

MUA Submission to the Senate Inquiry

Inquiry into the Transport Security Amendment (Serious Crime) Bill 2019

January 2020

The Maritime Union of Australia represents more than 14,000 Australian seafarers, stevedore workers, port workers and other associated workers in the maritime industries.

Almost all our members are required to either transit through security regulated zones or to work inside them every day and so need to maintain compliance with the MTOFSA and hold current MSIC cards.

Our union has a long and reputable history around the development and oversight of the Act, associated regulations and government departments applying and regulating those legislative processes.

The MUA has made a similar submission to the Transport Security Amendment (Serious and organised crime) Bill 2016 and there is no evidence that circumstances have changed nor has a case been made to use the Act in an additional way.

The Act and regulations have undergone a series of changes to what the government has from time to time labeled “enhancements”.

Regardless of which government has been in power, unions have worked through the big issues to find consensus in the name of national border security and the protection of transport workers as a priority.

Indeed, it is an important element of national security that in order to be effective, partnerships should be promoted, and stakeholders be encouraged to participate at all levels.

The government has failed to include working men and woman across all transport sectors as partners to support our national security.

Workers feel alienated and threatened through the application of transport security legislation and this Bill only serves to widen the gap between workers and Government agencies.

The MSIC/ ASIC are essentially a “Right to Work Card” and causes many existing employees much anxiety every time their card comes up for renewal.

In some cases, the MSIC renewal process is taking months and rendering some workers ineligible to access their workplace while agencies fumble the checking processes.

Long term employees are forced to account for the same offences time and time again, every time their cards need to be renewed despite there being no new offences recorded the preceding period. In many cases decades have passed since a security related offence was recorded and dealt with by authorities.

This slows down the renewal processes dramatically and threatens the ongoing employment of trusted and reliable transport workers.

This Bill proposes an additional purpose to the Aviation Transport Security Act 2004 and the Maritime Transport and Offshore Facilities Security Act 2003. It has the potential to affect up to 260,000 Australian workers across all transport modes in Australia’s sea and air boarders.

The government has claimed that *“Changes to the Aviation and Maritime transport security Acts will strengthen the ability of authorities to refuse access to aviation and maritime infrastructure by persons convicted of serious or organised crime”*

The explanatory memorandum claims that *“This additional purpose aims to reduce criminal influence at Australia’s security-controlled airports, security regulated ports, and security regulated offshore oil and gas facilities.”*

In fact, this is already the case as one of the changes implemented since the Maritime Act was introduced in 2003, was to broaden the context to include serious crime offences in the list of security relevant offences.

We have seen no evidence that there is a disproportionate problem with ASIC/ MSIC holders having a criminal influence inside our ports, airports and oil & gas facilities and there has been no case prosecuted to criminalise transport workers in our country.

The ASIC and MSIC cards are identification cards, not access cards!

The MUA objected to this *mission creep* because it dilutes the focus to the most urgent and diabolical threat to our nation which is a possible terrorist act coming through our maritime or aviation boarders.

Our national security should and must be quarantined from any level of politicization. National transport security must have strong, consistent and proportionate legislation to protect our citizens and the Australian community while respecting workers' rights.

The Bill proposes two key issues which will weaken the counter terrorism focus. The security related offenses as proposed will put transport workers at risk of losing their jobs for unassociated historical criminal offences. These issues are-

- The introduction of a new secondary purpose to both Acts
- Elevate yet again the eligibility criteria through an expanded list of security regulated offence

This submission has already covered the concerns around mission creep and the list of security related offences which in many cases hold no bearing to serious and organised crimes.

To deny a worker an ID card because at some stage in their past they may have been charged with any form of assault, tax evasion or the like is blatantly unfair and completely irrelevant in this context.

There has been no case made to exclude an applicant for past convictions for less serious crimes.

If the intent is to target serious crime, then this list of convictions must match the intent. The union could consider that serious crimes which attract serious prison sentences in excess of 5 years are a concern.

It is not clear whether the existing appeals process, and discretionary procedures will be maintained.

Current Gaps in Maritime Security

In every terrorist related act involving the transport sector, Aviation, Road, Rail and Maritime, there are always transport workers included in the list of dead and injured.

Transport Unions understand better than most the need to protect the integrity of the laws and the application of those laws designed to protect the infrastructure and the work force.

The Maritime Union of Australia knows our industries intimately and has identified gaping holes in the National Maritime Security network. We see it as our responsibility to expose these flaws and vulnerabilities; however political expedience has in some ways high jacked policy.

The MUA and internationally affiliated unions continue to expose these breaches and provide examples from an international perspective on how to counter these threats.

Some of these threats have been explained in detail to the Senate Inquiry into FOCs on the Australian coast. The most startling admission in that Inquiry comes from the then federal government's Department of Immigration and Border Protection who warned that:

'There are features of FOC registration, regulation and practice that organised crime syndicates or terrorists may seek to exploit.

'Reduced transparency or secrecy surrounding complex financial and ownership arrangements are factors that can make FOC ships more attractive for use in illegal activity, including by organised crime or terrorist groups.

'This means that FOC ships may be used in a range of illegal activities including illegal exploitation of natural resources, illegal activity in protected areas, people smuggling and facilitating prohibited imports or exports.'

Nothing has been done to address this incredibly stark warning. In fact, the process of dismantling the domestic national shipping industry continues and is replaced by shipping registered under FOCs using unchecked foreign workers.

The same inquiry heard that the foreign master of the ill-fated ship Sage Sagittarius was a person of interest to the NSW Coroner currently investigating three highly suspicious deaths on board in 2012. The same man, Captain Salas, had admitted being a gunrunner when subpoenaed to appear in the Coroners court. Captain Salas had been working in the Australian domestic shipping industry under a maritime crew visa for the past 8 months using the controversial federal government temporary license.

MUA sounding the alarm

- The systematic replacement of Australian MSIC's checked seafarers working in our domestic industry with cheap foreign workers from developing nations with Maritime Crew Visa with no background checks at all.
- The abuse of the navigation Act's Temporary License provisions TLs to undermine Australian seafarers in the Australian domestic shipping industry.
- The deliberate and orchestrated demise of the Australian domestic shipping industry leaving our national fuel security to foreign shipping interests using cheap foreign crews.
- The carriage, storage and delivery of high consequence and dangerous cargos including ammonium nitrate on FOC shipping in our domestic trade.
- The porous and substandard level of background check on foreign workers through the Maritime Crew Visa
- The huge spike in FOCs on the Australia coast and the vulnerabilities described by border force.
- Exposure of our critical infrastructure of Oil and Gas production, exploration and storage to foreign workers through a political attack targeting Australian unions.
- Australian city ports where there are no security checks at all and where foreign crew on foreign flagged ships like FOCs are free to come and go through open gates. Google "Border Security Exposed" <https://www.youtube.com/watch?v=znV-ftPOTJU>
- Aviation / maritime cabotage security vulnerabilities where foreign aviation workers don't require ASIC cards
- Managers, operators and workers in container packing yards, often backpackers, have no requirement for MSIC checks. These yards are sometime only meters outside of the security container terminals and have the responsibility to place custom locks on containers but are exempted from the MSIC program.
- Senior and middle managers from all transport companies are also exempted from the MSIC/ASIC program because they rarely physically access the zones. These people however are critical in the industry and entirely responsible for recruitment, placement of workers/ rosters, allocation of ship and aircraft berthing and directing security.

Conclusion

The Maritime Union of Australia considers us partners in a strong effective and consistent approach to boarder security.

We respect and support any changes designed to protect workers and their families particularly in a security context.

The current act provides for serious and organised crimes offenses to be considered already in the access control but the proposed expansion of the list of MSRO are not consistent or appropriate.

The Bill appears to provide crime agencies even more influence in granting of security ID cards while ignoring the more difficult questions around international transport imperatives as explained.

Our understanding is that there are no parallel additions to the US and Canadian models which are closely designed with the Australian legislation.

While Australian transport workers are the most highly background checked workers in the country, those with effective control of transport infrastructure are exempt.

The Australian government must act immediately to counter the fissures identified in the current framework. All sides of government must depoliticize national security and associated legislation in the national interest.

The settings for transport workers' background checks are already at the highest level for counter terrorism. There has been no case made to interfere and expand this simply to satisfy other agendas of Australia's crime agencies.

Prepared by the International Transport Workers Federation on behalf of the MUA.
