

MUA Submission to the Senate Inquiry

Transport Security Amendment (Serious and organised crime) Bill 2016

24/3/2016

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 of our members are required to either transit through security regulated zones or to work in them on a daily basis and so need to maintain compliance with the MTOFSA and hold current MSIC cards.

This 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.

This Bill has the potential to affect up to 260,000 Australian workers across all transport modes in Australia's sea and air boarders.

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.

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

Unfortunately this has not been the case on this occasion and the Union is very concerned for some of the consequences which have a potential to harm transport workers and their families. The MSIC card has come be known as a "Right to Work Card" and causes many long term employees much anxiety every time their card comes up for renewal.

In the Deputy Prime Minister Warren Truss's press release date the 11th February he states 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"

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.

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.

The most recent gut wrenching terrorist atrocities in Brussels serves to remind us that our national security should and must be quarantined from any level of politicization. National Transport Security deserves to have strong consistent and fair legislation to protect our citizens and the Australian society.

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-

- Add 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 are obvious.

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.

Offences identified as *“an offence relating to questioning by a person or body investigating serious and organised crime or corruption”* for example is confusing and is wide open to interpretation.

There has been no case made to exclude an applicant for past convictions for less serious crimes like prostitution, perjury and the importation of flora and fauna and there is no reference to crimes like this in the Ice Taskforce report.

There is a glaring inconsistency to the tiers of crimes against the terms of convictions. An applicant with any drug possession charge at any stage of their lives will incur an adverse background check while theft will only be recorded adverse once a 30 month prison sentence is imposed.

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 Gaping holes 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 workers.

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 fine detail to the current Senate Inquiry into FOCs on the Australian coast where in a startling admission the federal government's department of immigration and border protection 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.

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 to 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'd checked seafarers working in our domestic industry by cheap foreign workers from developing nations with MCV, the same visa held by the undetected gunrunning captain Salas.
- 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 is no security checks at all and where foreign crew on foreign flagged ships like FOCs are free to come and go through open gates. *Video available*
- 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 the stevedoing companies and trucking companies are also excluded from the program because they rarely physically access the zones. These people however are critical in the industry and entirely responsible for recruitment, placement of work gangs/ rosters, allocation of ship berthing and directing security. These are the positions which are most vulnerable to infiltration to enlist "trusted Insiders"

Secret Criminal Intelligence

Recommendation: 24 of the Ice Taskforce report calls for:

“The commonwealth Government should continue to protect the aviation and maritime environments against organised crime by strengthening the eligibility criteria for holders of ASIC and MSIC and establish a legal mechanism to enable compelling criminal intelligence to be used in determining suitability of workers to hold such a card.”

The reference to Criminal Intelligence has no basis in the taskforce report. It can only been seen as a opportunistic push by crime agencies to grab more power. The term is not clearly understood and its application has not been explained in the Explanatory Memorandum.

There were a number of MPs making comments and referring to the use of Criminal Intelligence in the 2nd reading speeches which causes great concern. In our experience internationally and nationally this would mean that crime agencies would have the capacity to block any applicant from holding a card based on what they consider reliable intelligence. This is not transparent and has a huge potential for abuse or to be applied by virtue of association or family relationships.

Conclusion

The Maritime Union of Australia considers ourselves partners in a strong effective and consistent approach to boarder security. We value all programs developed 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 but the proposed expansion of the list of MSRO are not consistent or appropriate.

A frank discussion with all stakeholders' must be held with some level of discourse and open debate about the list of new offences and an honest account of the tier system. This part of the process is essential to ensure industry participants full support. Without this process the entire program will be treated with suspicion and has a very real potential to alienate workers and the public.

The issue of secret criminal intelligence should be not form part of either Act and must be publicly dismissed. If crime agencies wish to pursue this very controversial power it should be done outside of the MSIC debate and with a full suite of safeguards and appeals mechanisms built in.

All avenues of appeals in the existing legislation must be retained and restated.

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.
