

MUA Submission to the Senate Inquiry

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

March 2021

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 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 borders.

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 borders.

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 more than 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 responsibly 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.

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Appendix A

In our submission we have identified the grave security risks that are associated with foreign flagged ships and their crews having very little security thresholds to satisfy by any of the government agencies prior to entering and Australian region or port.

The following evidence highlights that on occasion there may be no security checks at all because companies, agents and port authorities are failing to ensure foreign ships trading on the Australian Coast are not complying with requirements to hold a Temporary License.

The ITF Inspectorate in Australia has uncovered this disregard for the law and has been raising the matter with the Department of Transport and the Fair Work Ombudsman's office since the inception of the Coastal Trading Act in 2012.

The ITF Inspectorate consists of a team of five persons who carry out a range of tasks and responsibilities to ensure shipowners trading under FOC or foreign flag are complying with MLC 2006. We do this by visiting vessels entering Australian ports either by conducting routine inspections or acting on complaints received by a crew on board a ship.

One of the most common requests by seafarers working on board foreign flagged ships is the nonpayment of Part B of the Seagoing Industry Award when they qualify to be entitled to that payment.

When we investigate these types of allegations our inspectors verify if a foreign ship is carrying Australian domestic cargo. We attempt to verify this by looking up the Temporary License issued by the department and quite often we find that the shipowner or client has not applied for the license.

The following examples are a sample of transgression of the CTA by shipowners and their clients not holding, displaying or indeed even bothering to apply for a Temporary License.

- MV Pinehurst Kontor - IMO 9287895 - Marshal Islands (2014).
 - It had a crew of 22, all from Myanmar.
 - The complaint was regarding payment of Seagoing Industry Award - Part B.
 - There was no Temporary License displayed because the company never applied for a TL to carry coastal cargo.
 - The Captain refused to confirm if Australian cargo was being carried and refused to supply information regarding wages.
 - The crew made complaints to the FWO however no investigation or prosecution resulted from the complaint.
 - We confirm that the ship was carrying Australian cargo.

- MV Catherine Rickers -IMO 9236523 – Liberia (2015).
 - It had a crew of 25 (Romanian, Estonian, Russian and Myanmar nationalities).
 - The complaint was regarding payment of Seagoing Industry Award - Part B.
 - There was no Temporary License displayed because the company never applied for a TL to carry coastal cargo.
 - The crew made complaints to the FWO however no investigation or prosecution resulted from the complaint.
 - The ITF confirms that the ship was carrying Australian cargo.

- Qingdao Tower – IMO 9233832 – Liberia (2015).
 - It had a crew of 24 (Ukrainian, Bulgarian, Russian, Indian, Romanian, Turkish, Philippines and Estonian nationalities).
 - The complaint was regarding payment of Seagoing Industry Award - Part B.
 - There was no Temporary License displayed because the company never applied for a TL to carry coastal cargo.
 - The Captain refused to confirm if Australian cargo was being carried and refused to supply information regarding wages.
 - The crew made complaints to the FWO however no investigation or prosecution resulted from the complaint.

- Rolldock Sun – IMO 93939781 – Netherlands (2015).
 - It had a crew of 19 (Dutch, German and Philippines nationalities).
 - The complaint was regarding payment of Seagoing Industry Award - Part B.
 - There was no Temporary License displayed because the company never applied for a TL to carry coastal cargo.
 - The ITF can not confirm if complaints were made to the FWO on this occasion.

- MT Chembulk Sydney – IMO 9274288 – Marshall Islands (2015).
 - It had a crew of 21 (Burmese nationality).
 - Vessel traded on the Australian Coast regularly however despite claiming to pay Seagoing Award – Part B there was no record of this in monthly payrolls.
 - The vessel was carrying Australian cargo however did not hold a temporary license at all in 2015.

- MV Lake Konpira – IMO 9515527 – Panama (2016).
 - It had a crew of 22 (all Philippines nationals).
 - Crew made claim to Seagoing Award – Part B wages.
 - There were no Temporary Licenses issued for this vessel from 2016 onwards.
 - When the ITF sent an email to the FWO office a response was received stating that the crew were not entitled to payments because there was no temporary license.
 - This is despite confirmation that the vessel was trading on the Australian coast and carrying domestic cargo.

- Sunny Smile – 9254666 – Liberia (2016).
 - It had a crew of 25 (all Philippines).
 - Crew contacted ITF to seek claim to Seagoing Award – Part B payments.
 - The vessel had been trading on the Australian coast for some three months and had been carrying domestic cargo.
 - The ITF wrote to the FWO however the correspondence wasn't acknowledged.

- MT New Accord – 9487172– Liberia (2016).
 - Crew unknown.
 - No temporary license issued.
 - ITF flagged this vessel with FWO who responded stating they were launching an investigation.
 - The ITF never received any follow up regarding the investigation.

- Wide Hotel – 9694593– Marshall Islands (2020).
 - Crew made claim to Seagoing Award – Part B.
 - Award payments were paid to crew on previous voyages however due to a new charter contract, payments had ceased.
 - FWO stated that crew are not entitled to payments because the vessel does not have a temporary license.
 - This is despite the vessel trading on the coast for three months and the crew insisting they were carrying domestic cargo.

- GSL Ningbo – 9256482– Liberia (2019).
 - Crew made claim to Seagoing Award – Part B.
 - Vessel was trading on Australian coast and scheduled to call into five Australian ports.
 - Crew confirmed that the vessel was working Australian domestic cargo.
 - No Temporary License was granted to this ship.
 - ITF wrote to FWO however no acknowledgement was ever received back.

- MV Berge Phan Xi Phang – IMO 9806299 – Isle of Man (2020).
 - Claim for Seagoing Award – Part B.
 - No temporary license issued.
 - ITF contacted FWO office and received a response,
 - i. ***“For the purposes of employee entitlements alone, we regulate voyages conducted by vessels who are authorized by a temporary license. If the vessel has conducted voyages which were authorized by a temporary license to conduct said voyages, then their movements would be detailed in the departments report, if reported to the department correctly”.***

The ITF asserts there is a yawning gap between what is required legislatively and what transpires in the shipping industry on ships, on the Australian coast and in Australian ports.

Provisions of the Coastal Trading Act are breached on an almost daily basis by shipowners and charterers by either;

- Not displaying the approved temporary license as required
- Or not even bothering to apply for one at all.

Compliance with the Fair Work Act is almost negligible by the same shipowners and charterers who thumb their nose at paying appropriate wage entitlements to non-domiciled seafarers who lay legitimate claim to these payments.

When it comes to enforcement of the Coastal Trading Act and Fair Work Act, the ITF and its affiliates are scathing of both the FWO Office and the Department of Infrastructure and Regional Development's non-committal and outright ignorance of the breaches that occur by the hundreds, if not thousands each year by shipowners and charterers.

It should fall to the FWO to investigate nonpayment of award entitlements and if required, prosecute breaches of the FWA against ship owners and charterers. Where FWO investigations identify possible breaches to other Acts (such as the CTA) that do not form part of the FWO remit, these findings should be passed onto the appropriate department for them to prosecute.

In our experience it is because there is no FWO inspection regime for the payment of the Seagoing Industry Award wages for international seafarers, many shipowners, operators, charterers and managers simply try their luck and don't pay in accordance with the award.

Shipowners and charterers are more than happy to game the Temporary License Permit system as they know the likelihood of getting caught is minimal and the possibility of prosecution is almost zero.

The carriage of high consequence and dangerous goods such as ammonium nitrate by FOC ships around our port cities presents a huge risk. The ITF has examples of where this coastal and international shipping trade has been left open to the lowest bidders with the cheapest and most vulnerable crew. The ignorance or zero enforcement of the provisions of the CTA by the Department for Infrastructure and Regional Development would suggest that the Department, along with other agencies cannot validate the whereabouts, or indeed the number of foreign vessels operating on the Australian coast at any given time. How could they, if the shipping companies and charterers are not complying with the requirement to apply for a temporary license permit. This is hardly a ringing endorsement of confidence in the current system and when you overlay this gap with a security lense, it is quite reasonable to conclude that beefing up the Transport Security Act is an ill directed proposition that shifts the focus of the real security concern away from the real issue of national security.

The same reasoning is justifiable when you apply the criminal lense over the current vulnerabilities caused by gaps in compliance of the Temporary License Permit system. For example;

- a ship trading on the Australian coast without a permit system triggers that the shipowner or charterer may have a propensity to ignore Australian laws and regulations,
- the foreign crew have no MISC
- the department doesn't even know they are here let alone what ports they are visiting
- if the Department doesn't know they are here, Border force would not be able to appropriately allocate reasonable resources to ensure illegal activity is not being conducted

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 coastal trading and for high consequence dangerous cargos like Ammonium Nitrate, Aviation gas and explosives.

The Charterer of the ship should be the applicant of any TL and be held responsible for the application of the terms and conditions of the license. This shifts the onus to the charterers, usually an Australian entity, to exercise due diligence and care when engaging a foreign ship to work on our coast.

Any breaches to the Temporary License Permit application or to seafarers' rights under the MLC on vessels engaged in trade should spell the immediate removal of a TL and both the shipping company and the charterer should be ineligible to apply for future Licenses for a defined period of time.

Appendix B

Mentioned elsewhere in this submission, not all Australian ports require MISC controls, this by and large came about due to the intent of the original legislation acting as a counter terrorism measure.

Maritime workers and their representative organisations believe that the current suite of amendments is fundamentally flawed, do not address the real and serious security or criminality risks on the Australian coast or in our ports and are over-reach by security and intelligence agencies on transport workers who operate under one of the most rigorous security Acts in the world.

The MUA and ITF has done some preliminary research and have identified that there are at least 30 access points through various ports around the country that are not covered by MSIC. The proposed legislation will do nothing to enhance resources for the purpose of fighting organized crime at these access points. Are we to believe that the potential for organized crime to have

influence in or around these 30 access points has been eliminated and therefore need not be considered or is it just more oversight that comes with this ill prepared Bill?

For the purposes of this submission we choose not to comment on the subject of “serious crime” because the proposed amendments do not provide a definition of serious crime on which we might otherwise establish a view. The fact that we make no comment regarding serious crime does not dismiss the concerns we have however to try to determine a view on matters that are not described would be mere speculation. The law makers and judiciary should be equally alarmed regarding the potential implementation of legislation that establishes its meaning in the title and yet omits any definition in the sustentative text from which to draw a benchmark or be measured by.

Background criminal intelligence checks raises concerns regarding potential decisions being made that could establish or promote guilt by association or defining guilt via crystal ball gazing. Neither are necessary and set a dangerous precedent for citizens and their democracies. To have law enforcing agencies given the power to be the judge and jury may in our view be contrary to the separation of powers and therefore unconstitutional. The law enforcement agencies might not be locking transport workers up and throwing away the key however they could be sending them to unemployment lines without any justification or accountability for such actions if their collected intelligence is incorrect. Again, without a clear and concise definition of serious crime, different agencies could define different benchmarks that determine if a worker qualifies or is disqualified from obtaining a MISC or ASIC.

Over the course of a year there are some 20 000 ship visits to Australian ports by foreign flagged ships, crewed by 200 000 to 300 000 non-domiciled seafarers. Many of these ships, ship owners and charterers do not comply with the very basic requirements of the Coastal Trading Act to obtain temporary license permits to trade between ports or the Fair Work Act that determines the minimum wage for the seafarers that work these ships. The same ships, shipowners and charterers are entering ports that are not covered by MSIC and this Act does nothing to fill that chasm. The 200 000 to 300 000 non-domiciled seafarers working aboard these ships are not subjected to the same background checks as Australian transport workers yet have access to the same ports and much of the same infrastructure as Australian transport workers.

Container storage yards and whare housing facilities is where our imports and exports are packed into containers however this seems to be overlooked in the reasoning to enhance crime fighting measures via this proposed Bill.

The ITF and its affiliates are not opposed to security measures that keep themselves and the broader community safe. However, to place more rigorous security requirements on some of the worlds most scrutinized workforce without even so much as a feeble attempt to address some of the glaring gaps smacks of political opportunism.

If the glaring gaps in transport security are not taken seriously and some checks and balances are not introduced to preserve some basic human rights within the Transport Security (Serious

Crimes) Bill, transport workers will be excused for thinking that this Government are not serious about security at all and this is just another anti-work piece of legislation.