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## SENATE

EMPLOYMENT, WORKPLACE RELATIONS, SMALL  
BUS. & EDUCATION LEGISLATION COMMITTEE

**Reference: Navigation Amendment (Employment of Seafarers) Bill  
1998**

TUESDAY, 20 JULY 1999

MELBOURNE

BY AUTHORITY OF THE SENATE

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**SENATE**  
**EMPLOYMENT, WORKPLACE RELATIONS, SMALL BUSINESS AND**  
**EDUCATION LEGISLATION COMMITTEE**

**Tuesday, 20 July 1999**

**Members:** Senator Tierney (*Chair*), Senator Carr (*Deputy Chair*), Senators Collins, Ferris, Stott Despoja and Tchen

**Substitute members:** Senator Murray for Senator Stott Despoja

**Participating members:** Senators Abetz, Allison, Boswell, Brown, Brownhill, George Campbell, Crossin, Crowley, Faulkner, Gibbs, Harradine, Hutchins, Lundy, Mackay, O'Brien, Schacht and Watson

**Senators in attendance:** Senators Carr, Collins, Tchen and Tierney

**Terms of reference for the inquiry:**

Navigation Amendment (Employment of Seafarers) Bill 1998

**WITNESSES**

**HOULTON, Ms Julie-Anne, National Industrial Officer, Maritime Union of Australia** ..... **1**

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**Committee met at 2.08 p.m.****HOULTON, Ms Julie-Anne, National Industrial Officer, Maritime Union of Australia**

**CHAIR**—I declare open this public hearing on the Senate Employment, Workplace Relations and Small Business and Education Legislation Committee. On 26 May 1999, the Senate referred to the committee for report the provisions of the Navigation Amendment (Employment of Seafarers) Bill 1999. The committee is due to report to the Senate on 10 August. The purpose of this bill is to remove the employment provisions from the Navigation Act 1912, the principal act, that are inconsistent with the concept of company employment and with the aims of the Workplace Relations Act 1996. I welcome our first witness, who is from the Maritime Union of Australia. The committee has before it submission No. 2. Are there any changes you wish to make to it?

**Ms Houlton**—No.

**CHAIR**—The committee prefers all evidence to be given in public. However, if at any time you wish to give evidence, part of evidence or answers to any questions in camera, you may make a request and the committee will consider the request. Such evidence may subsequently be made public by order of the Senate. I now invite you to make a brief opening statement.

**Ms Houlton**—The thrust of the submission that is before you is fairly clear. The Maritime Union of Australia is of the view that deregulation for deregulation's sake is not necessarily something we would support. We are opposed to the objectives of the Workplace Relations Act. We are not opposed to updating existing provisions if they are outdated, but we are opposed to removing basic conditions for what must be said to be a very vulnerable group of workers who work in isolated workplaces and need every possible protection that they can achieve. I do not really have much to add apart from that.

**Senator CARR**—I will begin by asking you what aspects of the Navigation Act review you would support.

**Ms Houlton**—My submission goes to the issues we contest. Excluding them, we are supportive of the updating the act.

**Senator CARR**—Which parts of this bill do you oppose?

**Ms Houlton**—If you read the submission—

**Senator CARR**—I read the submission. For the benefit of the public record, could you indicate to us which measures in this bill the union supports and which matters it opposes?

**Ms Houlton**—We are opposed to the abolition of the Marine Council and its functions. We believe that it plays a very important role overall. We are opposed to the removal of the prohibitions for fees in relation to the supply of seafarers. We are opposed to the removal of the prohibition for using crews of ships in essentially what is stevedoring activities whilst they are engaged in handling cargo or ballast while the ship is in an Australian port. We are opposed to the removal of articles of agreement which historically have been very important for seafarers. In relation to repatriation, we support the existing procedures for the discharge of seamen, particularly where you have disputes about conditions where seafarers are essentially left stranded in ports and need to be repatriated. Essentially, they are the issues that we have put in our submission.

**Senator CARR**—The minister's explanatory memorandum refers to various provisions of the act that he says are now obsolete. He cites, for instance, the regulations concerning a ship's library being a requirement for seamen. Most people in this country, I would have thought, would ask questions about the nature of those sorts of regulations. I am not saying that they

are necessarily right. Can you explain why you think provisions such as the those for a ship's library are important for seamen.

**Ms Houlton**—As it is an isolated workplace, entertainment is important for seamen. I invite the committee to review the *Ships of shame* documents that were put forward. They deal with a lot of issues about the isolation and difficulties that seafarers face. When it comes to negotiating their conditions, it is not as though they can just hop off if they are not happy with the way that their employment contracts are going. It is more difficult for them to negotiate changes. They are entitled to a reasonable quality of life. That may include the provision of a library or perhaps some other form of entertainment for their off-duty hours.

**Senator CARR**—The submission you have put before us suggests that international trends are for greater regulation, not greater deregulation as proposed by this government. Can you give the committee examples of this international trend that you cite?

**Ms Houlton**—In terms of specific examples, I can undertake to provide the committee with a list of specific regulations within the next week. I cannot bring them forth today.

**Senator CARR**—The government is trying to put the view to the parliament that because industrial relations circumstances have now changed there is no need for regulations such as those contained in this legislation to be maintained. Is it the union's view that there would be a return to old injustices that had been outlawed by this bill if these provisions were removed from the legislation?

**Ms Houlton**—Without a doubt the underpinning philosophy of the economic rationalist is that market forces will ensure that everybody is able to bargain equally and that we will end up with a fantastic outcome employment wise and condition wise. The Esso disaster shows you that sometimes it is necessary for outside influences to be put into place. Deregulation for deregulation's sake is not necessarily an outcome which the union supports.

**Senator JACINTA COLLINS**—Are there provisions in the Navigation Act that are inconsistent with the Workplace Relations Act, to your understanding?

**Ms Houlton**—The objectives of the Workplace Relations Act are about having a direct relationship between employees and employers. The Navigation Act brings in a third party, if you like. It also has a government role.

**Senator JACINTA COLLINS**—That is not necessarily inconsistent. The Workplace Relations Act still provides scope for those areas where government determines that it is appropriate for outside involvement. We have not seen the government pursuing the AMA, for instance, at this stage.

**Ms Houlton**—With respect, I get calls from seafarers and people who work in the offshore oil industry all the time. They say to me that they would like to have a collective agreement involving a union at their workplace but that the employer has simply presented them with an AWA and said that if they did not sign that agreement they would not be picked up on the next swing. The problem is that you are dealing with an isolated group of workers who have difficulty organising for industrial action because of the requirements and procedures that are necessary under the Workplace Relations Act in order to organise. It is difficult to get to them sometimes.

**Senator JACINTA COLLINS**—I can easily accept the argument that there are factors relevant to the maritime industry associated with both isolation and safety.

**Ms Houlton**—That is right.

**Senator JACINTA COLLINS**—That upholds an argument that there should be public interest intervention in the industry. I also put to you that that is not necessarily inconsistent with the Workplace Relations Act and that we should not necessarily accept on face value the government's argument that provisions in the Navigation Act are inconsistent with the Workplace Relations Act.

**Ms Houlton**—The Workplace Relations Act objective is to push employers towards the use of AWAs. There were 10,000 collected agreements and 1,043 direct agreements on a collective basis and a big increase in the use of AWAs. The union's position is that the Workplace Relations Act fragments work forces that should normally take a collective position. To further promote that use of fragmentation is not in the interests of the Maritime Union of Australia or its members.

**Senator JACINTA COLLINS**—Where are the precise provisions in the Workplace Relations Act which demonstrate an inconsistency with provisions that this bill seeks to remove from the Navigation Act? I presume your argument is that all provisions in the act as they now stand should remain. I am asking where this inconsistency that the government relies upon to say that certain things need to be removed is.

**Ms Houlton**—The articles used for seafarers provide a certain number of conditions which may be different to what you could obtain if you were on an AWA. For example, the AIRC think tank came out with some statistics recently suggesting that pay increases for AWAs did not necessarily occur during the life of the agreement. You got one initially, but you did not get one during an AWA, which could be an ongoing document that was not withdrawn. With your articles, there was provision for improvement. You could call in a third party if you were not happy with your conditions. I really cannot add very much more to the submission than what I have.

**Senator JACINTA COLLINS**—We are talking at cross purposes on this issue. Perhaps I can approach it another way. Other professions have registration systems maintained by institutions, such as the Marine Council. Why should we regard seafarers differently from other professions that have ongoing regulation?

**Ms Houlton**—You are assuming that other professions are equal to seafarers. Seafarers are quite often vulnerable and put in an isolated environment. Doctors, for example, or other licensed individuals are in a very different working environment from that of seafarers.

**Senator JACINTA COLLINS**—The government accepts that there are some professions, such as medicine, where ongoing regulation should remain. Your argument is that ongoing regulation should also remain for seafarers for safety and isolation factors; is that the case?

**Ms Houlton**—That is right.

**Senator JACINTA COLLINS**—How do the working conditions of Australian seafarers compare on an international level?

**Ms Houlton**—Currently, they are amongst the best in the world. I would not say that they will be improving with the onset of the use of AWAs.

**Senator CARR**—What percentage of our trade is now staffed by foreign crews?

**Ms Houlton**—I cannot answer that question.

**Senator CARR**—This provision only applies to Australian ships operating in Australian waters with Australian crews no matter where they occur. What is the scope of the act, as you understand it?

**Ms Houlton**—I cannot put much more than my submission today, I am sorry.

**Senator JACINTA COLLINS**—What is your understanding of what will replace roles currently performed by the Marine Council? Will nothing replace them, or is the government intending to have other agencies address factors such as maintaining the code of conduct?

**Ms Houlton**—You are putting a leading question to me. Obviously other agencies are supposed to take over this function.

**Senator JACINTA COLLINS**—Who are they?

**Ms Houlton**—I cannot answer that question. I have a very limited set of instructions today to put existing submissions. I cannot go much beyond that, unfortunately.

**Senator CARR**—It will be said to you that other occupations do not require special considerations for sickness leave and that it should be part of workplace bargaining arrangements. Why is it the union's view that there should be special arrangements for seamen in relation to sick pay and injury provisions?

**Ms Houlton**—I have set that out in my submission. The difficulty for seafarers is that they cannot return without some sort of assistance. They quite often might be in a position where they would be working with existing injuries in order to continue with their right of pay.

**Senator CARR**—It is a question of isolation?

**Ms Houlton**—Yes. It is a question of isolation.

**Senator CARR**—What impact would there be if Australia ratified all relevant ILO conventions with regard to these matters? Would that make any difference to the actual employment conditions for workers in the maritime industry?

**Ms Houlton**—The government has expressed that it does not wish to ratify additional ILO conventions until there can be a demonstrated compliance with legal and practical aspects of the convention, which is rather puzzling to me. I think it would be very beneficial if the conventions were ratified. I do not think the government has expressed any interest in doing so.

**Senator CARR**—On the one hand the government says that it does not want to ratify them. Hypothetically, if it did ratify them, would that be in itself sufficient to provide protection for workers in the maritime industry, or would you also need the provisions of legislation such as that contained in an amended Navigation Act?

**Ms Houlton**—The two are not mutually exclusive.

**Senator CARR**—Why?

**Ms Houlton**—ILO conventions have an international nature. The legislation proposed here deals with the local issues. With a globalised economy, my understanding is that the objective is to push up the standards with the combination of the two.

**Senator CARR**—You are saying that ratification in its own right would not be sufficient to satisfy your concerns about employment conditions in the industry?

**Ms Houlton**—No. There needs to be a combination of the two.

**Senator JACINTA COLLINS**—In your submission there is one additional factor to what we covered earlier regarding safety and isolation factors as an argument for why this sector should remain in part covered by regulation. That factor is drug control. Is there anything additional that you would like to comment on there? On page 4 of your submission you say

that these changes will mean that there will be no legal impediment to a person convicted of drug related crime being employed as a casual seafarer crossing customs points.

**Ms Houlton**—That submission went to the role of the Marine Council and the fact that you would have a third party able to assess the suitability of a seafarer. That regulation would no longer be present and, therefore, there is the opportunity for people to slip through the net. That is the essence of that submission.

**Senator JACINTA COLLINS**—What do you think these changes will do to casualisation in this sector?

**Ms Houlton**—It is a fact that casualisation is occurring right across this country and is reducing security for workers overall. The problem with the removal of the Seamens Engagement System is that a lot of seafarers do not have access at the moment to the unfair dismissal provisions in the Workplace Relations Act because they cannot get over the jurisdictional problems. My experience is that there is a growing number of short-term projects occurring where people are not put on for long periods. There is no encouragement for shipping companies to maintain permanent work forces. There is a growing number of casual workers.

**Senator JACINTA COLLINS**—Is there anywhere the committee could go to get data on the level of casualisation in the sector? We might ask that question of the department.

**Ms Houlton**—I might be able to get some material from the national office.

**Senator JACINTA COLLINS**—If you could take that on notice. One of the government's arguments is that the original rationale for this legislation was the precarious and casual nature of employment in seafaring in the early 1900s. I am curious whether the general trend you have just described is something which is occurring in this sector despite the government's claims that company employment is of a different nature to what was occurring in relation to the casual work earlier in the century.

**Ms Houlton**—Are you talking about shipping or offshore oil areas? Have you delineated between the two?

**Senator JACINTA COLLINS**—I am talking about all areas of employment covered by this bill.

**Ms Houlton**—Certainly in the offshore oil and gas area there has been an increase, in my experience, in the use of casual or short-term labour on short-term contracts. The removal of the Seamens Engagement System has left a lot of people in a vulnerable position.

**Senator JACINTA COLLINS**—Does the union have a concern with employers paying for labour hire services?

**Ms Houlton**—I know that there are some labour hire services in existence, particularly in relation to the offshore oil and gas area and that there are some shipping management companies. The union is opposed to the increase in the use of labour hire companies.

**Senator JACINTA COLLINS**—Even if it is not allowed that employees can be charged?

**Ms Houlton**—It is a bit of a hornet's nest. Once you start opening up the system, you will get cheaper operators in. All you have to do is look at the *Ships of shame* report to see what happens once you get that kind of activity going.

**Senator JACINTA COLLINS**—I understand that the ships of shame problem was that it was associated with crimping practices, which is where an employee can be expected to make,

in some cases, quite a significant contribution to achieving employment. I am asking whether the union has a problem with employers paying for labour hire services?

**Ms Houlton**—The problem is that the relationship between the labour hire companies and the employer is a very different difficult one to assess without looking at the statistics. In my experience, labour hire companies become very enthusiastic about achieving the contract. The way in which they achieve it tends to be cutting labour costs and reducing conditions. People requiring work are prepared to compromise their position in order to obtain a job, even if that means signing an AWA or entering into a contract which previously would not have been done. You get a trend downwards in conditions.

**CHAIR**—Earlier in your verbal submission you seemed to be indicating that you are opposed to what the government is doing because you are opposed to the Workplace Relations Act. The Workplace Relations Act is a fact of life. It is not going to suddenly change.

**Ms Houlton**—In the short term that is correct.

**CHAIR**—It might be so for a very long time. Things might have changed to such an extent that no-one will change it because it will be so successful. I wonder how realistic it is to base your opening comments on the fact that you do not like the Workplace Relations Act.

**Ms Houlton**—There is always room for improvement in terms of some of the flexibilities that have been introduced. I am finding that there needs to be some balance in enterprise bargaining practices. If there is going to be deregulation, you might find that there is total deregulation, which will include new practices on the part of the union movement. We might be using the Corporations Law, for example, to try to redress the imbalance that we perceive exists for our members at the moment.

**CHAIR**—Are you conceding that within the current legislative framework there are sufficient redresses anyway?

**Ms Houlton**—I have just seen the proposed bill for the second wave of the industrial relations reform process. I am not terribly confident that the balances will remain in place if that legislation is passed.

**CHAIR**—It has to go through the Senate yet. I direct your attention to the independent third party group, the Marine Council, and why you think it needs retaining. Take other industries such as the railways industry. There does not seem to be a need for a railways council as an independent third party group. Why do you feel that we need to retain the Marine Council?

**Ms Houlton**—Probably for the same reason I feel we need to retain the powers of the Australian Industrial Relations Commission. Sometimes you need a third party or an independent arbitrator, if you like. Sometimes employers are not happy to have a third party, but it is necessary.

**CHAIR**—On what basis does the MUA assume that shipowners and operators would tolerate a lower standard of efficiency just because labour is recruited by a hire firm?

**Senator CARR**—It is cheap.

**CHAIR**—Senator Carr, I was not asking for your comment; I was asking the witness.

**Senator CARR**—I thought I would help out.

**CHAIR**—She does not need your help.

**Ms Houlton**—Conditions are more than just pay, naturally. In my experience, there is a drive down in pay and conditions for workers with the use of labour hire companies. There is a deskilling of the work force by the use of labour hire companies as well. Unfortunately,

I cannot add much more to my submission because I was not coming here today expecting this level of questioning.

**Senator CARR**—It is wide ranging.

**CHAIR**—I would have thought in this day and age that industry is upskilling, not downskilling. What are you basing this on? Is it just an assertion that perhaps this will happen?

**Ms Houlton**—It is based on my experience of about 10 years in the industrial relations area with three unions, two law firms and a number of company structures that I have worked in. I think I am in a reasonable position to form that opinion.

**CHAIR**—You are forming that opinion across three different union groups. Are you seriously suggesting that over the last 10 years there has been a deskilling process?

**Ms Houlton**—In a number of industries, yes.

**CHAIR**—It must have been the industries you have been involved with. Our view, looking at a whole range of matters relating to particularly the work of ANTA and other training matters over the last 10 years, is that the opposite process is occurring in this country.

**Senator CARR**—That is a matter of dispute as well.

**CHAIR**—Possibly. We are talking about seven years of your government too.

**Senator CARR**—That is right.

**CHAIR**—You mentioned the practice of crimping, which I take it is paying a bribe to get yourself further up the employment list. You seem to be indicating that that practice, which was prevalent in the 19th century in the labour intensive days of sail, might resurrect itself. Is that just another assertion, or do you have any basis for it?

**Ms Houlton**—My understanding is that it occurs overseas. That is a fact. We are speculating about things. It is difficult for me to answer you in concrete terms when you are putting general questions to me.

**CHAIR**—Let us be more specific. You said it happens overseas. Which countries are you talking about?

**Ms Houlton**—Third World countries.

**CHAIR**—Where the payment of bribes is quite a common practice across the whole society, not just in this area. Is a cultural practice in Third World countries going to revive in Australia?

**Ms Houlton**—There are a lot of practices reviving which I am quite surprised about, I must say, particularly in relation to the use of AWAs. Are you suggesting that every employer is open and that there is just a simple choice on the part of an employee to take that AWA? I have had all sorts of situations where employees have rung up in desperation trying to get some sort of assistance in relation to their employment contracts. People have been standing over them getting them to sign it and threatening to sack them. That is not meant to occur in this country either yet it does.

**CHAIR**—Your submission refers to sickness and injury provisions in the bill. You are in an industry which admittedly is dangerous. There have been changes in technology and the elimination of diseases that once affected seafarers. There are a whole range of dangerous industries in Australia which are now negotiating those sorts of sickness benefits as part of workplace agreements. Why should this industry be different from those other possibly dangerous industries in Australia? You should be able to negotiate things such as sickness benefits as part of the workplace agreement.

**Ms Houlton**—There needs to be a minimum. To leave it all up to market forces and to assume that everybody is going to do the right thing by the employees is quite puzzling to me. You would think it is just a question of negotiation. Sometimes there have been to be minimums imposed. What about where you have a situation where there is a dispute in relation to sickness benefits, for example? The employee would be left in limbo waiting for some form of outcome. Sometimes there needs to be some form of regulation to assist in that process.

**CHAIR**—They could not go to the Office of the Employment Advocate?

**Ms Houlton**—I would like to tell a story about the Office of the Employment Advocate.

**Senator CARR**—Please do.

**Ms Houlton**—I rang an officer, who will remain nameless, in relation to an operator who offered AWAs to the work force and said, ‘Sign it or we are not continuing with your employment.’ I rang the Office of the Employment Advocate and spoke to this person. I said, ‘These people haven’t even been told that they have an enterprise agreement in place, even though it has expired. All this letter says is that an award has been put in place.’ This person said, ‘I am familiar with this operator. Those people are not highly educated. They really would not know what covered them.’ I said to him, ‘Don’t you think this is even more reason that they should be informed about what choices they have?’ I do not place very much on the Office of the Employment Advocate. They have not been very helpful for the union movement. I do not recall any prosecutions in relation to the discrimination that many workers have been facing.

**CHAIR**—We always have isolated examples of things that do not work properly. Thank you for appearing today.

**Ms Houlton**—It was a pleasure. I am sorry that I could not be of much assistance.

[2.42 p.m.]

**PARMETER, Mr David Patrick, General Manager, Federation Services, Australian Shipping Federation**

**CHAIR**—I welcome representatives from the Australian Shipping Federation. The committee has before it submission No. 3. Are there any changes that you wish to make to it?

**Mr Parmeter**—No.

**CHAIR**—The committee prefers all evidence to be given in public. However, the committee will consider any request to have evidence, part of evidence or answers to any questions in camera. Such evidence may subsequently be made public by order of the Senate. I now invite you to make a brief opening statement.

**Mr Parmeter**—I will just make a brief statement that reflects an overall view on behalf of the Shipping Federation. Shipowners welcome the opportunity to appear before this committee. It is a reflection of the important role played by the Navigation Act and the regulation of the shipping industry in this country. Shipowners also acknowledge, however, that the act contains many provisions that are outdated and no longer relevant to the industry as it stands today. The overwhelming majority of the amendments contained in the bill generally have the effect of bringing the act into line with current employment practices in the industry. Some of these changes will result in issues arising that will require resolution through the enterprise bargaining process. On the basis that the remaining amendments are intended to delete from the act redundant concepts, the bill does not prejudice the position of shipowners.

**Senator JACINTA COLLINS**—In your submission at 2.1 you talk about changes after the 1964 ratings and the SES system. Is that the relevant change that you are referring to in terms of redundant provisions or is there something more recent that makes provisions under this act redundant?

**Mr Parmeter**—There is something more recent. The reference to 1964 puts in context the issue of employment for ratings. As a general statement, there is more than one group of seafarers involved in the shipping industry. There are deck officers, masters and mates and there are engineer officers and there are ratings. Deck officers and engineer officers have, to my knowledge, always been employed on a company employment basis; in other words, in accordance with normal community standards. It has been the ratings that have historically been employed on an informal basis.

Prior to 1964, there was a very informal system for the engagement of ratings. What occurred in 1964 was some degree of formalisation of that process. As I say in the submission, the advent of schedule 10 of the maritime industry seagoing award provided an administrative basis to that system of industry employment. We say that the demise of industry employment of ratings—I will comment on what I mean by that in a minute—is the event that makes a lot of the provisions in the act as it currently stands unnecessary, from our point of view. Do you want me to continue?

**Senator JACINTA COLLINS**—Yes.

**Mr Parmeter**—Last year, there were negotiations with the MUA representing the ratings employed by Australian shipping companies. Those negotiations involved a group of shipping company representatives—I was involved in that group—and senior officials of the Maritime Union of Australia led by the national secretary, John Coombs. Those negotiations concluded in an agreement being reached in April last year which became a framework agreement for the transition from industry employment to the company employment of ratings. Once that

occurred—that agreement was independent of the proposed changes contained in the bill—we could confidently say that the stage had been set whereby Australian shipping companies could employ all their employees' ratings, as well as deck officers and engineering officers, on a common basis and in accordance with normal community practice. To answer your question, it is really the events of last year which we see as being the significant factor in changing whatever historical reliance there may have been on certain provisions in the Navigation Act.

**Senator JACINTA COLLINS**—Can you point to provisions in the Navigation Act that are inconsistent with the Workplace Relations Act?

**Mr Parmeter**—That is an interesting question that you raise. I was thinking about it when you asked the previous witness. It is hard for me to point to areas of inconsistency where you would say some sort of conflict of law arises. To give an example—whilst the Marine Council, for example, when it was in operation did in effect deal with disciplinary issues in the industry, that did not preclude an individual or his or her union exercising their rights under the Workplace Relations Act in terms of the unfair dismissal provisions. Even in a case like that, where the act provides for a system of discipline that is certainly different from that which occurs in the rest of the community, I could not say that there would actually be a legal conflict. I would say, however, certainly from the perspective of shipowners, that the operation of the Marine Council was inconsistent with the objective of normalising employment arrangements in the shipping industry.

**Senator JACINTA COLLINS**—That leads me to another question with respect to normalising. What is the norm for isolated, potentially unsafe employment?

**Mr Parmeter**—What we would describe as the norm would best be seen by comparing—we are talking about normalising—the ratings previously employed under a regime of industry employment and the deck officers and engineer officers. These groups all worked on the same ships. They were all part of the same seagoing culture and experience.

**Senator JACINTA COLLINS**—Were they all regulated by the Marine Council?

**Mr Parmeter**—Yes. That is an interesting point. All seafarers were covered by the Marine Council. I would have to say from my own experience as a participant on the Marine Council that easily 95 per cent of the cases involved ratings. It was rare to get a case before it involving a deck officer or an engineer officer. To answer your question, the companies and their unions that represent the different groups in the workplace have demonstrated an ability to construct arrangements that give seafarers as normal conditions of employment as can be expected for people who choose to follow the seafaring life.

**Senator JACINTA COLLINS**—With the demise of the Marine Council, what areas will be regulated through alternative means, such as AMSA, and what will no longer be regulated at all?

**Mr Parmeter**—It is my understanding—I would obviously defer to representatives of AMSA in the department who follow me—that effectively AMSA is now very much excluded from the regulation of employment matters concerning seafarers with one important exception, and I will get to that in a minute. In terms of matters involving recruitment and discipline for seafarers, both shipowners and seafarers would enjoy the same rights as every other group in the community, and those rights are prescribed by the relevant legislation. In terms of AMSA's ongoing involvement, my understanding is that AMSA will continue to have a vital role in the recognition of seagoing qualifications and ensuring the high standards of the certificates of competency that are held by all classes of Australian seafarers.

**Senator JACINTA COLLINS**—The demise of the Marine Council essentially reflects a government decision that there is no longer a public interest to maintain by regulating certain matters, such as registering seamen. What do you, representing shipowners, say to that assessment?

**Mr Parmeter**—I would put things slightly differently. The Marine Council, it could be argued, was a reflection of the system of registration for seafarers. My understanding is that the Marine Council did not underpin or administratively support or establish the system of registration for seafarers. That was effectively done through schedule 10 of the maritime industry seagoing award. It was really the demise of schedule 10 of the maritime industry seagoing award which knocked the administrative legs from under the system of industry employment of ratings. It is arguable, though this is more a point for others to make, that it was in recognition of that conclusion that the MUA accepted that changes had to occur in the system of industry employment.

**Senator JACINTA COLLINS**—Who monitors the code of conduct?

**Mr Parmeter**—I will defer to the next witnesses. It is my understanding that a code of conduct does not have the force of law. Shipowners view the code of conduct as a valuable document in that it prescribes appropriate conduct and inappropriate conduct for seafarers. I believe that some of the companies are looking at having the code of conduct made part of the collective certified agreements that govern conditions of employment in the seagoing industry. I do not think it is correct to give the code of conduct any more status. It is a guide to appropriate or inappropriate behaviour.

**Senator JACINTA COLLINS**—So if it is breached there is no action that a party can take?

**Mr Parmeter**—A breach of a code of conduct would be prima facie evidence of a serious disciplinary issue that would be dealt with by the responsible company in accordance with practices and procedures developed by that company.

**Senator JACINTA COLLINS**—What if it is the company itself that is in breach?

**Mr Parmeter**—It is my understanding of the code that it effectively deals with the behaviour of seafarers, not their employers. I am happy to stand corrected on that. I find it difficult to answer your question.

**Senator JACINTA COLLINS**—It does not sit very well with the ships of shame inquiry.

**Mr Parmeter**—The ships of shame inquiry dealt with practices of companies that are not governed by the Navigation Act.

**Senator JACINTA COLLINS**—We are talking here about repealing sections which may well be regarded as important in explaining why people covered by the Navigation Act do not fall within the scope of the concerns raised in the ships of shame inquiry, such as the Marine Council.

**Mr Parmeter**—I do not think we would see it in those terms. The companies covered by the relevant sections of the Navigation Act are in an industry where they have to deal with a whole range of regulatory requirements. They are governed by the same laws that apply to every other employer in the Australian community. I do not think there is any suggestion that those companies would seek to behave differently now from the way that they have behaved in the past.

**Senator JACINTA COLLINS**—Let us go to the question you ask on page 5 which relates to the sick leave issue. I am talking about normalising and community standards. You ask a rhetorical question: 'The question is what the minimum should be.' The amendment as

proposed simply says to remove any minimum. As a senator on this inquiry, I ask you that question: what should the minimum be if it should not be three months?

**Mr Parmeter**—The point we are making in the extract that appears in the submission is that, as far as community standards are concerned, for sick leave it is—

**Senator JACINTA COLLINS**—Do you argue that the same community standards that apply in normal industry should apply to isolated, potentially unsafe employment in seafaring?

**Mr Parmeter**—We are saying that it is hard to justify in the current circumstances a maximum period of three months.

**Senator JACINTA COLLINS**—That maximum really operates as a minimum in terms of the bargaining position at the moment, doesn't it?

**Mr Parmeter**—The perceived requirement for a minimum standard of sick leave should be negotiated between the parties at the enterprise level and should be incorporated into an enterprise agreement.

**Senator JACINTA COLLINS**—If agreement cannot be reached, what should be the minimum?

**Mr Parmeter**—We would say that that is a matter for the parties at the enterprise level. There is no collective view as to what that minimum should be.

**Senator JACINTA COLLINS**—But there will always be circumstances where agreements cannot be reached at the enterprise level, which is why we have the Australian Industrial Relations Commission. It determines minimum standards for industry in general with respect to issues such as sick leave. Are you saying that that minimum should be the minimum for seafaring, or is there something else?

**Mr Parmeter**—I do not think the federation has particularly strong views on what the minimum should be. We would say that the parties at an enterprise level would be best placed to determine what that minimum should be. I will just say one thing in this regard: section 132 has been significantly changed, as we note by the reference that now appears to the Seafarers Rehabilitation Compensation Act, thereby removing the connection with compensable injuries to section 132. Seafarers enjoy, as a minimum under the industry award, a system of leave: for every day that they are on board the ship they accrue 0.926 days of leave. That normally gives rise in practice to a one for one leave system. That quantum of leave reflects many things: annual leave, weekends and public holidays and also a component for sick leave.

It is arguable that there is already built into each seafarer's leave component a sick leave provision. Given that history and given what this bill proposes to do, it is now open to the parties at an enterprise to agree between among themselves to what provisions need to be inserted into an enterprise agreement to deal with the circumstances of a seafarer being forced to leave a ship because of illness.

**Senator JACINTA COLLINS**—This is our quandry: the Workplace Relations Act and the work of the commission prescribe the minimum for the community in general with respect to sick leave. There is a minimum standard for the general working environment in Australia. Over and above that, various awards, certified agreements and AWAs can prescribe a variety of other arrangements. But there is still the floor. This proposal removes the three-month maximum, as it is framed. In a bargaining sense, it really sets a minimum. It removes any floor. Essentially you are saying that the floor for seafarers with respect to sick leave is what might prevail under the Workplace Relations Act. Even you seem to challenge that with

respect to what the minimum should be. As currently framed, this amendment removes any minimum other than what applies in industry in general.

**Mr Parmeter**—We have a problem with your fundamental premise, which is that section 132 provides a maximum which is in real terms a minimum. We do not consider the three months in section 132 as a minimum. We see it as a maximum. We are almost at cross purposes here. From our perspective, once you take away that maximum, the important thing in establishing the rights of an individual in these circumstances is what is an appropriate minimum.

**Senator JACINTA COLLINS**—Let me describe it to you this way: a shop assistant in the retail industry has a maximum of five days per year sick leave of which they might use three or they might use five if they meet the other criteria. Does a seafarer not have a maximum of three months of which they might use one month or they might use the full three months if they satisfy the other criteria? Their minimum standard is three months, is it not?

**Mr Parmeter**—To repeat what I said earlier, we would not look at it that way and would not put it in those terms. It is difficult to appreciate how old some of these provisions are and how they reflect circumstances that are remarkably different from those which the industry deals with now. In days gone by, if a seafarer had to leave a ship because of illness, the only way that they could get back to their home or their home port would be to wait for another ship to come. Inordinate periods could be involved with that. With modern communications and transport, we would say that the periods involved are not so dramatic.

The other point I would make is that a provision such as section 132 really reflects, as we said earlier, the old system of casual employment which existed for seafarers. Therefore, this section of the act gave seafarers some protection in circumstances where they might not otherwise have it. We now say that, with all seafarers being employed by a company, the companies will have to apply the same standards to all their seafarers as would be expected within the norms of the Australian community. They may be the norms as prescribed by state legislation or by the Industrial Relations Commission.

**Senator JACINTA COLLINS**—I am a seafarer at port and I have a major ear infection. There is no appropriate ongoing treatment on board ship. I get left at port and I cannot fly home. Do I get five days sick leave? Do I get potentially up to three months, although you probably would not need to use all of that, before I can be conveyed somewhere?

**Mr Parmeter**—One reason I find this discussion difficult is that for seafarers and in the shipping industry generally the notion of sick leave is really quite different from that which occurs for shore based employment.

**Senator JACINTA COLLINS**—This is why normalising does not necessarily work in this sector.

**Mr Parmeter**—Once they are on the ship, seafarers are effectively on the job for all purposes. They are either on the ship and on the job or they are off the ship. With ill employees who are company employed, the employer would look at wanting to get them back to get suitable medical treatment as quickly as possible. Protections built into an enterprise agreement, negotiated in good faith between the two parties at the enterprise level, are going to give an individual better protection in terms of their right of repatriation or the ongoing payment of wages or medical bills than section 132 currently does.

**Senator JACINTA COLLINS**—If that is the case, those enterprise arrangements should be made without the need to repeal this provision.

**Mr Parmeter**—That is a question for parliament. We do not have particularly strong views either way on that point. We are more concerned about the practical effects of some of these changes occurring if parliament amends the act.

**Senator JACINTA COLLINS**—It is not particularly your desire to see this provision repealed?

**Mr Parmeter**—I did not say that.

**Senator JACINTA COLLINS**—This is what I am seeking to clarify.

**Mr Parmeter**—Our view, as we say in the submission, is that we are not opposed to section 132 being repealed. On the basis it is repealed, we say that clearly there will have to be some arrangements put into place at enterprise level to deal with this set of circumstances. What we are saying in the submission was more, in many ways, that we are happier that the section is repealed in its entirety rather than parliament try to determine what the minimum should be. We say let the parties at the enterprise level, as part of an agreement, work out what arrangements should be in place instead.

**Senator JACINTA COLLINS**—From our perspective, we would probably say, yes, they should go and do that and then we might think about repealing it. You are talking about removing a minimum standard before an alternative has been negotiated.

**Mr Parmeter**—We do not consider that section 132 provides a minimum. We consider that it provides a maximum.

**Senator JACINTA COLLINS**—Shop assistants have a maximum of five days in their first year of employment too. I am sorry, it just does not cut.

**CHAIR**—Could you put on the record concisely how a move to company employment would remedy the deficiencies that currently exist in the way that seafarers are now employed.

**Mr Parmeter**—Shipowners have had the view for a long period that industry employment arrangements for ratings were inappropriate for a modern shipping industry. There are a number of reasons why we hold that view. A longstanding practice in respect of deck officers and engineer officers proved that there was no impediment to normal company employment practices being in place. Secondly, the days have long since gone when ratings were seen as unskilled labour on board a ship.

To the contrary, manning levels on Australian flag ships are just about the lowest in the world. The benchmark manning for an Australian ship is now 17, which is four deck officers, four engineer officers and nine ratings. That is very low manning, particularly by international standards. It requires all the members of that crew to be trained and competent to perform a demanding range of tasks. Clearly, the system of industry employment did not lend itself to the degree of training and enterprise focus that is required in a modern industry. We see the development of an agreed outcome on company employment which occurred last year as a very positive development for the industry and one which will benefit both the employees and the employers.

**CHAIR**—How do you feel that the rights of employees can be best protected if the articles of agreement are repealed?

**Mr Parmeter**—In respect of the articles of an agreement, the notion of articles themselves is, in our view, something of a historical concept. As we say in the submission, the true practical benefit of articles was that they spelt out who the seafarers on a particular ship on a particular voyage were and established the authority of the master as being in command of the ship. What we say now is that with contemporary employment arrangements there is no

longer the same reliance on articles of an agreement that there was once. But there is still value in having some form of agreement that establishes the authority of the master in terms of the practical and operational control that is required for someone of that position. As we say in the submission, the proposed amendments to sections 6 and 46 of the act address the issue and are acceptable to shipowners.

**CHAIR**—A theme running through the comments this afternoon seems to be that we are in an industry that is very rapidly changing and that the legislative arrangements that have been in place are no longer appropriate. The official from the MUA said that basically they did not like the Workplace Relations Act. We made the point that that is the reality of life and, therefore, there must be an adjustment to the fact that we do have this rapid change in this industry and we do have a different act. Would you see objections to what the government is trying to do at the moment to be backward looking to an era that is no longer appropriate and no longer existing in this industry?

**Mr Parmeter**—As we have indicated in the written submission and in my brief remarks at the start of my appearance today, we see the Navigation Act as being a very important part of the regulation of the shipping industry. As we set out in the submission, it covers a wide range of issues, some of which have impinged upon employment arrangements for seafarers. Notwithstanding some provisions of the act that are redundant or anachronistic, shipowners and their employees and the unions that represent them have gone about negotiating agreements in accordance with the provisions of the Workplace Relations Act. From our perspective, we have no problems in operating in accordance with the provisions of the act. In practical terms the conditions of employment for seafarers are determined, to my knowledge exclusively, by agreements that fall under the jurisdiction of the Workplace Relations Act.

**Senator JACINTA COLLINS**—Are you aware of any employment agencies placing seafarers in Australia?

**Mr Parmeter**—I have really had very little to do with this issue. I am aware of some bodies—I use that in the sense of corporate bodies—that have offered employment related services to deck officers and engineer officers. Certainly, in terms of the issue that you have referred to, we do not have particularly strong views on this issue. We would cite the existence of organisations that offer some form of employment agency type of service for deck officers and engineer officers as proof that this sort of thing does occur. It seems to us inconsistent that the act seemingly prevents this from occurring in respect of one class of seafarers, but there is no apparently no prohibition on it occurring with other groups of seafarers.

**Senator JACINTA COLLINS**—In other sectors where labour hire companies are used, they are often used to do so on a casual basis. Do you know whether it is in permanent or casual employment that the involvement of these companies tend operate within seafaring?

**Mr Parmeter**—I can only speculate because I have had no direct involvement in this. I am certainly not aware of companies that rely on manning agents to get their labour from.

**Senator JACINTA COLLINS**—If you are not aware—

**Mr Parmeter**—A meaningful comment might be to distinguish between the circumstances of domestic companies operating within the domestic context and individual seafarers who want to work internationally for non-Australian companies. It may well be that that the biggest market, if I can put it that way, for the services of labour hire companies—those currently offering services in respect of deck officers and engineer officers—would be in respect an international market rather than a purely Australian context.

**Senator JACINTA COLLINS**—The concept is simply interesting because the argument for the repeal of some of the provisions has been that there is now company employment. There is a lesser incidence of the problems associated with casual employment. At the same time, if we introduce the use of labour hire companies, you may find that a trend occurs elsewhere in the work force towards a greater incidence of casual employment which potentially reintroduces the original problems that the Navigation Act dealt with.

**Mr Parmeter**—From our perspective, this industry does not lend itself to casualisation. There are now very extensive international and, through the Australian regulatory authorities, domestic requirements in terms of standards of seafarers and safety. There is the international safety management code. In accordance with international conventions, there are very demanding requirements in respect of personnel and ship operation.

**Senator JACINTA COLLINS**—Are these conventions that we have signed on to or are these the ILO ones we have not?

**Mr Parmeter**—I am referring to, for example, the convention known in the shorthand as STCW, which deals with certification for watchkeeping, which is applied in Australia through marine orders. Companies have to ensure that the personnel employed on their ships are adequately trained. If they are not adequately trained, they are in breach of these provisions.

**Senator JACINTA COLLINS**—Who enforces those provisions?

**Mr Parmeter**—AMSA. That is something that is not touched upon by this bill.

**Senator JACINTA COLLINS**—I thought in part it was in terms of provisions with respect to advising AMSA of manning details.

**Mr Parmeter**—I suggest that that is more to do with an administrative requirement. I was referring to AMSA's ongoing role in determining the quality of certificates of competency and ensuring that individuals are properly trained. The conclusion I am directing to is that, rather than companies relying on third parties to satisfy their labour requirements, there is now such a pressure on individual operators that they have to be satisfied that the personnel they employ are of a standard that will meet the requirements of the various regulatory bodies.

**Senator JACINTA COLLINS**—That some of the administrative requirements that uphold these standards, such as the administrative arrangements that affect AMSA, are being withdrawn.

**Mr Parmeter**—That is an issue that goes more to how AMSA intends to carry out these arrangements. I do not think that detracts from the principle I am establishing, which is that the standards are there, they are maintained and we have to meet those standards.

**Senator JACINTA COLLINS**—In relation to the articles of agreement, one of the changes is the requirement not to advise of changes to the articles of agreement. Why is that the case?

**Mr Parmeter**—It goes back to what I was saying earlier, which is that the concept of articles of agreement is a dated one. It reflects, to my understanding, circumstances where a large proportion of the crew employed on a vessel were casuals and they had no real relationship with the owner or operator of a vessel other than entering into an agreement with the master of the ship and coming under his or her authority. Given the way that the industry operates now and the stability in terms of the work force that the various companies employ, we would say that the more important aspect is that the companies are putting suitably trained and qualified individuals on their ships rather than a historical requirement to advise someone else of actually who is on a ship for a particular voyage.

**Senator JACINTA COLLINS**—There is that issue. The other issue is that shipowners are opposed to the wholesale repeal of the articles of agreement section, but you are supporting a change which removes the requirement to notify changes to articles of agreement. Why is that the case?

**Mr Parmeter**—To put it in the bluntest possible terms, it serves no useful purpose.

**Senator JACINTA COLLINS**—To advise change?

**Mr Parmeter**—Yes.

**Senator JACINTA COLLINS**—Why did advising originally serve a purpose?

**Mr Parmeter**—It is difficult for me to answer that question. Given that all seafarers are employees of a company, there is no useful purpose now in having to advise AMSA of changes to the names that appear on the articles of agreement. We say that it is more relevant to have a document that underpins the authority of the master in terms of the operational requirements that go with that position.

**Senator JACINTA COLLINS**—The MUA claims that there is internationally a trend towards greater regulation in seafaring. Do you challenge that statement?

**Mr Parmeter**—A lot of these things turn on each party's perception. At one level, in terms of what I was saying about STCW 95, the international safety management code, you could make that accurately as a statement. There is an increasing regulation.

**Senator JACINTA COLLINS**—Do most other countries register their seamen?

**Mr Parmeter**—No. Not at all. I am reluctant to comment on that because I am not an authority. My understanding is that the former registration system that operated for Australian seafarers in the employment of ratings was—nowadays—quite a unique phenomenon. The view of shipowners is that the parts of the act that the bill proposes to change do not impinge upon the vital areas of regulation that govern international shipping or the important role of AMSA in terms of maintaining the standard of the shipping industry in this country.

**Senator JACINTA COLLINS**—Would you argue that everything important from the Marine Council is within AMSA, within the scope of AMSA and its current activities?

**Mr Parmeter**—My understanding of the operation of the Marine Council is that it dealt with the suitability of seafarers for employment.

**Senator JACINTA COLLINS**—There are safety connections to that. You do not want unsuitable seafarers working with you for safety reasons.

**Mr Parmeter**—We would say that the ultimate responsibility for the quality of the seafarers' rests, firstly, with the company that employs them. It is the company that employs them that has the duty of care. It has to meet the requirements of the regulator. To put it in the vernacular, that is where the buck stops. Secondly, AMSA still has a whole range of regulatory powers at its disposal to establish and maintain standards for seafarers. I do not think they need the Marine Council to act for them in that regard.

**CHAIR**—Thank you very much.

[3.27 p.m.]

**HOLLINGS, Mr Gregory Richard, Legal Officer, Australian Maritime Safety Authority**  
**TOOMER, Mr Geoffrey, Environment and Safety Team, Cross Modal and Maritime**  
**Division, Department of Transport and Regional Services**

**ACTING CHAIR (Senator Carr)**—The committee has before it an information paper supplied by the Minister for Transport and Regional Services. Are there any changes you wish to make?

**Mr Toomer**—No.

**Senator CARR**—I take it that that is the only form of submission?

**Mr Toomer**—Yes. The department and AMSA do not intend putting any other submission in.

**ACTING CHAIR**—The committee prefers all evidence to be given in public. However, the committee will also consider any requests for all or part of evidence to be given in camera. I point out that such evidence may subsequently be made public by order of the Senate. I now invite you to make a brief opening statement.

**Mr Toomer**—I thank you for the opportunity to appear before the committee. Most of the issues the department would wish to raise are covered in Minister Anderson's paper to you. If we assume that that has been read and noted, we will be happy to take questions.

**ACTING CHAIR**—Do you want to make an opening statement?

**Mr Hollings**—No.

**ACTING CHAIR**—I will begin with the question of the issue of the ratification of ILO conventions. You heard the evidence given by the MUA and you have no doubt read or have had access to their submission. Why have the relevant conventions for the maritime industry not been ratified?

**Mr Toomer**—Are there any particular conventions, such as 147?

**Senator CARR**—That is one that has been mentioned in the submission. I understand that is the case.

**Mr Toomer**—My understanding is that it is longstanding government policy not to ratify a convention until we can demonstrate that we comply in all respects. I gather that there are some technical matters still outstanding at state government level that suggest that Australia cannot fully comply with 147.

**Senator CARR**—What are those technical matters?

**Mr Toomer**—That is not within my area of authority. ILO conventions generally fall within the competence of the Department of Workplace Relations and Small Business. We could find that out for you. We will get back to you on that.

**ACTING CHAIR**—Could you take that on notice, please. Obviously the response that it is not government policy does not really answer the question. I am interested to know what particular obstacles there are to the ratification of ILO conventions relating to the maritime industry. Mention has been made of 147. There is also 179. There may well be others. What are the consequences for this bill if the proposal by the government is not carried by the Senate? Could you give us your views as to the implications of the Senate not agreeing to the amendments to the Navigation Amendment (Employment of Seafarers) Bill 1998?

**Mr Toomer**—The obvious implication is that the very prescriptive measures in the act would continue in force and continue to apply. There would therefore be these various standards set out in the act. This would be inconsistent with the concept that such matters are best left to negotiation between companies and their employees.

**Senator CARR**—There would be a philosophical difference as to the way in which the industry should be regulated. Can you point to any specific adverse effects that might occur if the Senate does not carry these proposed amendments?

**Mr Toomer**—That is an interesting question.

**Senator CARR**—I think you should think about it quite seriously.

**Mr Toomer**—I would like to think about that and get back to you, perhaps.

**Senator CARR**—Officers should come to this committee with a view that it may just be the case that the Senate does not agree with the government's proposals. It will give you the opportunity to explain to us why these measures must be carried and what adverse consequences would occur if they were not carried. On the question of sick leave, what would the consequences be if the amendments to the proposed provisions on sick leave were not agreed to?

**Mr Toomer**—The basic consequence would be that the flexibility for companies and their employees to negotiate better or more suitable enterprise agreements, AWAs, certified agreements or whatever would be much more restricted. You just would not have that degree of flexibility.

**Senator CARR**—We already have the most efficient industry, we are told, in the world in terms of its employment practices and manning levels. What would be so adverse?

**Mr Toomer**—There is a difference between the manning level and the cost of that manning. The issue is: have we got the most cost-effective manning level?

**Senator CARR**—So it would be cheaper for employers. Is that the principle?

**Mr Toomer**—That is a possibility. It depends on their ability to negotiate.

**Senator CARR**—You have heard the evidence presented to us today concerning the nature of the work specifically in the maritime industry—isolated and dangerous work—and that special regulation should apply in this area. What is your argument against that?

**Mr Toomer**—The argument essentially is one that the government has not agreed that there is a need for special arrangements. Why shouldn't modern workplace relations conditions apply equally to that industry as much as to any other industry, recognising that there are other industries that operate in isolated areas.

**Senator JACINTA COLLINS**—The argument we still really have not had presented to us is why this industry, which has been regulated in the past, is different from any of the other industries where the government still thinks that there is an ongoing role for such regulation. Why does the government not seek to remove registration arrangements for doctors, lawyers and a variety of other professions where registration applies? That is the argument that has not been presented to the committee to date.

**Mr Toomer**—The issue is one of why you are registering those other professions. It largely comes back to the level of competence of the persons involved that you are registering. In this case, we are not talking about registration based on competence. Let me go back a step. We seem to be talking about the Seafarers' Engagement System here. Is that correct?

**Senator JACINTA COLLINS**—Yes, that is part of it.

**Mr Toomer**—It is not a matter covered by the Navigation Act and the bill that we are proposing to amend.

**Senator JACINTA COLLINS**—The role of the Marine Council is.

**Mr Toomer**—No; the role of the Marine Council is to consider the suitability and fitness of certain persons to practice within the industry.

**Senator JACINTA COLLINS**—And deal with their registration.

**Mr Hollings**—I will assist with the Marine Council matter. The Marine Council's role in the legislation is to make a statement as to the suitability of a seafarer on the basis of that seafarer's character and conduct. That is really the extent of the role.

**Senator JACINTA COLLINS**—Not their competence?

**Mr Hollings**—No. The competence role of the seafarer is covered under the law that is not being changed.

**Senator JACINTA COLLINS**—Except with respect to the provisions to provide certain information to AMSA.

**Mr Hollings**—No. The amendment really only alters that requirement to give us information. The requirement to provide information about the seafarer on the ship is only being amended. To take out the current requirement that a shipowner is required to tell us every time a seafarer leaves or joins a ship is not taking away the responsibility of the shipowner to let us know who is on the ship so that we can do, say, an audit on the ship to see that it is safely manned or, in the worst scene, to be able to find out who is on a ship that is lost.

**Senator JACINTA COLLINS**—How can you assess manning levels if changes are allowed to occur to what you have been informed, which could easily affect the manning level?

**Mr Hollings**—That was only a requirement to tell us who was coming and going, not to tell us that there was a change in the manning requirement.

**Senator JACINTA COLLINS**—But once you apply it to the original advice, the coming and going gives you a quantum. But now, under the changes that you are talking about, there is no way to ascertain the quantum because you are never told of the changes.

**Mr Hollings**—We have the power to set those levels through manning orders. Through our marine orders, we specify who can do what function on the ship and what qualification that person must hold. In the past, because we have had other uses for it, we have had this running information flow of who is coming and who is going, but that was for other purposes.

**Senator JACINTA COLLINS**—They are still required to maintain a certain quantum as to who the precise seafarers are. What constitutes that is what you are not that fussed about knowing.

**Mr Hollings**—Not on a day-to-day basis, no.

**Senator CARR**—Under the government's proposals, would there be anything to prevalent the employment of foreign seafarers on Australian registered ships?

**Mr Hollings**—The short answer is no, except to the extent that such a foreign seafarer would have to be qualified in accordance with Australian rules. Therefore, they would need to hold a certificate that we would recognise and that would be a certificate issued under the IMO convention, the International Maritime Organisation convention, which has been mentioned a couple of times as STCW. We have the power to recognise other countries qualifications, as they do ours.

**Senator CARR**—The repeal of section 17 of the act, which concerns the production of certificates of qualifications for seafarers, how would that be affected?

**Mr Hollings**—Section 17 harks back to articles of agreement. Articles of agreement when they were first introduced ensured that every seaman was engaged in the presence of a government official. The act talks about people called proper authorities and superintendents. That was done to prevent, if I can use some waterfront slang, shanghaiing, where people representing shipowners went around the waterfront in the dark of night virtually hitting people over the head and carting them off into ships. I am told that this happened in Newcastle, New South Wales, in the old days of sailing ships. The crews would desert to go to the gold rush when the ships arrived. When the ships got alongside to load coal, the master would let the word out that the ship was sailing on the tide or whatever and people being paid by the shipowner or the master would go around town and get a crew. To prevent those practices worldwide, there was a move towards articles of agreement that were entered into in the presence of an official. They put a safety function on this as well by saying that it was the law that you must produce your seamen's papers. This was to try to sort out non-qualified people going to sea. Section 17 is really associated with this paternalistic control of seafarers on and off the ship. We do not need section 17 to control our seaworthiness provisions. Our surveyors, as they are called, have the power to go on board a ship and can demand to see these certificates at any time. If the ship is not carrying enough people with the right certificates, the ship can be declared unseaworthy.

**Senator CARR**—Do you think that is adequate to protect a situation whereby foreign seamen would be employed on Australian registered vehicles?

**Mr Hollings**—Yes. Obviously the Navigation Act does not control foreign people coming to Australia to work; that would be a matter for the Migration Act. If that person were qualified and able to have residence and work in Australia, they would be subject to the same rules. They would be required, on request, to produce their certificates and be required to hold the necessary certificate.

**Mr Toomer**—Under the current Navigation Act arrangements, there is no restriction on a foreign seafarer being employed other than through the migration legislation.

**Senator CARR**—In terms of the use of body hire firms, what is to stop such firms charging workers rather than shipping companies for the use of their labour?

**Mr Toomer**—There is no evidence to suggest that in any other industry that occurs in Australia. Why would it necessarily occur in the shipping industry?

**Senator CARR**—It did once occur. It obviously did occur in previous times. What is to prevent it reoccurring, given the proposals here to repeal the legislative prohibitions on it?

**Mr Toomer**—Only the same sorts of measures that exist in terms of other industries and presumably Australian culture in the modern circumstance.

**Senator CARR**—The strength of the union and that sort of thing.

**Mr Toomer**—That sort of thing, yes.

**Senator JACINTA COLLINS**—A working group was due to report to the minister in March this year on the implementation of the shipping reform group recommendations. Do you know whether it has reported?

**Mr Toomer**—That group has now reported to the minister, yes.

**Senator JACINTA COLLINS**—Is that report available?

**Mr Toomer**—As I understand it, it is a report to the minister and has not been publicly released at this stage.

**Senator JACINTA COLLINS**—Is that because it was never intended to be or it just has not occurred yet?

**Mr Toomer**—I am not in a position to answer that one. It is not an area I have had much to do with.

**Senator JACINTA COLLINS**—You mentioned earlier in relation to ILO conventions that you would need to refer to DEWRSB to get more information. Did any other department have any input into the amendments proposed in this legislation? If so, which department and what was the nature of that involvement?

**Mr Toomer**—At the time the legislation was drafted, the maritime component of our department was in the Department of Employment, Workplace Relations and Small Business.

**Senator JACINTA COLLINS**—It was within DEWRSB when this legislation was drafted?

**Mr Toomer**—It was at that time, yes.

**Senator JACINTA COLLINS**—Have officers from DEWRSB had a bridging role, or is it now completely within Transport?

**Mr Toomer**—It is now within Transport.

**Senator JACINTA COLLINS**—This probably relates to the question that Senator Carr has asked you to take on notice: do you believe that these amendments will improve flexibilities within the work force?

**Mr Toomer**—As I said earlier, the main improvement is to take away the very prescriptive conditions that are set out in these provisions and to allow the companies and their employees to negotiate on suitable arrangements.

**Senator CARR**—You said ‘the main improvement’, but who is the improvement for—for whose benefit?

**Mr Toomer**—I guess the industry and the administrators of the legislation.

**Senator CARR**—For government officials?

**Mr Toomer**—They are one beneficiary, in a sense—or the minister, where he has a role.

**Senator CARR**—How does the industry benefit?

**Mr Toomer**—By giving them greater flexibility to negotiate these matters.

**Senator CARR**—Is there anything to prevent flexibility on an agreed basis? Is there anything to prevent these matters?

**Mr Toomer**—If we take an example—say, the articles agreement—at the moment the Navigation Act says that you will have a very specific form of agreement called articles of agreement. If you look at the Workplace Relations Act, for example, it says that you can have several different types of agreement.

**Senator CARR**—Is that the only area where you think there is a conflict between the two, or is that in fact a conflict? What aspect of this legislation is inconsistent with the Workplace Relations Act?

**Mr Toomer**—As I said, that particular part is very prescriptive, as are other parts of the legislation.

**Senator JACINTA COLLINS**—Articles of agreement do not preclude certified agreements, AWAs or whatever arrangement is deemed to be appropriate for the terms and conditions of employment, do they?

**Mr Toomer**—My understanding is that an article of agreement is a very specific document, yes.

**Senator JACINTA COLLINS**—Maybe. But it does not preclude those other types of agreements regulating other conditions, such as sick leave and a variety of other conditions that are not determined through the articles of agreement.

**Mr Toomer**—That is probably true. You then have to ask yourself the question: is it necessary to have multiple levels of documentation?

**Senator JACINTA COLLINS**—That goes back to the original question we asked about the need for registration or regulation in this sector, which was determined to be relevant in the past. But the government is currently arguing that it does not exist. That leads me to my next question, which is that the minister's information paper is premised on the basis that the proposed amendments will merely bring the act into line with other industries in the country. Doesn't the department accept that the seafaring industry is unique and fraught with dangers? The AMSA annual report says that the seafaring industry is historically recognised as a hazardous industry. All sorts of regulation occurs relevant to other hazardous industries or sectors. Why should that not continue in relation to this area?

**Mr Toomer**—I think you will find that there will be continuing regulation on matters that affect the hazardous nature of the industry, certainly in terms of seafarer qualifications, as we previously discussed, the standards of ships and so on.

**Senator JACINTA COLLINS**—Articles of agreement.

**Mr Toomer**—Articles of agreement are not necessarily related to the standards of qualification of the seafarers. I will ask my colleague to talk a bit more about that.

**Senator JACINTA COLLINS**—AMSA relies on them with respect to safety issues.

**Mr Hollings**—Not articles of agreement. Articles of agreement are in prescribed form, a set down form. They are laid down in the subordinate legislation made under the act. They are for one ship. At the moment they prevent seafarers transferring from one ship to another with the same employer or a different employment. They require a ceremony to be conducted each time someone joins the ship or leaves the ship, which the master of the ship has to attend to. There is this form filling that goes on as people sign on. It is rather like an attendance book.

**Senator JACINTA COLLINS**—Aren't they part of what you use to determine manning levels?

**Mr Hollings**—No. They normally run for six months and come back to us. They are well past their use-by date before we see them. If we wanted to determine the manning levels, we would go on the ship and make an inspection.

**Senator JACINTA COLLINS**—You do not use them currently to monitor manning levels?

**Mr Hollings**—We cannot. They are on the ship while they are current. They do not come back to us until the expiry of the voyage or the employment they relate to. They normally run for about six months.

**Senator JACINTA COLLINS**—Monitoring can occur in retrospect.

**Mr Hollings**—It could do, but we would not find it terribly effective to chase after shipowners to say, ‘Eight or nine months ago your ship was unmanned.’ AMSA would rather be more pro active and go onto a ship today and say, ‘I am here to check the manning of your ship to determine whether it is seaworthy or not.’ In our view, it would not be a very effective way to police the matter. It takes a fair while for them to come back to us.

It would be a rather complicated document if you had to work out who was on a ship on a particular day. On the *Spirit of Tasmania* you have hundreds of crew and all these pages referring to them. It is a rather complicated document and it would be difficult if you had to sit down and prove to a court that they were three short on a certain day. It would be very difficult to raise the evidence of that in court. Even on a small ship it would be very difficult. They are the inflexibilities that we see in that system. It does not meet the needs of employment where people might transfer from ship to ship and where people might have different employment conditions applying to them. They may not all want to be on the same condition.

**Senator JACINTA COLLINS**—I have a question related to questions I have asked previous witnesses: do you have any measures of the actual level of casual engagement in the sector at the moment?

**Mr Hollings**—There are no official statistics. Until about February or March last year, AMSA operated on behalf of the industry the Seamens Engagement System, which has been mentioned already in evidence. That applied to the ratings. It was a system whereby the ratings were industry employed. We ran the engagement centres where the people were allocated to their jobs. We did have statistics under that system. I cannot put a date on this, but somebody looked at those figures and found that over 65 per cent of the seafarers, although they were registered in an industry employment scheme, were actually permanent employees with a certain employer. Some people claim that that figure is higher. I understand that somebody went through at one stage—I presume when it was computerised—and was able to take some sampling of where everybody was on a certain day.

**Senator JACINTA COLLINS**—How old is that?

**Mr Hollings**—I am not sure. We have not run the system since February or March last year. It was some time prior to that when there was some discussion about whether the system should carry on.

**Senator JACINTA COLLINS**—Do you have any knowledge of the operations of labour hire companies to date?

**Mr Hollings**—No. Now and again, ads appear in the shipping newspapers in Australia. There are companies operating that are recruiting, I understand, Australian seafarers for work overseas and they advertise in things like the *Daily Commercial News*.

**Senator JACINTA COLLINS**—You do not know the level of usage, the nature of employment used and those sorts of issues?

**Mr Hollings**—No. There are companies that provide crews to ships. Overseas operators bring ships in, particularly in the oil and gas industry, on charter to do a specific job. There are companies—I think they call themselves crewing agents—that provide the crew. They have no relation to the ship except that they are the crew provider. I presume that that is a commercial arrangement with the owner or operator of the ship from overseas.

**Senator JACINTA COLLINS**—Could you provide on notice the assessment about the level of permanent employment.

**Mr Hollings**—I am sure the figures are there. I can get someone to dig them out. I will do my best to find them.

**Senator JACINTA COLLINS**—Some trend data would be useful. I have a few questions about the Marine Council. Who refers breach of code of conduct matters to the Marine Council?

**Mr Hollings**—The code of conduct was devised between the industry and government some years ago. To go back a little further, we had a regime whereby the master of the ship would impose monetary fines for breaches of discipline which were deducted from the seafarers' wages. A code of conduct was devised not only to get rid of the crude system of fining but also to cover a more wide-ranging area of acceptable conduct on the ship. It was devised by the unions and the shipowners with the department assisting. It pre-dates AMSA, when we were part of the department. A provision was put in the act that that code of conduct may be—it is optional—a clause of the articles of agreement. The code then lays down that, if the master of the ship wishes to deal with a breach, an official logbook is provided in the same sections and it remains. The master must investigate the alleged offence and go through a procedure close to natural justice to be satisfied that the offence has occurred, record it or tell the person. The master could impose sanctions by way of warnings; dismissal was the ultimate sanction. The discipline reports were then sent to the Marine Council by the master of the ship. The Marine Council would then conduct a hearing and decide whether that incident had affected the suitability of that person. The result of the Marine Council making such a decision that the person was unsuitable was that that person could not be employed on an Australian ship. No person could take that person into employment on an Australian ship.

**Senator JACINTA COLLINS**—Is the rationale behind the Marine Council with respect to the code of conduct of seafarers the fact that seafarers are essentially living where they work and they may have some reluctance that disciplinary matters are dealt with solely by the employer and that somehow independence and due process were introduced by the Marine Council?

**Mr Hollings**—The Marine Council's beginnings go back to World War 2 when, under the National Security Act, a body called the Maritime Industry Commission was established. It had various manpower provisions, because of the conditions of war, controlling the adequate supply of seafarers. One of the provisions that was inserted in their orders—it was established under orders made under that act—was the power to deal with seafarers who misbehaved. From the point of view of natural justice, there was a conflict in getting them off the ship and to make that legally binding. Shipowners would be saying, 'This seafarer is not a fit person to be on our ship' and perhaps the union saying, 'Oh no, you are picking on that person for some industrial reason.' A body was put there to say, 'We will get this out of the industrial arena and look at the evidence of the incident and make a decision based on the evidence of the seafarer's suitability rather than on an argument that was more industrially based.'

**Senator JACINTA COLLINS**—Why do you think that need no longer exist?

**Mr Hollings**—With company employment, the maritime industry would be the same as any other industry. They will interview prospective employees themselves and determine that suitability themselves. With industry based employment, some employers would have claimed that it was impossible to sack anybody; they would go back onto that roster system and could just go onto another ship. There was a double push from the shipowners: 'We do not want somebody who has been sacked by somebody else until that behaviour has been judged,' and also—from the point of view of the shipowner who had executed the sacking—'We do not

want that person back unless that independent body says that perhaps we were wrong or it is of a minor nature.’

**Senator JACINTA COLLINS**—I am thinking more from the point of view of the seafarer. What has changed in terms of their need, given their working environment, which is basically their living environment, to make them feel that there is some independence in the determination of disciplinary factors?

**Mr Hollings**—My only answer to that would be that they should be like any other employee, that they have their own grounds for fighting off a dismissal that is wrong or unlawful.

**Senator JACINTA COLLINS**—But any other employee is not as isolated as a seafarer and does not live in their working environment.

**Mr Hollings**—True.

**Senator JACINTA COLLINS**—It brings back memories of the old American Ford example: even though Mr Ford treated his employees very well, he used to send social workers around to their homes to make sure they were not drinking.

**Mr Hollings**—I do not think the Marine Council has ever done that.

**Senator JACINTA COLLINS**—You understand what I am saying?

**Mr Hollings**—Yes.

**Senator JACINTA COLLINS**—From the seafarers’ perspective there is obviously concern that being isolated and living in their working environment they are at the hands of their employer in relation to discipline without the existence of the Marine Council.

**Mr Hollings**—I am not sure that the Marine Council would help them. The Marine Council could help in some way but really is only the arbiter of whether that behaviour was bad enough or of sufficient severity that that person should now be excluded. It was never a body able to sort out that type of dispute that arises of being an unlawful dismissal. Their determination would happen some time afterwards. They did not have public hearings. It was all done on paper. It would be necessary for each person involved to be written to, for submission to come in and for them to be swapped between the parties so that they could each comment. It was never something done dockside to sort out that problem of being treated unfairly because they live and work in that place. It was really an afterwards thing. Seafarers generally would have gone to the Industrial Commission or some other tribunal to sort out that immediate problem.

**Senator JACINTA COLLINS**—Does the Marine Council produce something like an annual report? How would you determine questions such as who is on it, how many breaches have been reported to it in the last 12 months, et cetera?

**Mr Hollings**—It reports in the AMSA annual report. I would have to look for you and see if there are separate ones.

**Senator JACINTA COLLINS**—Could you provide us on notice with the information of who is on it, how many breaches have been referred to it and by whom in, say, the last 12 months and on how many occasions have they deemed someone unsuitable and what other disciplinary courses of action have been available.

**Mr Hollings**—Yes.

**Senator JACINTA COLLINS**—That is it for my questions.

**Senator TCHEN**—Based on the exchanges I have just heard, it seemed to me that what this bill proposes is to remove a lot of red tape that dates back in history. Is that true?

**Mr Hollings**—Yes. It has a fascinating history. The British first legislated in this way in the mid-1800s. It is a reflection of the development of the industry. It is very historical and somewhat of a past era.

**Senator TCHEN**—Would it be fair to say that the removal of this red tape would be likely to bring benefits to the industry?

**Mr Hollings**—I think there would be some cost savings in that there will be some administrative functions that will not be required. As I mentioned, having these prescribed articles requires the master or the ship's officers to maintain quite a systematic system of records. Hopefully, in the longer term it will provide more flexibility in employment in allowing transfers across from ship to ship, and enable that to be done more speedily without having to go through the ceremony.

**Senator TCHEN**—Earlier, Senator Carr asked Mr Toomer a question: if the Senate refused to pass the this bill, what would the department do? Mr Toomer was not able to respond to that. If the Senate fails to pass this bill, if there is an underlying benefit to the industry as a whole, presumably it will be arising out of concerns for the welfare of the Australian crew, that they may not be protected. I refer you to page 7 of the minister's information paper. It says that the welfare of the Australian crew would continue to be protected by the relevant maritime awards, the Industrial Relations Commission in respect of certified agreements and the Employment Advocate in respect of the Australian workplace. Would you stand by that statement, Mr Toomer?

**Senator CARR**—Do you disagree with the minister?

**Mr Toomer**—I am not allowed to disagree with the minister. The intent of this statement is to say that the matters that are subject to repeal through the bill would then be the subject of negotiation between employers and their employees, which would lead to either relevant maritime awards or different forms of agreement. Those other forms of agreement have other mechanisms to ensure that the terms are met or to settle any other dispute—that is bodies like the Employment Advocate or the AIRC. The contention is that there is no continuing need to prescribe such matters in the body of legislation such as the Navigation Act when they are more appropriately met by agreement between employers and their employees. The legislative basis to protect those negotiations is the Workplace Relations Act and any other provision that applies generally throughout the rest of the economy.

**CHAIR**—About eight years ago, the previous Labor government decided to locate the Maritime Safety Authority in Newcastle. It was then switched to Canberra, 100 kilometres inland. After eight years, have AMSA recognised the folly of their ways and when do they intend relocating to Newcastle?

**Mr Hollings**—It is a difficult one to answer. As one who would very much like to live by the seashore, I would gladly sign up if they decided to move.

**CHAIR**—You are welcome in Newcastle any time.

**Mr Hollings**—I would not like to mention on record any particular town.

**CHAIR**—Thank you very much. I thank the witnesses from the authority and from the department. That concludes consideration by the Senate committee of the Navigation Amendment (Employment of Seafarers) Bill 1998. Thank you very much.

**Committee adjourned at 4.08 p.m.**