

Maritime Union of Australia & International Transport Workers' Federation

**Parliamentary Joint committee on the Australian
Commission for Law Enforcement Integrity**

**Inquiry into the integrity of Australia's border
arrangements**

The MUA along with our Global Union Federation, the ITF, welcomes the opportunity to make this submission based on our experience of representing Australian and international maritime workers.

This is the first time we have been invited to participate in this Inquiry although we have been highly active in the debate around national security.

Transport security is a fundamental concern to our organizations as it is transport workers in the front line in almost all terrorist attacks and it is transport workers who are among those killed, injured and traumatized.

The MUA has played a significant role in a range of Maritime security forums for almost 15 years including in the development of the MTOFSA 2013. We have provided an informed and balanced argument over numerous debates around the many changes to the MSIC cards which remains central to our 14,000 members' ability to access their only workplaces.

We have been critical of the governments constant additions to the eligibility criteria for MSICs to accommodate an expanded regime of crime fighting. We think this refocus dilutes the counter terrorisms objectives of the Act. This is seen by transport workers across the sector as deliberate mission creep and has gradually but effectively alienated the maritime workforce. This is a missed opportunity in an environment where collaboration between government, industry and unions would have been a significant asset in consolidating border security.

Both the Union and our international federation have identified vulnerabilities and threats to the integrity of our borders. We have highlighted these in the press, at security forums, at Inquests and through other government inquiries.

We remain concerned that despite our intimate knowledge of our industries with generations of experience to draw from, our warnings go ignored from government agencies like the Office of Transport Security, the AFP, ACC and ABF. This speaks to a weakness in the integrity of our maritime border arrangements.

Australia's National Border Security Vulnerabilities

NO SECURITY CHECKS FOR THOSE WITH EFFECTIVE CONTROL OF INFRASTRUCTURE AND RESOURCES

Currently there is no requirement for MSIC background checks for those who have effective responsibility for the allocation of labour, the scheduling of ships, awarding of transport logistics contracts and recruitment of employees. This is a small and identifiable group of people who have effective control of human resources and Australia's critical infrastructure. As they have no need to physically enter a determined maritime security zone they do not require background checks.

Counter terror and counter crime agencies continue to identify the exploitation of "employees" with access to security areas, as a risk but do not make the obvious conclusion. That is that employers and managers higher up the chain of responsibility are in fact a more attractive potential asset to crime syndicates and terrorist's organisations. Clearly the higher up the chain the more valuable a trusted insider would be.

NO SECURITY FOR CREWS CARRYING HIGH CONSEQUENCE CARGOES

The carriage of high consequence and dangerous goods such as weapons grade ammonium nitrate into and around our port cities on Flag of Convenience ships presents a huge risk. The ITF and AMSA have a litany of examples of where this coastal and international shipping trade has been left open to the lowest bidders with the cheapest and most vulnerable crew.

Too often crews from developing nations are mistreated and intimidated within the FOC system creating a compelling environment for exploitation. These crews are not MSIC checked despite the extremely sensitive nature of the cargo. Maritime Crew Visas are inadequate and inappropriate for continuous coastal trading and for high consequence dangerous cargoes like Ammonium Nitrate, Aviation gas and explosives.

Owners and operators of many of these ships are known to the ITF as bad operators, exploiting the FOC system often using corrupt administrative systems and manning agents.

Last year alone the ITF Flag of Convenience campaign returned more than USD \$50 million of stolen wages back to international seafarers who work in a system which has no enforceable minimum wage.

The entire country's supply of Ammonium Nitrate is now shipped domestically on deregulated FOC ships to service our mining and agricultural industries. Our entire coastal fuel supplies are shipped using foreign flagged tankers with cheap crew from developing countries.

FLAGS OF CONVENIENCE SHIPPING REPLACING AUSTRALIA'S DOMESTIC TRADE

Currently there is an ongoing senate inquiry investigating Increasing use of so-called Flag of Convenience shipping in Australia.

The maritime unions and the ITF have gone on record to provide a substantial body of evidence which exposes this system of registration as open to exploitation. The defining response however does not come from unions rather from our own Australian Border Force. In their submission to the inquiry they warn -

Flag of Convenience shipping and threats to Australia

The Department notes that while a significant proportion of legitimate sea trade is conducted by ships with FOC registration, there are features of FOC registration, regulation and practice that organised crime syndicates or terrorist groups may seek to exploit.

These features are:

a lack of transparency of the identity of shipowners and consequent impediment to holding the owner to account for a ship's actions; and

insufficient flag state regulatory enforcement and adherence to standards. Identification of ownership and accountability A lack of transparency through concealed ownership in some FOC registration regimes is caused by a flag state not requiring disclosure of ownership as a condition for registering ships (some flag states actively advertise secrecy as a benefit of registering ships to their flag). Further, timely verification and validation of a ship's registration can often be delayed where flag state registries are managed by third parties or if flag states do not respond to enquiries.

In addition, FOC registered ships often have complex financial and ownership arrangements (such as ownership through shell companies) that make it difficult to identify the individuals and organisations involved in their operations.

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 Senate Committee recommendations reflected the national security concerns including-

Recommendation 2

4.13 The committee recommends that this review include a comprehensive whole-of-government assessment of the potential security risks posed by flag of convenience vessels and foreign crews.

TEMPORARILY COASTAL TRADING LICENCES

The senate committee were astonished to learn that foreign vessels using cheap foreign crews could *trade in the domestic routes with no checks.*

SMH 4th December 2015

Senator Heffernan said average Australians would be shocked to learn that no one checks who owns a vessel before handing over a temporary license to take cargo on domestic shipping routes.

"In my view, this law needs to be immediately fixed," he said.

The matter came up at an inquiry hearing into foreign-flagged vessels when the department's acting deputy secretary, Judith Zielke, was asked who owns the ship that has replaced one of the last remaining Australian-crewed ships, the MV Portland. The Portland's Australian crew was recently dumped for a cheaper alternative by resources company Alcoa.

In 1962 there were 138 Australian ships working the coast. Today the figure is just 15.

This month, the Senate voted down a Coalition bill that would lessen red tape further to encourage more foreign vessels into the cargo market.

The issue made headlines, after a local tourist ship operator said Ms Zielke and a colleague had advised he should sack his Australian crew and re-register under a foreign flag if he wished to stay in business. Ms Zielke said she didn't believe she provided advice that he take that option,

She and colleague Michael Sutton told Friday's hearing that ownership details could be acquired through a registration check, but under current regulations that is not a requirement before a temporary license is granted.

"We have mechanisms to find out if we need to," she said.

Labor senator Glenn Sterle said there should be more checks when cargo can be explosive.

"What if the ship is carrying nitrate up and down the coast?"

Earlier, the inquiry heard from retired US Navy rear-admiral Robert Reilly.

He was called to brief the committee on the so-called Jones Act, which governs the domestic shipping sector in American waters.

WikiLeaks on FOC

In a WikiLeaks report titled "KIRIBATI NEW FLAG OF CONVENIENCE SHIP REGISTRY; FOLLOWING TUVALU EXAMPLE" the authors articulate governments' view of some FOC registers.

In correspondence in March 2007 the sender was alarmed that the small island nation of Kiribati had joined the FOC register and along with Tuvalu, Vanuatu and the Cook Islands had handed their administration over to a Singaporean based company "Sovereign Ventures Limited". Later in the report Sovereign is described as having close and long standing ties with North Korea.

https://wikileaks.org/plusd/cables/07SUVA169_a.html

CORRUPT SYSTEMS ON FOC SHIPS

Australia has a small team of dedicated shipping inspectors funded by the ITF FOC campaign whose

job it is to police industrial agreements on FOC ships and to represent all seafarers visiting Australian ports.

Last year they recovered more than \$5 million dollars in stolen wages in Australian ports and exposed many forms of corrupt practices including, double book keeping and deliberate breaches to the ILO Maritime Labour Convention 2001. They uncovered systemic administrative practices on FOC ships designed to circumvent a range of regulatory port state requirements and evade scrutiny. On many occasions these ships were directly replacing Australian ships and crews in our domestic trade.

In December, last year ITF inspectors visiting a ship chartered by ALCOA to replace an Australian ship, found hard evidence of corrupt administrative practices. A document identified as "captain's statement of account" for the FOC Strategic Alliance, covering January, 2015, was proof that the company maintained a cash reserve on board to provide government agencies with bribes while the balance was subsequently maintained after receipts from the master to the company were processed.

The SMH 8th December 2015 by Tony Wright-

The statement details payments described as "under table money" to Nigeria's drug law enforcement agency and to Nigerian immigration authorities.

It also states that thousands of US dollars of "under table money" were paid to a "hold inspector" later that month in the Argentinian port of Necochea.[p://edcaptains-bribes-revealed-20151207-glhids.html](http://edcaptains-bribes-revealed-20151207-glhids.html)

MTM, headquartered in Singapore, manages 45 vessels on behalf of ship owners in the US, Japan, Hong Kong, Indonesia, and the UK. The company's website boasts that "our inspiration is drawn from the ant, which goes about its business quietly, carrying twice its body weight and planning for the season ahead".

The Australian federal police refused to investigate.

MARITIME CREW VISA Vs MSIC

From the 1st January 2008, all foreign seafarers travelling to Australian ports or working in our domestic trade are required to hold a MCV. These are applied for on line and it is the usual process for a foreign manning company or ship operator to submit a crew list prior to arrival to process the applications. There is no face to photo checks and the process is very fast. We are not aware of any rejections or what happens to a seafarer already on their way to Australia in the event of a rejection.

The union is outraged that security settings are so very low for foreign seafarers (usually sourced from countries with domestic unrest like the Ukraine, Philippines, Sri Lanka etc.) while Australian seafarers like all Australian maritime workers are subjected to the most invasive background check of any worker in the country under the MSIC scheme.

The case of the FOC bulk ship in Gladstone "OS 35" demonstrates the porous and compromised nature of the MCV against the national standard of MSIC.

On the 10th July, the Lebanese-owned Tuvalu FOC registered bulk ship "OS 35" berthed in the Port of Gladstone with a full Syrian crew. We were advised that only one crew member held a MCV from an earlier job and that crew were not permitted ashore.

The ITF complained to ABF officers stationed at the bottom of the gangway and several calls to AMSA who have an MOU to work with ABF in such cases.

Within 24 hours all the Syrian nationals on board had received MCVs with rights to unescorted shore leave.

This is a remarkable turnaround where Australian authorities successfully liaised with the war torn Syrian government overnight to ensure all the crew were eligible to be issued with a MCV.

At the same time, Australian citizens can wait up to 3 months to have an MSIC application processed.

The Union argues that there be two categories of Maritime Crew Visa (MCV – subclass 988) – (i) a transit visa for international seafarers entering Australia on a continuing international voyage (the purpose of the current MCV); and (ii) a more rigorous maritime crew visa for international seafarers engaged on ships authorised under a Temporary License (TL) to undertake coastal voyages made under the Coastal Trading (Revitalising Australian Shipping) Act 2012, that is consistent with the national security standards for obtaining the Maritime Security Identification Card (MSIC) and which contains all the features of a 457 visa such as labour market testing, payment of market rates and supported by the Specification of Income Threshold and Annual Earnings made under the Migration Regulations 1994.

CONTAINER PACKING YARDS OPEN FOR EXPLOITATION

Containers leaving Australia and arriving here are packed in unsecured and unmonitored yards often just outside of the port gates. Low paid/ skilled workers and often transient workers like backpackers are employed in this industry. These workers are responsible for packing, unpacking and placing customs security seals on containers bound to travel through security zones to international destinations. This remains the only part of the chain of logistics not regulated consistently with national security standards.

In fact, the existing security standards could easily protect the illegal activities of crime and terrorist organisation by providing security around their containers through the entire logistic chain from unregulated packing yards through the secured corridors to their unregulated destinations.

DEPLETED MARITIME SKILLS BASE

The very low reserve of the Australian maritime skills base to fill core jobs in our ports, terminals, regulators, and associated industries present a potential security vulnerability. Australia maritime skills base has been systematically eroded and is left heavily dependent on foreign workers.

Sage Sagittarius – an FOC case study

On the 30th August 2012, the chief cook on board the Australian bound, FOC Sage Sagittarius was reported missing presumed overboard. The ship was owned in Japan, chartered in Japan, crewed by Pilipino seafarers, carrying Australia coal, and registered in Panama.

Two weeks later the chief engineer received a blow to his head and fell to his death while the ship was mooring in Newcastle. Two weeks after that the Japanese superintendent was found crushed to death in the discharge gear alongside the Japanese discharge port.

There were a number of investigations and eventually a NSW coronial Inquest which is still working through the evidence. At one stage the NSW Coroner subpoenaed Captain Salas, the Master of the ship who had been found working on the Australian coast for the past year under a MCV despite being a person of interest in at least two highly suspicious deaths.

The ABC 4 corners aired a documentary "Ship of Death" on the 3rd June 2015 <http://www.abc.net.au/4corners/stories/2015/06/01/4244465.htm> after which the Australian senate initiated a senate inquiry into FOCs which the ITF labeled the "The high of cheap shipping"

This program is an accurate account of the FOC system and reflects some of the Union's concerns.

Conclusion

In conclusion, the MUA and the ITF accept the burden of national security in our seaports and the need to background check all workers in security regulated zones.

We are however deeply concerned that while we have identified and articulated serious vulnerabilities these continue to be ignored. We believe that government agencies like the Office of Transport Security and others, discount union concerns as politically motivated and therefore not valid.

The startling evidence provided by the ABF in their submission to the FOC Inquiry about the risks associated with FOC shipping should be acted on and the maritime crime statistics from government agencies should be referenced against FOC shipping in Australian ports.

The serious lack of background checks for foreign workers engaged in our domestic trade under MCV should be of the highest priority for government and a MSIC equivalent Visa should be considered.

Australian seafarers, stevedore workers and port workers are proud, hardworking Australians with a personal stake in maintaining high level of national security.

Government policy and agency attitudes have squandered the opportunity to collaborate with the workforce in the struggle against terrorism. National domestic shipping should be considered a national security agenda priority and domestic shipping be treated as an asset as do many of our trading partners including the US.

The MUA and ITF remain committed to a consistent national maritime security framework and look forward to providing the Inquiry with any further support required.