The Maritime Union Of Australia

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Ms Jackie Morris
Secretary
Senate Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Morris

Re: Inquiry into the Migration Amendment (Maritime Crew) Bill 2007

The MUA wishes to thank the Committee for the invitation to make a submission to the Inquiry. We regret that we were not able to meet the initial deadline set, but trust that our views will nevertheless be taken into consideration in the Committee's deliberations.

The MUA is strongly committed to improving Australia's maritime security. We have demonstrated this commitment by the constructive role we have played in implementation of the International Ship and Port Facility Security Code (ISPS Code) and the Maritime Security Identification Card (MSIC) in Australia. We welcome new Government initiatives aimed at further improving maritime security and border protection. However, we are not convinced that the proposed Maritime Crew Visa (MCV) will in fact close a gap in maritime security as stated, nor achieve its intended objectives.

We also believe it is regrettable that the regulations that will accompany the Bill are not available for scrutiny by the Committee and the industry, as there is considerable lack of detail available on how the MCV will be administered in practice.

One of the stated objectives of the creation of this new class of visa is that it will provide for the collection of data on the applicant beyond that now collected through the pre-arrival crew list lodgement process. However, it is not clear what additional data or information is intended to be collected, nor is it clear how this additional information will improve security checking.

A second stated objective is that because the MCV process is an application process (rather than a simple lodgement process, as is the case with the pre-arrival crew list), there will be more time for Immigration and other officials to check and analyse data and information on a seafarer. However, there are three apparent operational aspects which, prima facie, will negate this alleged benefit.

First, we understand that one of the key checking mechanisms will be a compatibility check between the information contained in the MCV application and the information provided on the pre-arrival crew list. If this is the case, then such checking cannot occur until officials receive the crew list, hence taking away the apparent time bank for additional checking.

Second, the practicalities of crew engagement and ship voyage allocation will invariably limit the time for applications to be made within a time window that will allow for this so called additional checking and assessment of security risk.

Third, as proposed Regulations will make provision for third parties to make an application for a MCV on behalf of a seafarer, there is considerable scope for error or inaccuracy in information to be provided on MCV applications. Such a process will inevitably lead to delays as communication processes seek to rectify inaccurate or incomplete information.

If our analysis as outlined above is correct, we question the potential security benefits of the proposed MCV, and importantly, question the effectiveness of the $100M price tag that attaches to implementation of the MCV.

In relation to the proposal that authorised third parties, such as shipping or crewing agents, be permitted to make application for a MCV on behalf of a seafarer, we are concerned that the Bill makes no reference to the standards that will be applied to shipping or crewing agents, such that they will be authorised to undertake such a representative function. It is our view that the Bill and/or regulations should specify the standards that would apply to a shipping or crewing agent to enable the agent to achieve “authorised” status. It is well recognised internationally in the shipping industry that there are a raft of rogue shipping companies and crewing agencies who we suggest should not be brought into the circle of trust.

Of significant concern and a matter that we urge the Committee to clarify is the definition of “international voyage” – in other words, precisely what voyages or voyage types will the MCV apply to. We believe that a clear definition should appear in the Bill. In this regard, it is our view that the MCV should apply to foreign crew where the vessel is the subject of an application for, or grant of, a Single or Continuous Voyage Permit under the *Navigation Act 1912* and associated Ministerial Guidelines for Granting Licences and Permits to Engage in Australia's Domestic Shipping.

The MUA raises two broader concerns about the MCV process which we ask the Committee to consider.

First, we do not believe that adequate attention has been given to the very important issue of shore leave as provided for under the ISPS Code (an International Maritime Organisation (IMO) Convention to which Australia is a signatory) and the potential the application and grant process for the MCV could have on a foreign seafarer’s right to shore leave. We note that the Department of Transport and Regional Services submission to this Inquiry indicates that 400 seafarers were refused entry to Australia in 2005-06 under the current Special Purpose Visa arrangements, which are said to be less rigorous that the proposed MCV process. This suggests that upwards of 400 foreign seafarers annually will be denied shore leave in Australia. Just how many such seafarers are a genuine threat to Australia’s security is unknown, but shore leave is an important human right, so there needs to be a well considered balance struck between the security objectives of the Bill and the human rights implications for foreign seafarers.

We note in this regard that neither the Bill nor Explanatory Memorandum makes reference to any sort of review or appeal process from an adverse decision. We believe that there should be a form of expeditious and transparent review process to allow genuine mistakes or incorrect interpretations of information to be rectified, and that appropriate support and information services should be available to MCV applicants who are denied a MCV ie who are denied shore leave or detained onshore while the vessel remains in port.

The second issue, and one which is of concern within the global shipping industry generally since the introduction of the ISPS Code, is the additional onus placed on the Master for compliance. We understand that the Bill/Regulations will provide for the ability to infringe on Masters for carrying improperly documented crew, yet the application process for a MCV could well be completely outside the control of the Master. The Master is always an easier target than the owner, charterer or operator, as they are physically accessible, and therefore are often the target of zealous regulatory agencies. The potential to scapegoat (and penalise) Masters, and therefore other complying crew, is an aspect of the introduction of the MCV process that needs to be carefully weighed against the wider security objectives. It is our view that the onus for compliance should rest with the beneficial owner and/or crewing agency.

I look forward to being advised on the Committee's report.

Yours sincerely

Paddy Crumlin
National Secretary