HOME AFFAIRS PORTFOLIO
AUSTRALIAN BORDER FORCE

PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 06

Subject: Criteria in determining if a ship is imported to Australia

Asked by: Glenn Sterle

Question:

1. What criteria or factors does the Collector (or delegate thereof) take into account when making inquiries under s49A(1)(b) of the Customs Act 1901 in determining whether ship is deemed to be imported into Australia?
2. Is one of those criteria whether the ship has been authorised to undertake one or more coastal trading voyages (as defined in sections 6 and 7 of the Coastal Trading Act) over a maximum 12 month period in accordance with a Temporary Licence (TL) or Emergency Licence issued under the Coastal Trading Act, or, a TL issued under the SRV Act, and if the voyage is so authorised, what is the implication of that factor for:
(i) The ship (and its owners, operators, charterers (in economic and regulatory terms) and the period of time it is deemed not to be imported nor entered for home consumption?
(ii) The seafarers on that ship and their immigration status, particularly their right to remain in Australia for up to 3 years under a Subclass 988 Maritime Crew visa?
3. If one of the criteria is whether the ship has been authorised to undertake a coastal trading voyage in accordance with a Temporary Licence or Emergency licence under the Coastal Trading Act, which suggests that Customs regards that circumstance as meaning the ship is operating as part of a continuing international voyage, what is the policy reason (economic, taxation, employment) or legal reason, behind acceptance of that circumstance? i.e. What problem is the government seeking to resolve by this arrangement? (We ask this question because that circumstance seems so contrary to and unlike the circumstance of a ship that is genuinely on a continuing international voyage and only visits one or more Australian ports to unload or load cargo or passengers and then continues on as part of the same international voyage as to be incapable as being regarded as one and the same circumstance).

Answer:

The importation status of a ship is determined by an objective assessment of the relevant facts and circumstances associated with the arrival of a ship in Australia which may or may not indicate the purpose of bringing the ship to Australia is to enter the ship into the domestic economy (often referred to as 'home consumption'). Some of the indicators taken into consideration in determining that a ship is imported include:

- the breaking or cessation of a continuing international voyage;
- the length of time a ship remains in Australia;
- the ship's pattern of activity;
- the type of activity being undertaken;
- any evidence that the ship has entered the Australian domestic economy;
- relevant information about the ship such as ownership, registration, licences, permits or the purpose for which the ship is in Australia;
- if there is a lawful reason why the ship should not be entered for home consumption; and
- if the ship is engaging or will be engaging in coastal trading except when doing so as authorised under a temporary or emergency licence.

Ships operating on a Temporary Licence or Emergency Licence issued by the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) in accordance with the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading Act) access the exemption from customs import entry requirements through section 112 of the Coastal Trading Act. These ships remain subject to other regulatory requirements, such as immigration processing, payment of duties on bunker fuel, control of goods taken on or off the ship, and acquittal of any ships' stores.

The Maritime Crew (Subclass 988) Visa (MCV) is a temporary visa which allows crew to undertake work that meets the normal operational requirements of a non-military ship. A 'non-military ship' does not include a vessel which has been imported or entered for home consumption under the *Customs Act 1901* and is not registered in the Australian International Shipping Register.

MCV holders are permitted to crew on vessels that are covered by a Coastal Trading Licence where those vessels otherwise meet the definition of a non-military ship and while their visa is in effect.

The Australian Border Force is unable to advise on the policy or legal reasons for the provisions in section 112 of the Coastal Trading Act. This is a matter for the DITRDC.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

09 September 2020

QoN Number: 07

Subject: Customs exemption provided by s112 of the Coastal Trading Act

Asked by: Glenn Sterle

Question:

1. Does the schema, in relation to the Customs exemption provided by s112 of the Coastal Trading Act for voyages undertaken under a TL, accept that the s112 exemption apply for the whole voyage, including the ballast leg and any anchorage awaiting loading a subsequent voyage, resupply of the ship, bunkering the ship or repositioning the ship? For example, does that s112 exemption apply continuously for the whole period where future voyage authorisations have been applied for or for the whole period a TL is in force (which appears unworkable given the authorisation only applies to a voyage and not a ship, which doesn't need to be secured and advised until just prior to the loading date of an authorised voyage) or only to the actual period of the voyage (including the ballast leg, and any repositioning, refuelling or resupplying associated with a particular authorised voyage? If this requires the advice of the Department of Infrastructure, Transport, Regional Development and Communications, the Committee requests you to obtain that advice and include it in your response.
2. Where on the Departments or ABFs website is information about all this available to stakeholders and the public?
3. If it is not available to stakeholders and the public, why not?

Answer:
The Australian Border Force (ABF) considers that the exemption provided by section 112 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading ACT) for ships undertaking voyages on a temporary licence applies for the whole voyage. This includes activities reasonably incidental to an authorised voyage such as ballast, resupply, bunkering and repositioning. It can also apply where a ship is reasonably transitioning between authorised voyages.

The ABF website does not provide information on temporary licenses issued under the Coastal Trading Act as this information is available on the Department of Infrastructure, Transport, Regional Development and Communications' website.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 08

Subject: Determination under s49A of the Customs Act

Asked by: Glenn Sterle

Question:

1. What information is a shipowner/operator/charterer required to provide to the Collector to assist in making a determination under s49A of the Customs Act?

2. If, after making such inquires, what factors would lead the Collector to decide not to issue a Notice, thereby presumably permitting the ship to remain in Australia for up to 30 days without the ship being deemed imported and therefore not entered for home consumption, which presumably allows the ship to be exempt from customs duty and GST payments (and perhaps other Commonwealth fees or charges) during that period of up to 30 days?

Answer:
Section 49A of the *Customs Act 1901* (Customs Act) empowers the Collector to request any information they believe may assist them in determining if a ship is imported. Section 49A does not specify, nor limit, the information a ship owner or operator may be required to provide. In addition, the Collector may use any information contained in the ship's report provided under other sections of the Customs Act to inform his or her determination.

Section 49A does not specify, nor limit, the factors that a Collector may consider in making a determination. In practice, however, a Collector would consider the general factors for determining whether a ship is imported into Australia as outlined in the Question on Notice relating to the criteria in determining if a ship is imported into Australia.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 09

Subject: Imported Ships

Asked by: Glenn Sterle

Question:

On how many occasions over 2019-20, or over 2019 calendar year, and over the first 8 months of 2020 to 31 August 2020:
(i) Has a ship been deemed not to be imported, and what are the names of those ships?
(ii) Has a ship had its non-imported status period extended beyond 30 days, and if so:
(a) For how many additional days;
(b) What are the names of those ships; and
(c) What was the reason for granting the extension?
(iii) What newspaper or newspapers were these decisions published in, pursuant to S49A(5) and could you provide the Committee with samples of newspaper notices?

Answer:

Section 49A of the *Customs Act 1901* applies in circumstances where there is a disagreement between the Australian Border Force (ABF) and a ship owner or operator over the importation status of a vessel. The section empowers the ABF to direct the ship owner or operator to either enter the vessel for home consumption or depart Australia, within 30 days.

For the periods asked for as part of the Senator's question, no notices have been served.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 10

Subject: Imported Ships

Asked by: Glenn Sterle

Question:

1. If a determination is made that a ship is deemed to be imported, does it automatically follow that the ship is entered for home consumption in accordance with s68?
2. If that is not how the Act operates, could you describe how it operates and how it is possible for a ship to be imported but not also entered for home consumption.

Answer:
No.

Section 49A of the *Customs Act 1901* (Customs Act) empowers the Australian Border Force (ABF) to serve a notice on a ship stating that if the ship remains in Australia throughout the period of 30 days commencing on the day of service the ship shall be deemed to be imported and may be forfeited. In all other situations, importation is a question of fact based on the circumstances of the ships arrival into Australia.

If the Collector serves a notice under section 49A of the Customs Act at the end of the 30 day period the ship is deemed imported. The ship must then make an entry for home consumption or warehousing or the ship may otherwise be forfeited; or the collector may revoke the notice before the expiry of the 30 day period. The ship may otherwise depart from Australia before the expiry of the 30 day period (or any extension agreed to by the Collector).

A ship operating on a temporary or emergency licence issued under *the Coastal Trading (Revitalising Australian Shipping) Act 2012* is not imported for the purposes of customs legislation where it is being used to carry passengers or cargo under such licences. In those circumstances, such ships are not required to complete import entry requirements under section 68 of the Customs Act.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 11

Subject: Imported Ships

Asked by: Glenn Sterle

Question:

1. Does the Department and or ABF regard ships that are deemed imported and entered for home consumption as being required to comply with the Navigation Act (or particular sections thereof) and or Marine Orders (or particular Marine Orders made under the Navigation Act)?
2. If so, could the Department or ABF confer with the Australian Maritime Safety Authority (AMSA) on what sections of the Navigation Act and which Marine Orders apply to imported ships for the duration of that importation, and include that advice in its response?

Answer:
Once a ship has been imported and entered for home consumption, it becomes a domestic ship and ceases to be under customs control.

The Australian Border Force considers that all vessels are required to comply with all relevant legislation, including the *Navigation Act 2012* or Marine Orders made under Commonwealth laws.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 12

Subject: Commonwealth Duties, Excises, Fees and Charges

Asked by: Glenn Sterle

Question:

What is the value of all Commonwealth duties, excises, fees and charges forgone on all foreign ships deemed to not be imported and authorised to undertake voyages in accordance with a Temporary Licence over the last 3 full financial years (calculated on the basis that had those ships been imported for those periods they would have been liable for a range of Commonwealth duties, excises, fees and charges?

Answer:
The Australian Border Force (ABF) has no mechanism to calculate this figure. The value of any Commonwealth duties, excises, fees and charges that may apply to the importation of a ship would depend on the individual circumstances of the vessel.

The value of any Commonwealth duties, excises, fees and charges that may apply to the importation of a ship would depend on the nature and individual circumstances of the vessel. Australia applies a ‘free’ rate of customs duty to vessels over 150 Gross Weight Tonnes. The Australian Taxation Office administers the application of Goods and Services Tax to ships, including any concessional or refund arrangements that may apply.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 13

Subject: Ship Importation Status

Asked by: Glenn Sterle

Question:

1. What as a general rule is the ship importation status of foreign registered ships undertaking intrastate voyages (that are not covered by the Coastal Trading Act and invariably do not opt into the Coastal Trading Act under s12), and therefore cannot presumably obtain the benefit of the Customs exemption from importation provided in s112 of the Coastal Trading Act?
2. Are these ships required to meet Commonwealth duties, excises, fees and charges of an imported ship (entered for home consumption)?
3. What on average is the total annual revenue collected by the Commonwealth on such ships (per ship)?

Answer:
The importation status of a ship is determined by an objective assessment of the relevant circumstances associated with the arrival of the ship in Australia. A ship arriving in Australia will either be on a continuing international voyage or imported, depending on its circumstances. The Australian Border Force considers the individual movements and activities of each ship to determine its status, and does not apply a general rule.

If a ship is entered for home consumption, it is required to pay all applicable Commonwealth duties, excises, fees and charges unless a specific concession applies. If the ship is on a continuing international voyage, it remains under customs control and must meet the regulatory requirements for goods under customs control.

The value of any Commonwealth duties, excises, fees and charges that may apply to the importation of a ship would depend on the nature and individual circumstances of the vessel. Australia applies a ‘free’ rate of customs duty to vessels over 150 Gross Weight Tonnes. The Australian Taxation Office administers the application of Goods and Services Tax to vessels, including any concessional or refund arrangements that may apply.

HOME AFFAIRS PORTFOLIO
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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

QoN Number: 14

Subject: Subclass 988 Maritime Crew visa

Asked by: Glenn Sterle

Question:

In the context of the operation of the scheme in relation to foreign ships employing foreign seafarers undertaking intrastate coastal trading voyages, how and under what instrument are Rio Tinto foreign registered ships carrying Rio Tinto bauxite intrastate between Weipa and Gladstone, which have not opted into the Coastal Trading Act and therefore cannot get the benefit of the s112 Customs exemption from the operation of the Customs Act, able to employ foreign seafarers for up to 3 years continuously (subject only to a the requirements of a seafarer employment agreement) on a Subclass 988 Maritime Crew visa? The ships we refer to include the RTM Gladstone, RTM Dias (both owned by Rio Tinto), Azalea Wave, Raga, and Sargam.

Answer:

The Maritime Crew (subclass 988) visa (MCV) is a temporary visa which is valid for three years from the time of grant, and allows for maritime crew to undertake work that meets the normal operational requirements of a non-military ship.

The grant of an MCV does not tie the holder to a specific employer, or to working on any one non-military ship for the three year validity period of the visa. Outside of the current COVID-19 pandemic period, MCV holders may come ashore for shore leave whilst still being signed onto a vessel, provided there is an intent to return to the vessel.

Employment conditions of MCV crew are not contingent on Migration Legislation. Employment conditions and limitations regarding continuous periods of service on any one vessel, and provisions for shore leave, are a matter for the Australian Maritime Safety Authority.

During the MCV's three year validity the visa holder may make multiple entries and departures to and from Australia, as crew of a non-military ship, provided the ship continues to meet the definition of non-military ship as provided for under the Migration Act 1958 (the Act). A 'non-military ship' is defined as one that:

- is engaged in commercial trade, or the carriage of passengers for reward, or
- is owned and operated by a foreign government for the purposes of scientific research, or
- has been accorded public vessel status by DFAT, or
- has been imported under section 49A of the Customs Act 1901 (the Customs Act) and registered in the Australian International Shipping Register, or
- has been entered for home consumption under section 71A of the Customs Act and registered in the Australian International Shipping Register.

A ‘non-military ship’ does not include a vessel which has been imported or entered for home consumption under the Customs Act and is not registered in the Australian International Shipping Register.

In the case that a ship is exempt from importation, for example ships covered by a coastal trading license, crew may continue to operate on these ships provided the ship is engaging in ‘commercial trade’ (a category provided for under the definition of non-military ship).

The Department of Infrastructure, Transport, Regional Development and Communications manages the issuing of coastal trading licenses. The Department of Home Affairs does not provide input into this process.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 15

Subject: Importation Status of Cruise Ships

Asked by: Glenn Sterle

Question:

What as a general rule is the importation (and entry for home consumption) status of foreign registered large international cruise ships that are exempt from the operation of the Coastal Trading Act and therefore cannot obtain the benefit of the Customs exemption provided in s112 of the Coastal Trading Act, in circumstances where they nevertheless engage in coastal trading as defined in s7 of the Coastal Trading Act, or where the voyage meets the definition of a round trip between two Australian ports, in which case the Committee understands that such an international cruise ship is regarded as not having left Australia?

Answer:
The Australian Border Force considers the individual movements and activities of each ship in determining its importation status and whether entry for home consumption is required and is unable to provide a general rule.

A Collector would consider the factors identified in Question on Notice regarding the *Criteria in determining if a ship is imported into Australia* when determining the status for each ship.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 16

Subject: Ruby Princess

Asked by: Glenn Sterle

Question:

1. Could you advise whether the Ruby Princess was deemed imported under s49A and entered for home consumption under s68 of the Customs Act when it was in Australia on several occasions in 2020 and in particular when it was in Australia continuously between 18 March and 23 April 2020 (noting that the Committee understands the that the Ruby Princess met the definition of a round trip between two Australian ports, in which case the Committee understands that the ship was regarded as not having left Australia for Customs Act purposes)?
2. As this period exceeds 30 days, were the crew able to remain in Australia over the whole of that period on a Subclass 988 Maritime Crew visa? If so, how was that legally possible?

Answer:
The Ruby Princess was not deemed imported under section 49A of the *Customs Act 1901* (Customs Act). The Ruby Princess was not entered for home consumption under section 68 of the Customs Act.

The Maritime Crew (Subclass 988) Visa (MCV) is a temporary visa which allows crew to undertake work that meets the normal operational requirements of a non-military ship. The MCV is valid for three years from the date of grant, unless otherwise ceased or cancelled, and provides for multiple entries. The MCV does not specify a maximum time in Australia for individual journeys while the MCV holder remains signed-on to a non-military ship as a member of crew and holds a valid visa.

As the Ruby Princess was not imported under the Customs Act, the related provisions of *Migration Regulations 1994* that would have required the MCV holders on board to either depart Australia or sign on to another non-military ship, were not engaged.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 17

Subject: Port of Sydney

Asked by: Glenn Sterle

Question:

Could you explain the implications of the decision to revoke the Port of Sydney as a port under s15 of the Customs Act, so that after 15 March 2020 Sydney was no longer a 'port' for the purposes of s 58 of the Customs Act and s 247(1) of the Migration Act, in relation to the importation and entry for home consumption of cruise ships entering or in the port of Sydney after 15 March 2020?

Answer:
On 15 March 2020, the Prime Minister announced the Australian Government's decision to restrict the arrival of cruise ships from foreign ports at Australian ports. To give effect to the Government's decision, a delegate of the Comptroller-General of Customs revoked the appointment of the port of Sydney and immediately appointed the port of Sydney under section 15 of the *Customs Act 1901* as a port only for purposes in relation to ships that are not international passenger cruise ships.

Cruise ships that had entered into the port of Sydney prior to 15 March 2020 were assessed on their individual facts and circumstances at the time of their arrival to determine if those ships were imported or required to be entered for home consumption.

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Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 18

Subject: Australian Customs and Border Protection Notice No. 2014/61

Asked by: Glenn Sterle

Question:

1. Is Australian Customs and Border Protection Notice No. 2014/61 (International Ships Undertaking Maintenance and Repair — Interim Process) dated 3 December 2014 still current, notwithstanding that the Departmental website says it was updated in December 2018?
2. What change was made in December 2018?

Answer:
The Australian Customs Notice (ACN) 2014/61 is still current. Where an ACN is no longer valid, the Australian Border Force (ABF) revokes the notice by removing it from the ABF website.

No changes were made to the content of ACN 2014/61 in December 2018. Changes in December 2018 relate to the underlying webpage and migration of content to the ABF website.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 19

Subject: Contradiction in Notice 2014/61

Asked by: Glenn Sterle

Question:

Could you explain the apparent contradiction in Notice 2014/61 that says on the one hand that (i) "In the interim the ACBPS proposes to manage international ships undertaking scheduled maintenance and repair by not requiring an import entry (entry for home consumption). All relevant circumstances, including consideration of a reasonable amount of time in dry dock to undertake repairs of the kind the ship is undergoing as well as whether there is any change in circumstances, such as ownership of the ship, will be used to determine whether entry is actually appropriate in the situation." and (ii) "Although the ACBPS will not be enforcing the requirement to lodge an import declaration, the status of the ship, remains unchanged. It is imported."?

Answer:
Importation and entry for home consumption are separate concepts. Importation or imported is not defined in customs legislation. Importation is a matter of fact, based on the specific circumstances of a ship's arrival in Australia. Entry for home consumption is a process required under the *Customs Act 1901* (Customs Act) for imported goods to be cleared from customs control and enter Australia's domestic economy.

Australian Customs Notice 2014/61 advises industry that the Australian Border Force proposes to manage international ships undertaking scheduled maintenance and repair by not requiring an entry for home consumption. Under this Notice, even though the ship may be reasonably considered to be imported under customs legislation, a ship in dry dock is not served a notice under section 49A of the Customs Act and is not required to make an entry for home consumption under section 71A of the Customs Act.

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 20

Subject: Notice 2014/61

Asked by: Glenn Sterle

Question:

Under what provision of what Act or instrument was the decision made (and by who) to enable the Notice to include the following statement (the) "Department of Immigration and Border Protection advises that crew on board ships entering dry dock will not be required to apply for a Temporary Work (Short Stay Activity) visa (subclass 400), provided the ship is not subject to an import entry. They may remain on their Maritime Crew visa (subclass 988)" (presumably for longer than 5 days in many dry docking circumstances) contrary to the stated requirements for the Maritime Crew visa (subclass 988) that in circumstances where a continuing international voyage is broken and the vessel is imported, the MCV is only valid for 5 days, after which the holder must re-engage on another ship or leave the country?

Answer:

Regulation 988.512 of the *Migration Regulations 1994* sets out the circumstances in which an MCV will cease.

The Australian Customs and Border Protection Notice No. 2014/61, issued by Customs and Industry Branch, Australian Customs and Border Protection Service, notes that:

> *…the Department of Immigration and Border Protection advises that crew on board ships entering dry dock will not be required to apply for a Temporary Work (Short Stay Activity) visa (subclass 400),* ***provided the ship is not subject to an import entry****.*

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 21

Subject: Subclass 988 Maritime Crew visa

Asked by: Glenn Sterle

Question:

1. The Committee understands the Wincanton ship has been operating in Australia between Newcastle and Gladstone almost continuously for a period of around 10 years, with crew on a Subclass 988 Maritime Crew visa. Could you confirm the immigration status of the non-national crew on this ship and what is the legal mechanism used to allow the ship to operate with crew on a Subclass 988 Maritime Crew visa for a period of 10 years?
2. Could you please provide a link to all relevant pages on Commonwealth websites where information on these arrangements is made available to stakeholders and the public?
3. Could you also provide copies of all Departmental guidance on how this scheme operates (and interacts) that is available either publicly or internally to Departmental/ABF officers?

Answer:

1. The Maritime Crew (subclass 988) visa (MCV) is a temporary visa which is valid for three years from the time of grant, and allows for maritime crew to undertake work that meets the normal operational requirements of a non-military ship.

The grant of an MCV does not tie the holder to a specific employer, or to working on any one non-military ship for the three year validity period of the visa. Outside of the current COVID-19 pandemic period, MCV holders may come ashore for shore leave whilst still being signed onto a vessel, provided there is an intent to return to the vessel.

Employment conditions of MCV crew are not contingent on Migration Legislation. Employment conditions and limitations regarding continuous periods of service on any one vessel, and provisions for shore leave, are a matter for the Australian Maritime Safety Authority.

During the MCV's three year validity the visa holder may make multiple entries and departures to and from Australia, as crew of a non-military ship, provided the ship continues to meet the definition of non-military ship as provided for under the Migration Act 1958 (the Act). A 'non-military ship' is defined as one that:

- is engaged in commercial trade, or the carriage of passengers for reward, or
- is owned and operated by a foreign government for the purposes of scientific research, or
- has been accorded public vessel status by DFAT, or
- has been imported under section 49A of the Customs Act 1901 (the Customs Act) and registered in the Australian International Shipping Register, or
- has been entered for home consumption under section 71A of the Customs Act and registered in the Australian International Shipping Register.

A 'non-military ship' does not include a vessel which has been imported or entered for home consumption under the Customs Act and is not registered in the Australian International Shipping Register.

If a crew member enters Australia on a non-military ship that is entered for home consumption or imported, their MCV will cease at the end of whichever period is longer from the below:

- five days from the date the vessel was entered for home consumption or imported, unless they either depart Australia or to sign onto another non-military ship within those five days, or
- the cease date of any other visa held by the crew member, or
- a period of up to 30 days from the date the vessel was entered for home consumption or imported as set by an authorised officer.

In the case that a ship is exempt from importation, for example ships covered by a coastal trading license, crew may continue to operate on these ships provided the ship is engaging in 'commercial trade' (a category provided for under the definition of non-military ship).

The Department of Infrastructure, Transport, Regional Development and Communications manages the issuing of coastal trading licenses. The Department of Home Affairs does not provide input into this process.

2. Information in relation to the MCV is available publically via:

- The Department of Home Affairs website at https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/maritime-crew-988#Overview
- https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/maritime-crew-988/covid-19-requirements
- LEGENDcom to subscribers, or at libraries participating in the Commonwealth Library Deposit and Free Issue Schemes, at https://immi.homeaffairs.gov.au/help-support/tools/legendcom
- Federal Register of Legislation

3. Copies of the Department's *Maritime Crew Procedural Instruction* and *Foreign crew on import vessels and coastal trading vessels Procedural Instruction* are attached.

The *Maritime Crew Procedural Instruction* is also available through LEGENDcom at https://legend.online.immi.gov.au/migration/2017-2020/2020/15-10-2020/policy/Pages/_document00003/level%20100224.aspx

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PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Rural and Regional Affairs and Transport Committee
Inquiry into the policy, regulation, taxation, administrative and funding priorities for Australian Shipping

9 September 2020

QoN Number: 22

Subject: s49A of the Customs Act

Asked by: Glenn Sterle

Question:

Could you advise the Committee why it is not possible to publish in real time, or shortly after a decision is made, decisions under s49A of the Customs Act identifying:
(i) The name of the ship;
(ii) The date of a decision to deem or not to deem a ship imported and entered for home consumption; and
(iii) The duration of a decision that deems a ship to not be imported.

Answer:
Section 49A of the *Customs Act 1901* (Customs Act) applies in circumstances where there is a disagreement between the Australian Border Force (ABF) and a ship owner or operator over the importation status of a ship.

The ABF publishes decisions made under section 49A of the Customs Act in accordance with the requirements set out in the provisions of the legislation. The relevant requirements set out in the Customs Act are to serve notice of the Collector's decision by affixing it to a prominent part of the ship or aircraft under section 49A(4) and as soon as practical after serving the notice, publish this decision in a newspaper circulating in the locality of the ship under section 49A(5).

A notice issued under section 49A of the Customs Act would state relevant details including the name of the ship, date of the decision and nature of the direction.