bond amount towards payment of any bond payments to which the account holder has become or may become liable; and

in either case, will provide the account holder with a statement detailing accruals to, and deductions from, the account in the name of that account holder.

- “(6) For the purposes of **subsection (4)**, the net bond amount is calculated as the original bond payment, plus interest earned, less administration costs and any payments made under **subsection (10)**.
- “(7) In the event that an operator or notified user of a vessel becomes, while the vessel is fishing in New Zealand fisheries waters, unable to continue to pay the wages of the members of the crew or to provide them with return transport to their homes, the members of the crew for whom a bond has been paid (or insured equivalent arranged), or their representative, may apply to the chief executive for assistance.
- “(8) An application made under **subsection (7)** may be made on behalf of 1 or more members of the crew.
- “(9) The chief executive may, on his or her own motion, make a determination in respect of any foreign crew member who has not applied for assistance, as if that crew member had applied for assistance, but must inform that foreign crew member as soon as practicable of his or her intention to make a determination.
- “(10) In making a determination following an application under **subsection (7)**, or in making a determination under **subsection (9)**, the chief executive may, in his or her discretion, pay to the applicant or applicants, or to any other persons on behalf of 1 or more applicants, either or both of—
- “(a) a sum or sums of money towards the wages of the applicant or applicants, up to the adult minimum weekly wage as prescribed under section 4 of the Minimum Wage Act 1983:
- “(b) a sum or sums of money towards the cost of air travel to the airport nearest the home of each crew member.
- “(11) Where the chief executive is considering an application made under **subsection (7)**, or making a determination under **subsection (9)**, the chief executive—
- “(a) may require any applicant or applicants to provide wage slips, bank account details, or other relevant information in support of the application; and
- “(b) will have regard to the needs of all the members of the crew, whether or not they have themselves applied for assistance.

“(12) Payments under **subsection (10)** will be made from the Foreign Fishing Crew Wages and Repatriation Bond Account and will, where they relate to crew members for whom the insured equivalent has been arranged, be recoverable (together with any accrued penalty interest and costs) by the chief executive, 5  
from the permit holder in whose name the insurance was taken out, as a debt due to the Crown.

“(13) The chief executive may not approve payments to, or on behalf of, the crew of any 1 vessel which in total exceed, as the case may be, the insured equivalent arranged in respect of 10  
the crew of that vessel (less any administrative costs), or the total bond payments paid in respect of the crew of that vessel (after adding any interest accrued thereon and subtracting any administration costs).”