



**Australian Government**  
**Department of Immigration and Citizenship**

SECRETARY

26 March 2007

Ms Jackie Morris  
Committee Secretary  
Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600

Dear Ms Morris

**Migration Amendment (Maritime Crew) Bill 2007**

Please find attached the submission of the Department of Immigration and Citizenship to the Senate Legal and Constitutional Committee inquiry into the Migration Amendment (Maritime Crew) Bill 2007 ("the Bill"). The submission has been developed in close collaboration with other relevant departments and agencies: the Department of Transport and Regional Services, the Attorney-General's Department, the Australian Security Intelligence Organisation and the Australian Customs Service.

The submission addresses the four areas that the Committee flagged for consideration when referring the Bill, namely:

- the Bill's effect on international maritime conventions;
- the reasons for the cost;
- the security measures that will be introduced; and
- whether there will be any additional support for Australian shipping, container inspections and coastal carriage of dangerous goods.

Please contact Mr John Rees, A/g Assistant Secretary, Entry Policy and Procedures Branch on (02) 6223 8274 should the Committee require further information to assist with its inquiry.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Metcalfe', with a large loop at the end of the signature.

(Andrew Metcalfe)

**people** our business

6 Chan Street Belconnen ACT 2617

PO Box 25 BELCONNEN ACT 2616 • Telephone (02) 6264 1111 • Facsimile (02) 6264 2670 • Website: [www.immi.gov.au](http://www.immi.gov.au)



**Australian Government**  
**Department of Immigration and Citizenship**

**Submission to the Senate Legal and Constitutional Legislation Committee Inquiry into  
the Migration Amendment (Maritime Crew) Bill 2007**

**PURPOSE OF THE BILL**

The Migration Amendment (Maritime Crew) Bill 2007 (“the Maritime Crew Bill”) proposes to amend the Migration Act 1958 (“the Migration Act”) to:

- create a new class of visa to be called maritime crew visa;
- permit holders of the new visa to enter Australia by sea only unless authorised to enter in another way;
- enable the new visa to be held with other substantive visas;
- enable the new visa to be ceased if the Minister declares that it is undesirable for the holder (or a class of persons of which the holder is a member) to travel to and enter Australia by sea, or to remain in Australia;
- make it an offence to bring to Australia by air a non-citizen who only holds a maritime crew visa; and
- effect other minor and technical amendments consistent with the introduction of maritime crew visas.

**INTRODUCTION**

Under current arrangements, foreign sea crew arriving in Australia obtain permission to enter Australia through the grant of special purpose visas (SPV). An SPV is granted by operation of law to members of the crew of non-military ships provided the foreign seafarer meets the prescribed description of a member of the crew of a non-military ship and holds a passport that is in force and a document that identifies the crew member as a seafarer employed on that ship.

The initial identification of foreign sea crew occurs through the provision of a ship’s crew list. This is a pre-arrival reporting requirement under Customs legislation, subject to offence provisions for failure to report in a specified manner. Crew lists must be provided to Customs no later than 96 hours prior to arrival in Australia, although shorter time periods may apply depending upon the duration of the ship’s voyage to Australia. The crew list contains names and biographical details which are subject to pre-arrival checks against Australia’s Movements Alert List (MAL). The MAL contains information about persons and documents of concern, including those listed by the Australian Security Intelligence Organisation (ASIO).

Any foreign sea crew identified through MAL checking as a person of potential concern are subject to further scrutiny, either prior to or upon their arrival in Australia including entry interview, identity checking and document examination. Should the MAL identity be confirmed, and the person raises immigration, character or security issues, then the crew member is refused immigration clearance. The person would then be restricted on board their ship or placed in detention onshore, depending on the circumstances. Foreign sea crew who have not been identified through MAL checking, but who fail to meet the passport and documentary

requirements at the time of immigration clearance in Australia, are also refused immigration clearance and, usually, restricted on board their ship. In the 2005-06, around 400 people were refused entry to Australia at seaports. Offence provisions under the Migration Act allow the master, owner, agent, charterer or operator to be issued with an infringement of AUD\$5000 for bringing a non-citizen to Australia who is not in possession of evidence of a visa that is in effect.

The introduction of a maritime crew visa would require that all foreign sea crew wishing to travel to Australia undertake a formal application process for a purpose-made visa which would permit them to enter Australia by sea as crew on non-military ships. The visa application process would collect considerably more data on foreign crew than is currently available through pre-arrival crew lists. In addition, the time in which this data may be assessed against Australia's Movements Alerts Lists (MAL), plus the capability to undertake additional security checking of foreign crew, would serve to align the arrangements for foreign crew with other temporary entrants to Australia. This is consistent with Australia's universal visa regime.

From a legislative perspective, it is planned that regulations under the Act would:

- allow for a new MCV class/subclass for non-citizen crew and supernumerary crew employed, or to be employed, on non-military ships entering Australia in the course of an international voyage and for their spouses and dependent children;
- set out the application process, including an on-line application process and completion and lodgement of applications by third parties on behalf of applicants;
- prescribe criteria for the grant of an MCV including public interest and special return criteria relating to immigration integrity, character, security, foreign policy and weapons of mass destruction;
- allow the visa, once granted, to be in effect for a period of three years and allow multiple entries by crew during this period (subject to the visa ceasing earlier because of the occurrence of specified events or the expiration of a specified period); and
- set out the events which will automatically cease an MCV (such as failure to sign on to a ship within 5 days of arriving in Australia or failing to depart Australia within 5 days of signing off a ship in Australia).

Importantly, the regulations would seek to allow authorised third parties such as shipping or manning agents to make applications on behalf of crew using information supplied to the third party by the crew member. This approach recognises the practical difficulty that would otherwise be faced if foreign sea crew were required to attend an Australian overseas mission to apply for a visa when they may be at sea when called upon to travel to Australia. This would also present significant logistical difficulties to shipping operators and crew manning agents worldwide

The maritime crew visa information requirements for foreign sea crew would enable the Department of Immigration and Citizenship to record sea crew data which would be cross-checked against pre-arrival information provided by masters of non-military ships seeking to enter Australia, to ensure that each crew member possesses a maritime crew visa. Each crew member would continue to be subjected to pre-arrival checks to ensure that persons are properly authorised to enter Australia.

The recording of sea crew data would extend to the capture of sea crew movements (such as arrival, departure, crew sign-on and sign-off) in immigration databases. This would provide much greater transparency to the lawful status of crew at any point in time, identify instances of crew overstaying their visa, and allow a more sophisticated analysis of sea crew immigration compliance than currently exists.

## **CONSIDERATION OF KEY ISSUES:**

### **Implications for international maritime conventions**

Australia is party to the Convention on Facilitation of International Maritime Traffic (the Convention) and may introduce a sea crew visa requirement without breaching its obligations, provided the Secretary-General of the International Maritime Organisation (IMO) is notified of the new arrangements.

As a party, Australia has agreed to cooperate with other States through the IMO to achieve as much uniformity as practicable in documentation and procedures to facilitate maritime transport. This includes Standards and Recommendations about what documents should be required of arriving and departing seafarers. The standard for seafarers is a passport, and it is recommended that parties do not require further documentation beyond a passport or other identity document.

Nevertheless, under the Convention, Australia can decide that (a) it is impracticable to comply with the Standard, or (b) that it deems it necessary to adopt other formalities or documentary requirements. In this context, Australia regards it necessary to adopt the maritime crew visa on national security grounds. In adopting this measure, Australia has an obligation to notify the Secretary-General of the IMO and outline the difference between Australia's proposed practice and the Standard. This notification would be provided to the IMO were the Maritime Crew Bill to be passed by Parliament. It is unlikely that the IMO would react negatively to the proposed regime, as it strikes a balance between legitimate national security interests and the need for seafarers to have access to shore leave.

### **Additional security measures**

The Special Purpose Visa arrangements for foreign sea crew have been in place for many years, have provided significant flexibility and broadly are more sophisticated than other countries. However, there is a need to improve them given heightened security risks and the need to more comprehensively cover migration and character risks. Accordingly, this legislation would more directly address the limited amount of crew data available on the pre-arrival crew list and the relatively short timeframes available to assess foreign sea crew before they arrive in Australia.

The maritime crew visa application would require crew to provide passport and biographical data, details regarding their citizenship and place of residence, name and contact details of their employer (including those who are about to engage crew) and a range of immigration, character and security-related declarations. This data would be used for additional immigration and security checking where warranted.

The application process would not only allow Australia's security agency to examine applicants at that time and assess their security worthiness but would provide, by virtue of DIAC's visa database, an ongoing resource of information on individuals seeking to travel to Australia as crew on non-military ships. Any resultant grant of a maritime crew visa thereafter would provide permission to a foreign seafarer to travel to Australia by sea only. Under Customs legislation, masters of vessels are required to report the impending arrival of their vessel in Australia and provide details of crew. These details would be able to be cross-checked against the visa database to ensure that the details provided by the master match the details provided by seafarers in their initial applications. Discrepancies would prompt relevant checks against any crew member whose details are suspect and these would be dealt with accordingly on a case by case basis.

Under the proposed visa arrangements, there would be two points at which someone may be identified as a person of concern. Firstly, in the application process which would result in a refusal of a maritime crew visa once we were satisfied as to the applicant's identity (including an interview at an overseas post, if necessary). Secondly, at the point of pre-arrival checking and arrival in Australia, where we would seek to refuse immigration clearance and detain the person either by restriction onboard the ship or in a detention facility.

In summary, the proposed new visa arrangements for foreign seafarers would assist with Australia's overall border integrity because of:

- the ability to security check applicants because crew will be required, through a formal application process, to provide relevant personal biographical data and other information including character information and employer details;
- the inclusion of information, in DIAC's visa database, about seafarers seeking to travel to Australia can be cross-checked against crew information provided to Customs at the time of their impending arrival in Australia with their ships;
- increased funding for relevant staff to be involved in the various checks to be carried out at the time of visa application and at the time of crew arrival in Australia;
- an MCV holder would only be able to travel to Australia by air if they obtain an additional visa suitable for travel by air;
- the ability to check the bona fides of sea crew arrivals when their ships arrive in Australia with the added ability to check crew of concern on non-military ships before they enter Australia's migration zone;
- the ability to infringe the masters, owners, charterers and operators of ships for carrying improperly documented passengers and crew to Australia; and
- the ability to more closely monitor, analyse, and respond to breaches of immigration compliance by foreign sea crew.

These features, taken together, represent a more comprehensive process for deterring non-genuine crew seeking to enter Australia for purposes unconnected with the maritime industry and to generally address the possible future risk involved in dealing with foreign seafarers as a cohort of temporary visitors to Australia.

### **Summary of funding arrangements**

The Maritime Crew Visa initiative is funded to a total of \$100.3 million over 5 financial years (2005-06 to 2009-10). This funding is allocated across three agencies: the Department of Immigration and Citizenship; the Australian Customs Service; and the Australian Security Intelligence Organisation. The relevant expenses for these agencies are outlined below.

#### Department of Immigration and Citizenship (DIAC)

DIAC's funding is to provide an implementation team to manage the MCV initiative; to employ and equip additional Regional Seaports Officers to assist industry with the new visa, conduct vessel boardings and manage industry compliance; to employ additional staff to process the visa applications and provide application enquiry support to the shipping industry; to design and implement the IT systems associated with the new visa and to record sea crew

movement records; and to provide funding for compliance and detention operations associated with the new visa regime.

<b>Description</b>	<b>Funding \$M</b>
Maritime Crew Visa (MCV) Project Implementation Team, National Training Strategy and Stakeholder Consultation	3.3
Additional Seaports Officers and supporting equipment	11.4
Additional MCV Processing Staff and Visa Activity	3.0
MCV IT Systems Solution Design and Implementation	17.9
Compliance and Detention Operations	18.3
(Indexation)	1.1
<b>TOTAL</b>	<b>55.0</b>

#### Australian Customs Service

Funding of the Australian Customs Service is for additional Customs Officers to enforce the new provisions as part of Customs' vessel clearance process, and to effect systems changes associated with the checking of crew visa data and the recording and sending of crew movements to DIAC.

<b>Description</b>	<b>Funding \$M</b>
Additional 67 Customs staff (66 regional Seaports officers and 1 Central Office) and supporting equipment to enhance levels of first-port boarding	30.3
Customs IT systems changes and accommodation requirements for new MCV and boarding regime	6.2
IT Systems solution design and implementation for sea crew movements data capture and transmission	1.7
Customs IT systems changes to allow for sea crew movements data capture and transmission	1.4
<b>TOTAL</b>	<b>39.6</b>

#### Australian Security Intelligence Organisation

The Australian Security Intelligence Organisation has been funded for systems development and staff resources to effect security checking.

<b>Description</b>	<b>Funding \$M</b>
Systems and staff costs to undertake security checking	5.5
<b>TOTAL</b>	<b>5.5</b>

#### **Implications for other aspects relating to Australian shipping/container inspections/coastal carriage of dangerous goods**

The Maritime Crew Bill is essentially a migration initiative directed at the scrutiny of foreign seafarers on non-military ships seeking to enter Australia temporarily in the course of an international voyage. It is expected to broadly complement maritime security arrangements that currently exist in Australian shipping. The Bill contains no provisions relating to shipping more generally, or to container inspections or the carriage of dangerous goods.