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STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

Reference: Migration Amendment (Maritime Crew) Visa Bill 2007

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**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

Thursday, 29 March 2007

Members: Senator Barnett (*Chair*), Senator Crossin (*Deputy Chair*), Senators Bartlett, Kirk, Ludwig, Parry, Payne and Trood

Participating members: Senators Allison, Bernardi, Bob Brown, George Campbell, Carr, Chapman, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Fifield, Fier-ravanti-Wells, Fifield, Heffernan, Hogg, Humphries, Hurley, Joyce, Kemp, Lightfoot, Lundy, Ian Macdonald, McGauran, McLucas, Milne, Murray, Nettle, Patterson, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Watson and Webber

Senators in attendance: Senators Barnett, Crossin, Payne and Trood

Terms of reference for the inquiry:

Migration Amendment (Maritime Crew) Visa Bill 2007

WITNESSES

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Committee met at 5.34 pm

CHAIR (Senator Barnett)—Good afternoon. This is a hearing of the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the provisions of the **Migration Amendment (Maritime Crew) Bill 2007**. The inquiry was referred to the committee by the Senate on 1 March 2007, for report by 20 April 2007. The bill amends the Migration Act 1958 to create a new class of temporary visa, the maritime crew visa. The maritime crew visa will replace special purpose and other visas which are currently granted by the operation of law to foreign crew of non-military ships, foreign crew of ships being imported into Australia, foreign supernumerary crew and the spouses and dependent children accompanying those crew.

The committee has received six admissions for this inquiry. All submissions have been authorised for publication and are available on the committee's website. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

Just before I welcome officers from the Department of Immigration and Citizenship, I want to place on the public record my thanks to Senator Marise Payne, who has for nine years been the chair of this committee. This is the first committee hearing in which I am chair, and I will endeavour to do my best to fill the very large shoes which she has left. I thank her profusely on behalf of the committee for her efforts and for the professional and courageous manner in which she has chaired this committee over those nine years. I have said that privately and I want to put it on the public record.

[5.37 pm]

KELSON, Mr Adrian, Director, Seaport Policy Section, Department of Immigration and Citizenship

McMAHON, Mr Vincent, First Assistant Secretary, Border Security Division, Department of Immigration and Citizenship

PARKER, Ms Vicki, Assistant Secretary, Legal Framework Branch, Department of Immigration and Citizenship

O'DONNELL, Mr Rodney Andrew, Acting Director Seaports, Enforcement Operations, Australian Customs Service

PRICE, Mr Terry, Acting National Manager, Enforcement Operations, Australian Customs Service

CHAIR—Welcome. DIAC has lodged submission No. 5 with the committee. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. I now invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Mr McMahon—The introduction of a visa for crew of foreign non-military ships would effectively seek to align foreign sea crew with the arrangements in place for most other temporary entrants to Australia. In effect, we operate under two regimes at the moment. We operate under an extensive visa regime involving applications by non-citizens offshore and also a regime that operates at seaports, through which, by meeting certain basic conditions—effectively, being a crew member of a ship coming through an Australian port—the visa comes into operation by law. This is probably more than what a number of other countries currently do.

Many countries operate, in effect, visa-free arrangements in terms of the movements of crew. Under the current system, we have notification of certain information, biodata, relating to the individual crew members ahead of their arrival. That allows us to do some basic checking. Probably at the other end of the scale at the moment is the US, which requires a full visa before arrival. For those people who do not have one, this requirement ostensibly restricts them to remaining on board. A fundamental change, therefore, is that crew will have to apply for a visa before they come to Australia, in contrast with crew obtaining a visa by operation of law.

An important part of a formal application process for foreign crew would be the ability not only to security check applicants but also to collect data on them, which would in turn

enhance our ability to check bona fides. Another component which is not tied to the legislation but is important in the construction of this arrangement is the ability to better integrate customs and immigration systems. The new visa would only authorise entries into Australia by sea. Crew who wish to travel to Australia by air would have the means to do so through our current transit visa arrangements. The bill incorporates the ability to infringe masters, owners, operators and charterers of vessels bringing in improperly documented persons to Australia.

I would make the broad observation that crew arrangements work very differently from air arrangements. So what we have tried to do through a consultation process is to construct something which tries to balance the need for the security and the information against the realities of a shipping industry. Many of the features of the visa, such as the ability to apply online, the ability for other people to apply for the visa on behalf of the crew member, the multiple re-entry capability and the term of the visa, were all designed to reflect some of the basic requirements of the maritime industry. That is essentially all I can usefully add at this point in time.

CHAIR—That is fine for an opening statement. I appreciate that. Would anyone from Customs like to make an opening statement?

Mr Price—I am satisfied with the submission. We do not intend to make an opening statement.

CHAIR—Thank you, Mr Price. We will go to questions now.

Senator CROSSIN—I mainly want to put on the record a few issues that we want clarified. I am going to refer to the Maritime Union of Australia's submission. They are not appearing before us, but I think they have raised some questions that I believe need some clarification. At what stage would the regulations that accompany this legislation be available for scrutiny?

Ms Parker—The drafting instructions for the regulations are currently being prepared. We anticipate that the regulations will be available for the EXCO meeting before 1 July when this legislation would hopefully be proclaimed, if it is in fact enacted.

CHAIR—Thank you for providing clarity about the regulations and when they would be available. Could you give us a feel for how long it takes to undertake the actual process of obtaining and granting this visa?

Mr McMahon—It is very similar to our current visa system in the sense that a lot of the visa grants will take place extremely rapidly, perhaps even within minutes of the application. However, when an issue is raised the time taken is generally as long as is required to resolve that issue. Reflecting on our experience in other areas, it is sometimes not possible for the security issues to be fully resolved in any short period of time, so it is possible that for some people—and I imagine this would be a very small component—the application may still not have been granted by the time they depart. But for the overwhelming majority I would expect very rapid, sometimes almost immediate, approval.

CHAIR—Is that based on an application from the applicant and/or a third party?

Mr McMahon—Correct. Either can lodge.

CHAIR—If it is such a quick turnaround, obviously they do not need such advance preparation of the application before they enter Australia?

Mr McMahon—Correct. Essentially, every visa application which is made is run against our movement alert system. The movement alert system comprises around half a million name records and nearly three million document records. That check would take place in real time. A couple of things could happen. One of them is that there is no issue there or there are no other issues that need to be pursued and it would be issued very rapidly. The second possibility is that we may get a name match against a person of concern and that would require resolution. And then, thirdly, there may be issues from a national security point of view which would require resolution and, as I have indicated, that generally takes as long as it needs to take.

CHAIR—Shipping Australia Limited in their submission, which is submission No. 3, identified three areas they wish to be clarified, so I will put those to you. I think you have already answered one of them in part. They ask whether internet applications should be permitted, to which I assume the answer is yes.

Mr McMahon—Correct.

CHAIR—The second one is that visa applications should be able to be made by either the applicant or the third party—

Mr McMahon—Correct.

CHAIR—and, finally, that there is no charge.

Mr McMahon—Correct again.

CHAIR—Is it normal procedure that there is no charge for this sort of thing? What about the cost recovery? I noticed in the explanatory memorandum and the second reading speech that there is a cost of something like \$100 million over three years for the program. What is your response to that?

Mr McMahon—More broadly, we have a range of visa regimes operating for entry to Australia. There is no government charge in respect of the electronic travel authority, which is used by 85 per cent of people who enter Australia. It broadly reflects our reliance on electronic systems to rapidly dispense visas. The government is prepared to wear the cost of those for the convenience of the client, the speed of response and the fact that, if you go through an alternative hardcopy form, you start to introduce major costs for government anyway.

So, yes, there are very substantial costs, but we are also getting benefits other than simply a visa, including a greater presence at seaports. It would not be absolutely necessary for that to take place, but it is part of the government's view that it is necessary to bolster the level of security at seaports, and a number of other measures have been taken to do that. The integration of Customs and Immigration systems is very important. Consequently a range of other benefits exist there. Of course, we then have greater assurance around national security. They were the benefits for us.

But we were also reasonably realistic in terms of the way we needed to approach this. It was no use starting a process which is immediately going to get you in a fight with the people

you are dealing with. The industry put to us a range of requests and concerns, one of which was that this could be a significant impost on the industry and that the controls would be quite tight relative to some other countries. What we were trying to do was balance our national security and border requirements with the way it impacted on the industry. I think it has been broadly reflected in good support by the industry itself.

CHAIR—Just to clarify that for the record, it is \$105 million over five years. Can you outline for the committee what consultations you have had with stakeholders in developing the policy underlying the bill?

Mr McMahon—We had a range of consultations with industry bodies. One of the main concerns in having those consultations was to understand exactly how the industry worked and how to best position this in a way which was going to be feasible for the industry. We had a number of consultations and they were very helpful. As I recall it, we also wrote to the relevant union to ask for their comments. I might hand over to Mr Kelson at this point.

Mr Kelson—We established an industry working group with Shipping Australia Ltd in early 2006 and we met on four occasions last year to discuss the proposed arrangements for the maritime crew visa. In addition we met here in Canberra with representatives of the Maritime Union of Australia and the Australian Shipowners Association to broadly discuss the proposed arrangements. All of those meetings indicated to us that our approach to the maritime crew visa was largely meeting the various requirements of industry. In addition to those meetings and formal processes we undertook industry consultations which started in late November last year. We had 11 industry seminars in major capital cities and at major ports around Australia. The overwhelming response by the array of industry representatives at those seminars indicated that we had a product that was broadly meeting their needs. In addition to that, we have had some information available to the international shipping industry on our website since last November. We have also had some articles in the *Shipping Australia* magazine since about September last year.

CHAIR—You indicated that you had consultations with the MUA. We have received a submission, albeit somewhat late, from the MUA expressing some of its views and concerns. What response do you have to the representations and concerns made to you by the MUA?

Mr McMahon—We have not had time to study them, but we are aware of them. Most of the issues are simply seeking additional explanation. As I understand it, one or two of the concerns have been concerns that we are conscious of, but we will have to deal with them in the light of the circumstances. For example, the issue of people being restricted on board has been an issue which has been raised by both them and the industry. It is a current practice that we do restrict people on board. At the moment around 400 crew members are already restricted on board. This will increase the number, but I would not expect that the number would increase significantly.

CHAIR—Thank you.

Senator TROOD—Do the crew currently receive special purpose visas?

Mr McMahon—Correct.

Senator TROOD—Do you expect that there will be an increase in the number of visas that you will be granting or is it basically an exchange of one visa for the other? Is it likely to involve more crew or more visas?

Mr McMahon—The number of crew will not change but there will be a reduction in the number of visas issued. The special purpose visa is an operation of law thing which is managing their legal status rather than obviously a piece of paper or whatever. The reason why the numbers will go down is that each time a person arrives they are, by operation of law, receiving a special purpose visa. Under this arrangement they will make an application and, to the extent that people re-enter, they will be using the same visa. We get over 300,000 crew members entering a year and, as I recall it, that is about 190,000 people. In effect, each crew member is getting 1½ visas a year, and that will fall away. Over the years the actual number of visas, which, as I say, really only go to the issue of their immigration status at the moment rather than being something which is incorporated into our systems, will fall.

Senator TROOD—Will there be multiple entry visas?

Mr McMahon—Correct.

Senator TROOD—For how long will the visas be granted?

Mr McMahon—We expect it to be multi-year, but we do not have final approval within government as to the number of years. But it could be up to three years.

Senator TROOD—Will a three-year visa will only require one security check?

Mr McMahon—Correct.

Senator TROOD—So you will not be checking them during the course of the visa?

Mr McMahon—Just to clarify, the visa application process is the basis to initiate all our clearance processes. The movement alert system is going to issues of national security, criminality, health and immigration bona fides. If a person is put on that, it would automatically check against the system to see whether or not a visa had been issued against that person. So additions to the movement alert list could well throw up another check.

In addition, it is possible that new information will come to light to the security organisation, which could then initiate a check. But your broad proposition is correct: you would expect that, in the general scheme of things, a person would only have a check at the time of a visa.

Senator PAYNE—I want to ask about the responses in the consultation process. I think you indicated there had been information on the website for the international shipping industry. Have we had any feedback on that?

Mr Kelson—Very little, it is fair to say. We have also had some discussions with overseas crew-manning agents and operators—one or two discussions only, just to check some basic assumptions we had about internet related processes. But it is fair to say that we did not have an extensive consultation process overseas; we relied on their representatives in Australia, Shipping Australia Ltd.

Senator PAYNE—So, in terms of the protocols and approaches taken internationally, is it reasonable to describe it as sitting Australia fairly and squarely in the middle of other international activity in this regard?

Mr McMahon—It is true that we had limited engagement, although not through choice, with overseas agents—shipping agencies, et cetera. We did, though, consult our post on their experience in respect of the issuance of transit visas, and we also looked at the nationality issues. For example, over 30 per cent of all crew are Filipinos.

Senator PAYNE—Internationally?

Mr McMahon—Coming to Australia, but probably internationally as well. So, consequently, we tried to work through in our minds what that meant. Our initial thinking was: ‘Our office in the Philippines, if they were to do hard copy stuff, would be very busy.’ And then we realised that that is not the way they work, because these people are in an international space, rather than a nationality space. So we have tried to work through that. We have also tried to take into account—

Senator PAYNE—Sorry, Mr McMahon—by which you mean that even if you are a Filipino crew member, you would not necessarily pick up a visa in Manila—

Mr McMahon—Correct.

Senator PAYNE—you might just pick it up in Montevideo.

Mr McMahon—Correct. We fundamentally want people to use the internet and we think that will provide attraction. But we are also gearing ourselves up to take hard-copy applications as necessary. Having answered your prior question, I have forgotten what your main question was!

Senator PAYNE—My question was where this placed us in the international context.

Mr McMahon—It puts us up at the high end. The US, I think, is leading at the moment. It has the most stringent provisions. We are doing essentially what we often do, which is to go for the high-end requirement of a visa but then try to do everything we can to make that visa as easy as possible to access and to be as flexible as possible. I suspect that the US is largely a hard-copy application-based visa, which means that a lot of people are not going to get the visa before they come, while we would expect that the great majority of people coming to Australia—particularly bearing in mind that we get people coming on multiple occasions—

Senator PAYNE—Would they need one visa to do that?

Mr McMahon—Correct.

Senator PAYNE—One of these visas?

Mr McMahon—One visa, and it may well be that they come in 20 times on that one visa. So, internationally, it puts us at the higher end, but I would expect that it is not onerous, though, in doing that. A lot of countries are examining very closely the changes taking place at seaports. Many countries feel reasonably exposed on seaports, and I would not be surprised if we saw within the next three to four years a move towards much more extensive arrangements around sea crew.

Proceedings suspended from 6.04 pm to 6.45 pm

CHAIR—The committee will now resume. Thank you for your patience and forbearance.

Senator CROSSIN—Will there be Internap applications for these maritime visas?

Mr McMahon—Correct.

Senator CROSSIN—They will be able to be made by either the applicant or a third party. Is that correct?

Mr McMahon—Correct.

Senator CROSSIN—Will there be a charge?

Mr McMahon—No charge.

Senator CROSSIN—What then is the difference between what currently happens and what you are proposing for someone who arrives, say, on a cruise ship as a crew member?

Mr McMahon—People arriving on the cruise ship will still require a maritime crew visa. At the moment, we have the special purpose visa legislative provisions. All that requires—besides being a member of a ship and having a passport et cetera—is coming through a proclaimed port. We get data at least 96 hours prior to their arrival. The data we get is relatively limited. Essentially, we get the name of their ship, their family name, their given name, their date of birth and their sex—just very basic bio data. Under the new arrangements, they will have to make a formal application and the level of data that they will provide will be more in keeping with the sort of data that we would require in respect of some other visa applications—and certainly our e-visa platform generally requires more information than what we are getting currently. We will be getting additional information, and that information will then be used to assist us with our normal immigration clearance processes.

It will also be used for when we operate on behalf of other agencies, such as the AFP in terms of checking names for criminality, and we may pick up that information for ourselves. It provides a more comprehensive set of information against which security organisations can make checks. Once those checks are made, if a visa is to be issued—and that would be in the overwhelming number of cases—then the person has in some sense greater security about re-entry, because it will be a multiple entry, multi year visa. We have noticed that in any year you would expect crew members to enter not quite twice but something of that order—1½ times. You have people coming more than once; you would expect that to happen. Once the visa is issued, they certainly have greater assurance that on arrival they will have no issue in respect of entry.

The other dimension of this, as I mentioned in my opening statement, is that some of this is about having more people at the border to deal with any issues that arise. Also, at the moment, data is collected in respect of people but held in Customs' systems. From a Commonwealth point of view, that is very helpful. From an immigration point of view, at times that is not convenient. This would allow us to get a more comprehensive database about movements—like we would in respect of anyone who is arriving by air. We would have greater access to data about movements, more checking and greater confidence regarding security and other issues to do with people entering Australia.

Senator CROSSIN—So you will now be collecting data that goes beyond what you collect for the pre-arrival crew list—is that correct?

Mr McMahon—Correct.

Senator CROSSIN—What extra data will you be looking for or asking of people?

Mr McMahon—Marital status, passport date of issue, passport date of expiry, other citizenship held, residential address, phone number—those sorts of things.

Senator CROSSIN—You currently do not ask for those?

Mr McMahon—None of that information is currently available through the basic crew list which comes in. We do use the crew list at the moment, nonetheless. It is run on the Customs system against the movement alert list which we provide them.

Senator CROSSIN—Will people have to apply for this visa?

Mr McMahon—Correct.

Senator CROSSIN—Will it be issued for only the period of time, say, a ship is in port, or will they get it for three years, for example, and have multiple comings and goings in that time?

Mr McMahon—We expect it to be multi year. It is not absolutely clear whether it might be for two years or three years or whatever. That is a matter still being worked through in fine detail. It is certainly multiple entry and we would expect it to be multi year. We would not expect it to be beyond three years but exactly where it is going to be pitched is something that the government is still considering.

Senator CROSSIN—Will you also get a pre-arrival crew list and will there be some compatibility check between the crew list and the applications for visas?

Mr McMahon—We will still get crew information—and others may want to comment on this as well—but our primary concern will be whether or not the person who is arriving holds a visa. The person still needs to be a member of the crew. You could not apply for it and then try to come in through some other means.

Senator CROSSIN—Do they have to pass both checks in order to get onto the shore? Are you saying that if they have a visa but are not part of the crew they can come into the country, or do they have to be on the crew list as well having a visa in order to get in here?

Mr McMahon—They would have to be a crew member of the ship because that is what the visa is for. Just as for any other person entering the country, we have to be satisfied as to their bona fides, and one way of establishing their bona fides in this case is checking to see whether they are a member of the crew.

Senator CROSSIN—You won't be able to do that until the ship actually arrives, will you? At what point in the process do you get the crew list?

Mr McMahon—It is at least 96 hours before arrival.

Senator CROSSIN—So the issuing of visas is not to expedite the entry of people into the country; it is to make it more secure. Is that the intent?

Mr McMahon—Correct.

Senator CROSSIN—It will not actually take away the apparent time bank then for checking—is that correct?

Mr McMahon—I will put one qualification on an earlier answer. We are definitely trying to make the border more secure, but there is a facilitation element in the sense that once people have it then we will be more satisfied as to their bona fides on arrival. At the moment, even with the special purpose visa, if we had concerns about them at the border we would restrict them on board. So once they have gone through that process, particularly if they have entered under a visa arrangement, having met conditions of that visa arrangement, then just as in other areas of entry we would be more confident about their continued compliance. At the moment what we do not know and do not collect very well is how they performed on previous occasions. We could—and sometimes do—put them on the movement alert list but this will provide us with a better database for those complying with visa conditions.

Senator CROSSIN—I am assuming that the first time they come in under this new system you will check their visa as well as their entry on the crew list. But, if they are coming back in six months time, you will not recheck their visa, will you? They will somehow be in the system already as being a visa holder, so it will just be quicker or more automatic the second and third time?

Mr McMahon—We would still need to check that the person has a visa, but that is a very lightning fast check. That is just an online inquiry as to whether or not the person has a visa. But I might just turn it over to my colleagues here, who may be able to give a bit more detail.

Mr Kelson—I will make a comment. The prearrival crew list supplied by the ship or the ship's agent in Australia to Customs is a mechanism by which Customs can ascertain whether those crew have an MCV or not, so it effectively establishes that these people have been through the application process and have been granted an MCV. So it is the first point, several days out or 96 hours out from Australia, that we get to clarify that the crew on board the vessel have a maritime crew visa. At that point, if there are any crew that do not have a maritime crew visa, that would require Customs to bring it to the attention of Immigration. That crew list is provided every time a vessel enters Australia, so every time that vessel and those crew enter Australia there is a check that that person still holds or holds a maritime crew visa.

Senator CROSSIN—So I am assuming then that the crews of these ships will have to apply for these visas well before the 96 hours—is that right?—or probably when they leave their home port.

Mr McMahon—They need to apply before they get to Australia. For those for whom the visa process is very rapid, which would be the majority of the people, even if they applied relatively soon before coming to Australia they would be clear. There will be some people for whom issues arise who obviously would be very wise to make an application as far in advance as possible to allow time for the visa to be processed.

Senator CROSSIN—I will just go on to the third parties. The Maritime Union have raised a concern that there may be considerable scope for error or inaccuracy in the information to be provided on MCV applications. The question is really: will third parties need to be somehow registered or qualified or identified by you in some way?

Mr McMahon—We have taken the view that that would be too difficult to do and probably not very practical, bearing in mind that these applications are going to be made all over the world. We are doing a couple of things. First of all, we have had an information campaign and we are going to run the information campaign more seriously.

Senator CROSSIN—Is that what the \$100 million price tag is against?

Mr McMahon—It is included in that, but it would be in the thousands rather than—

Senator CROSSIN—The millions.

Mr McMahon—any significant number. We will produce material. But a fundamental part about the way that we have proceeded, both here and in other areas in which we have introduced entry requirements, has been not starting the process up immediately but running in parallel with a voluntary arrangement. So we have a period of grace. Our intention would be that, for at least six months, we would be encouraging people to use the visa system but not penalising anyone who did not. In that way, we can deal with the issues and we can work with various parts of the industry which may not be aware of it or where there are issues. That has worked extremely effectively.

Quite clearly, if a person does not have a visa under this new arrangement, once it goes into the hard-wired component of it, they will not get entry. There are penalty provisions in respect of people—masters et cetera—who do not comply, but, on the other hand, we have handled those infringement notices quite flexibly over the years, both in the maritime industry and in the airline industry. As a general proposition, we do not blindly pursue fines. We issue a lot more infringement notices than we actually require people to pay the fines. In other words, if they have a good story then we may not proceed. So, between those, we think we can get it right over that six-month period.

Senator CROSSIN—Can third parties now make an application?

Mr McMahon—There is no application process yet.

Senator CROSSIN—You just provide a crew list and that is it, essentially?

Mr McMahon—Yes. In effect, by the time they get to Australia they have been checked against the movement alert list and in entering the port, by operation of law—because they have got their passport, because they have signed to the ship—a visa comes into effect.

Senator CROSSIN—So there will not be any standards for a third authorising party then?

Mr McMahon—No.

Senator CROSSIN—So they could be scoundrels, or they could be international reputable shipping companies?

Mr McMahon—That is true, except that—bearing in mind that you can make the assumption that they are trying to facilitate the entry of the person—if they do not provide the information then the person will not enter. So it is hard to know what the objective would be of someone and to what end—for example, if they are attached to a ship and they are trying to secure entry to Australia, we will check things like passport et cetera on entry as we do now, so if they have provided false information the person will not get access. So it is a bit hard to know how they would manipulate the system. I think the greater risk would be that people do

not fill the thing in properly, resulting in the person, the crew member, not having a visa on arrival, and that then causing a problem with restriction on board. But again that is an issue that I think we can work through in that six-month grace period and make an assessment of that.

Senator CROSSIN—What is the definition of an international voyage then? There is concern raised here that perhaps that ought to be clarified.

Mr McMahon—An international voyage is something that is administered by the Australian Customs Service, so I might just turn that over to my colleague.

Mr Price—There is a definition for ‘international voyage’, but it is not one that relates to this bill. It relates more to revenue aspects. But all vessels that are international are those that come from another country to an Australian port. Basically, they can remain on the coast delivering cargo and then depart to another port, unless they are actually entered for home consumption and the required revenue that is applicable, if any, is paid.

Senator CROSSIN—At the moment, though, a crew would need an MCV if they were on an international voyage, but ‘international voyage’ is not defined in the act—is that correct?

Mr Price—In terms of this bill, no, not that I know.

Senator CROSSIN—You have seen the suggestion that perhaps it ought to be a continual or single voyage permit under the Navigation Act. Are there concerns about, or has consideration been given to, defining what ‘international voyage’ might be and picking up this suggestion of this definition?

Mr McMahon—Yes, we have considered that and did consider it in the past. We do not think it is appropriate for us to define it where it is part of established processes administered by another agency—and I think administered quite effectively—over time. I do not think there is the level of doubt about it that may be inferred from the MUA’s submission, which I have now had an opportunity of reading.

Senator CROSSIN—Is the suggestion that they have in their submission too restrictive?

Mr McMahon—We would not favour it from an Immigration point of view. Basically, it is a longstanding practice. It is reasonably well understood in the industry, and there are some clear guidelines around it anyway in respect of its relationship to the Migration Act. For example, the minister’s determination is that after three months the international voyage has ended, so that is a clear cut-off point at the other end. It is our inclination and view that it is not an area that poses a significant problem and it should not pose a significant problem for the industry itself in its application.

Mr Price—If I can also clarify, in terms of the single voyage permit and continuous voyage permit, they do not actually affect the fact that it is an international vessel on an international voyage. It is related more to the revenue implications of the fuel on board the vessel and how it is treated in revenue terms.

Senator CROSSIN—So are you saying that this definition is not applicable or too limiting?

Mr Price—I would say that it does not apply in terms of how we would look at its international voyage. It really relates to the percentage of cargo on board and how we treat it in a revenue sense as opposed to how we treat it in terms of its international status.

Mr McMahon—I will just make one point. What is absolutely clear is that a person coming from overseas will require a visa. What actually happens after that point is not really to do with the maritime crew visa but goes to the purpose of the stay within Australia. If a person is here under a maritime crew visa arrangement, they are coming because they are a member of a crew. That will be the first and absolute test at the barrier. What happens subsequently in respect of that vessel will not matter in respect of the entry point. What will matter is that, if you are no longer a member of a crew, then you cannot expect to stay in Australia if that is the purpose of your visit. Some of these things which subsequently happen are not really material to the fact that a person requires one to enter Australia.

Senator CROSSIN—That leads to my next question, which is about shore leave. I am assuming that when people actually arrive here they have a right to get onto the shore and stay for a period of time. Are the special purpose visa arrangements much more stringent than the current visa you are suggesting?

Mr McMahon—As I think is reflected in some of these documents, at the moment we are restricted on board about 400 people a year for immigration purposes. You would expect that this arrangement will result in somewhat more people. It is very hard for us to estimate what the impact will be, but, in essence, we recognise that there are—

Senator CROSSIN—Could I just interrupt you there. Why do you think it will restrict more than 400 people? Is it because the requirements are—

Mr McMahon—For a number of reasons, and probably more so in the earlier stages. We hope that the transition period will help, but it will be higher because some people will not have the visa and cannot apply for it on shore. People who do not follow the process will not be able to get entry. There will also—

Senator CROSSIN—Does that mean they then have to stay on the ship and not get off the ship?

Mr McMahon—Correct. If you are in the US, great numbers of people do not get off the ship because they actually require a formal written visa application process. The arrangements should work much more flexibly than that. We would expect that the overwhelming majority of people will be able to have shore leave. There will be some people who raise serious issues from a national security point of view and those issues will need to be resolved. It may well be that they are refused entry or, alternatively, for a few it may be that the issues are such that they cannot be resolved in the time period. But, on the positive side of it, bearing in mind that people tend to re-enter, at least the issue can be resolved and entry can be facilitated in the future.

Senator CROSSIN—So if you currently want to stay on shore for a period of time, you have to have a special purpose visa. Is that correct?

Mr McMahon—The special purpose visa comes into operation in law and that does permit people to come on shore subject to us satisfying ourselves as to the bona fides of the person.

Senator CROSSIN—Will the MCV be a much more rigorous test than the special purpose visa?

Mr McMahon—It is a much more rigorous test. Like a lot of things, it will be more rigorous and, for a lot of people, it will not make any difference because in the end we do want to facilitate entry. But for some people it will raise issues that will restrict entry.

Senator CROSSIN—The other issue is the ISPS code that is raised in this submission. Is the additional onus placed on the master for compliance? Is it correct that the bill or the regulations will provide for the ability to infringe on masters for carrying improperly documented crew yet the application process for an MCV could well be outside the control of the master? Is the master subject to a fine or an infringement?

Mr McMahon—The master would be responsible but who pays would be another issue. It is quite clear that if people are undocumented when they arrive they could be subject to an infringement. That is the same arrangement that broadly applies in respect of airlines.

Senator CROSSIN—You would fine or infringe the master of the ship rather than the owner of the ship. Is that what happens now? You say that with airlines you infringe the captain rather than the owner of the airline.

Mr Kelson—Senator, an infringement may well be served upon the master, but it is a carrier's obligation to make sure that everyone on board a vessel is appropriately visaed or documented. Under our legislation, we can serve an infringement on, from memory, the owner, charterer, master or agent of the vessel—any one of those parties. It is just a means to make sure that we have an infringement regime that allows us to serve and hopefully have that fine paid at some stage, and it would usually be by the vessel owner. So in that respect the master is the conduit.

Senator CROSSIN—Or it might not be the vessel owner, though.

Mr Kelson—I do not think that there would be too many masters in the world who would be dipping into their own pockets, because in fact they are the representative of the vessel owner.

Senator CROSSIN—I see. You currently do not have that sort of notice because the visas are not required. Is that correct?

Mr Kelson—We currently do have that notice and in that respect the MCV will continue in exactly the same regime—

Senator CROSSIN—How many masters would be infringed at this point in time?

Mr Kelson—Off the top of my head I cannot be sure. In relation to the 400 people who are refused entry on an annual basis, in rough terms, a significant proportion of those would be eligible for us to serve an infringement against. As Vince outlined earlier, there may be circumstances which would warrant us to use discretion where best endeavours have been made and we might withdraw an infringement. I have the feeling that it is in the order of a couple of hundred, but we might have to take that on notice.

Mr McMahon—If I may make an observation, when we introduced the infringement regime, we got up to revenue annually of about \$22½ million, from memory. That was in

1999-2000. The estimated revenue at the moment is about \$4 million and I think we are running at about \$3½ million. I just give you those figures as an observation that it does not take long for the industry to respond and comply with an infringement regime.

Senator CROSSIN—Will Customs rather than the department of immigration be enforcing these new provisions?

Mr Price—No.

Senator CROSSIN—What is the difference?

Mr Price—Our role is more the physical checking of the passport to the crew member in this process in a very short time after they arrive. If we have any issues or discrepancies, we will refer the matter to Immigration for resolution and then we will act upon the advice provided by Immigration.

Senator CROSSIN—Thank you.

CHAIR—I have a couple of follow-up questions. How many maritime crew visits are there each year?

Mr McMahon—A little over 300,000. There are over 600,000 movements in and out of the country.

CHAIR—Six hundred thousand?

Mr McMahon—300,000 in and 300,000 out. There are about 318,000 visits, as I remember.

Mr Price—We have those statistics here.

Mr O'Donnell—The figure we have for arrivals is 326,979 for 2005-06. We are probably looking at similar figures now for this year or maybe something a bit higher. Those movements again would have an outwards leg as well, so probably double that number.

CHAIR—In terms of the costs, on the last page of your submission you have outlined that Customs need 67 additional customs staff and you need additional seaport officers—\$11 million for DIAC and another \$30-odd million. Why do you need so many extra officers to attend to these matters?

Mr McMahon—Firstly, as a broad proposition, it was taken as an opportunity of strengthening the arrangements around the sea borders. Sea borders are not nearly as well serviced, as a general proposition, as airports. Secondly, we anticipate that there will be more issues resolution and we may also need, for those who are restricted on board, a more direct capability to deal with that. I would like my Customs colleague to make a comment on that.

Mr Price—We are currently required to meet a minimum of 75 per cent of first-port boardings and we receive funding to achieve that—

CHAIR—What does that mean?

Mr Price—Seventy-five per cent of all first-port arriving vessels will be boarded by Customs on a risk assess basis. That is the minimum. However, there is no time restriction. Under these new arrangements and the tightening of the new arrangements there is a requirement to undertake the physical checking within one hour of the vessel actually

arriving. In order for us to meet that requirement in some of these ports we need to increase our staffing accordingly. Around Australia we have quite small ports where we need to increase our staffing to achieve that aim.

CHAIR—Finally, Customs have not put in a separate submission but you had input into the substantive submission—

Mr Price—Yes.

CHAIR—Do you have any further comments on the benefits of the legislation to the Customs Service?

Mr Price—Not so much in terms of the submission itself—we are pretty comfortable with what is contained there. I just want to clarify one issue in relation to the 96 hours. We have spoken about that, but there is a sliding scale depending on the length of the voyage. Most vessels will take longer than a 96-hour voyage so that is why we have this 96-hour reporting regime. But for countries that are closer, like Indonesia and New Zealand, there is a sliding scale so we might not get that 96 hours from our nearest neighbours. There is probably only a 12-hour arrangement for pre reporting. I just wanted to clarify that 96 hours.

CHAIR—Thank you for clarifying that and thank you again for your patience. Before we close the hearing, I thank the witnesses who have given their time today to give evidence. I declare the hearing today adjourned.

Committee adjourned at 7.18 pm