



Australian Government
Department of Home Affairs

Submission to the Inquiry into the policy, regulatory, taxation, administrative and funding priorities for Australian shipping

The Rural and Regional Affairs and Transport References
Committee

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1. Introduction

The Home Affairs Portfolio (Home Affairs) provides the following Submission to the Rural and Regional Affairs and Transport References Committee for its Inquiry into the policy, regulatory, taxation, administrative and funding priorities for Australian shipping. This Submission responds to the Inquiry's Terms of Reference released on 5 December 2018.

It provides an overview of Home Affairs' regulatory role in relation to shipping, sea crews and ports. Home Affairs is not, however, authorised under any legislation to regulate specifically the economic activity of Australian ships or ports.

2. The Home Affairs Portfolio

Home Affairs' mission is to work together with the trust of our partners and community to keep Australia safe and secure, and support a cohesive and united Australia open for global engagement.

Home Affairs brings together the Department of Home Affairs, the Australian Border Force (ABF), the Australian Federal Police (AFP), the Australian Criminal Intelligence Commission (ACIC)¹, the Australian Security Intelligence Organisation (ASIO), and the Australian Transaction Reports and Analysis Centre (AUSTRAC), to ensure a safer and more secure Australia.

Home Affairs includes the entirety of the former Department of Immigration and Border Protection and functions relating to customs, multicultural affairs, emergency management, transport security, transnational serious and organised crime, criminal justice policy, national security and counter-terrorism coordination, cyber policy, and countering foreign interference.

The ABF is Australia's frontline border law enforcement agency and Australia's customs service. The ABF delivers critical border protection outcomes while facilitating the movement of people and goods across the border. ABF and Home Affairs more generally partner with industry to build more effective systems and to assist with building understanding for passengers and industry who travel or transport goods across the border. Supporting traders and travellers to encourage voluntary compliance with relevant regulations and legislation is a key element in this process.

3. The Operating Environment

Home Affairs has policy and operational responsibility for Australia's civil maritime security among other responsibilities. Australia's maritime domain is vast and complex. It covers almost 53 million square kilometres (including the Security Forces Authority Area), multiple maritime jurisdictional zones, vertical elements that span from outer space to the sea bed. Interests including trade, health, migration, and the environment, and multiple stakeholders from all levels of government, industry, academia and the community.

Good policy, regulatory and administrative frameworks contribute to robust civil maritime security. Home Affairs is leading the development of the National Civil Maritime Security Strategy, which seeks to provide overarching policy direction to ensure the security and prosperity of Australia's maritime domain and ocean-based economy.

Shipping is one of a broad range of civil maritime security interests. The Australian economy relies on ocean shipping as the main means of transport for imports and exports, including strategic products such as crude oil. Sea transport is both an enabler of economic and energy security, and a potential source of vulnerability.

¹ ACIC includes the Australian Institute of Criminology

It is therefore important that our civil maritime security policy, regulatory framework and administrative settings ensure a robust security environment while facilitating legitimate trade and create an environment that minimises the risk of disruptions to the supply of foreign vessels and crew.

The National Civil Maritime Security Strategy will provide a framework that enables better considerations of these factors.

4. Australian Shipping

Home Affairs regulates the movement of international ships, travellers and cargo arriving at Australian ports and travelling in Australian waters.

4.1. Foreign Crew Visa System

Australia has a universal visa requirement. Applicants must meet identity, character, security and other requirements relevant to the visa for which they apply. Foreign sea crew, supernumerary² crew (including any accompanying spouses and dependent children) are able to apply for a Maritime Crew Visa (MCV).

4.1.1. Maritime Crew Visa (subclass 988)

The MCV allows a non-citizen to enter and temporarily remain in Australia as a member of the crew of a non-military ship to undertake work that meets the normal operational requirements of that ship. MCVs are multiple entry visas, which are valid for three years.

The objective of introducing the MCV in 2007 was to facilitate ahead-of-the-border security and bona fide checking of non-citizens. While Home Affairs has streamlined processing of these visas, Home Affairs routinely refers applications for manual processing wherever it identifies aspects that may indicate non-genuine intent.

Home Affairs assesses all MCV applications against its risk assessment systems and processes. Checks against these systems run automatically, several times during application processing, to ensure thorough checks of all applicants' migration records. Processing officers can also conduct discretionary checks, such as interviews or site visits.

MCV applicants must also meet public interest criteria (PIC), including:

- PIC 4001 – Character
- PIC 4002 – National security
- PIC 4003 – Weapons of mass destruction
- PIC 4004 – Debts to the Commonwealth
- PIC 4013 and 4014 – Compliance with previously held visas
- PIC 4020 – Fraudulent document, misleading information or bogus documentation
- PIC 4021 – Must hold a valid passport

Legislation imposes a number of conditions on MCV holders, including restrictions on:

- working in Australia other than as a member of the crew of a non-military ship;
- arriving in Australia by air without holding another visa; and

² Supernumerary crew are not listed as crew on the crew list but are contracted employees and a part of the vessel's complement, or are a dependant of a crew member, e.g. trainees or cadets who may be undertaking learning experience as part of the voyage, or a spouse or child of a crew member.

- automatically ceasing their visa if they fail to sign on to a vessel within five days of arrival or if their vessel is imported or entered for home consumption (under the *Customs Act 1901* (Customs Act)).

MCVs that are granted, but subsequently found to be non-genuine, can be ceased prior to or on the person's arrival in Australia, under subsection 33B(3) of the *Migration Act 1958* (Migration Act), on the basis that it is undesirable for that person to travel to and enter Australia or remain in Australia. MCVs also cease by operation of law under other circumstances.

MCVs can also be cancelled on arrival under general visa cancellation powers under the Migration Act.

It is also possible under section 249 of the Migration Act for Home Affairs to restrict unlawful non-citizens arriving in Australia to the vessel they arrive on and requiring them to depart on that same vessel.

4.2. Maritime Transport Security

Safeguarding maritime transport against unlawful interference is a policy priority for Home Affairs.

The *International Convention for the Safety of Life at Sea 1974* (SOLAS) and the International Ship and Port Facility Security (ISPS) Code establish an international framework between contracting governments and the maritime industry. The framework aims to detect security threats and deter acts that threaten the security of ships and port facilities used in international trade. It requires passenger ships, cargo ships (above 500 gross tonnage), and mobile offshore drilling units operating on international voyages to have an approved security plan informed by a security assessment. Contracting governments will issue a ship operator with an International Ship Security Certificate (ISSC) to confirm that operators meet these requirements.

Australia extends its SOLAS and ISPS Code obligations to include the wider port area in addition to the port facilities that interface with ships on international voyages.

Home Affairs administers the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA). This Act establishes a regulatory framework for maritime transport security and fulfils Australia's international obligations under SOLAS and the ISPS Code.

4.2.1. Regulation of Maritime Transport Security in Australia

In Australia, government agencies and industry work together and have a robust, layered approach to maritime security with several agencies contributing to security outcomes. To date, there have been no attacks on Australia's maritime transport sector.

Home Affairs works closely with intelligence agencies to respond to maritime security threats, targeting resources towards the areas of highest risk.

The MTOFSA sets security requirements for regulated Australian ships and regulated foreign ships in Australian waters, as well as the ports and port facilities that interface with these ships. As at 23 January 2019, MTOFSA regulated the security of 65 ports, 213 port facilities and 42 Australian ships.

The Department collects pre-arrival information from regulated foreign ships to confirm the safety and security status of the ship, and the crew and passengers travelling on it. The pre-arrival information includes details of the ship's ISSC, the security level the ship has been operating at, and its last ten ports of call. Home Affairs provides this information to Australian ports and port facilities to inform security arrangements.

Of the approximately 56,000 ships arriving in Australia between 2016 and 2017³, the vast majority were operating at maritime security (MARSEC) level 1 – indicating they did not pose an identifiable heightened risk of a security incident occurring.⁴ Any ship arriving in Australia operating at a higher MARSEC level provides information on their mitigating circumstances and reasons for the higher level.

Ports and port facilities are required under the MTOFSA to have a security assessment and security plan approved by the Secretary of Home Affairs (the Secretary). The security plan includes a range of measures, informed by a security assessment, to protect both the facility and the visiting ship, setting out how they will interact. Examples of security measures include maritime security zones, access and escorting arrangements for crew, and CCTV monitoring. Regulated Australian and foreign ships must comply with the port and port facility operator's security requirements.

The Secretary has established maritime security zones under the MTOFSA to protect critical infrastructure and control the movement of goods and people around ships. Unmonitored access in maritime security zones is limited to the holders of maritime security identification cards (MSICs), who have had a background check and have met minimum security requirements. With some controlled exemptions, all persons, irrespective of their nationality, who require unmonitored access to a maritime security zone, must have an MSIC. This may include port facility and port service workers, seafarers, stevedores and people who work on and/or supply offshore oil and gas facilities. A MCV does not exempt a foreign seafarer from MSIC requirements.

4.3. Regulation of Ports

Ports are critical elements of infrastructure due to their role in the movement of people and goods. Accordingly, international ports have to be designated under the Customs Act and Migration Act, as well as other Acts, such as the *Biosecurity Act 2015*, that are administered by other agencies. The designation under the Customs and Migration Acts provides the legal authority for the ABF to exercise its powers at designated areas within port precincts.

4.3.1. New and Redeveloping Ports

The Australian Government recognises that international transport is vital to Australia's trade and tourism, along with the need to balance the efficient movement of people and goods across Australia's border. Accordingly, it has established a transparent and consistent process to help ensure that border services (biosecurity, immigration and customs control) are available at ports. Certain maritime ports are also designated under the *Security of Critical Infrastructure Act 2018*, which provides for a Register of Critical Infrastructure Assets, an information gathering power, the ability to issue directions where there are significant national security concerns.

³ The Australian Maritime Safety Authority (AMSA), 'Port State Control 2017 Report: Australia', https://www.amsa.gov.au/sites/default/files/port_state_control_report_2017_amsa13.pdf

⁴ The MTOFSA states, unless otherwise declared, MARSEC level 1 is in place for each regulated port, ship and offshore facility. The Secretary of Home Affairs may increase the MARSEC level of a particular regulated port, ship or offshore facility if appropriate due to a heightened risk to maritime transport. A regulated foreign ship may also be directed by its flag state to operate at a higher security level.

Port operators seeking to introduce international services at a port where no border services are provided, or where there is a change to an existing business model that impacts on border services capabilities, need to apply to the Department of Infrastructure, Regional Development and Cities (DIRDC). DIRDC assesses proposals for new and redeveloping ports to determine whether they are in the national interest, and coordinates advice to the Australian Government on the proposals in consultation with Home Affairs, the Department of Agriculture and Water Resources, and other relevant agencies.

Port operators are responsible for costs associated with relevant infrastructure and facilities required to support international services. This includes any costs incurred by the Australian Government for establishing a border services capability at the port.

4.4. Importation of Ships

The Customs Act establishes circumstances in which an imported ship must be 'entered for home consumption' for customs purposes. Essentially, a ship is imported where it breaks its continuing international voyage to engage in activities other than the transport and delivery of international cargo and/or passengers while in Australia. A ship arriving in Australia can either be on an international voyage or be imported while in Australia. There is no other status available at law.

Once a ship is imported, it must be entered for home consumption via the lodgement of an import declaration (in the same way as most other imported goods). The import declaration covers a range of border-related requirements on revenue obligations and concessions, and enables risk assessment of prohibited goods and biosecurity issues by the ABF and partner agencies. These processes need to be completed prior to approving the ship's delivery into home consumption.

There are no discretionary powers within the Customs Act to exempt a ship or its operating scenario from triggering importation, however, exemptions exist within the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading Act) for ships operating under a Coastal Trading Licence. The Coastal Trading Act provides a statutory presumption against importation for ships operating under a Coastal Trading Licence.

A licence issued under the Coastal Trading Act is the only mechanism available to exempt international ships engaging in domestic trade (that is, ships considered to meet the requirements for importation), from importation.

Ships with a Coastal Trading Licence are not required to complete formal entry requirements. However, these ships will remain under customs control and subject to other regulatory requirements, including:

- immigration processing for crew;
- payment of duties on bunker fuel;
- restrictions for firearms kept on board;
- reporting requirements for goods taken on or off the ship; and
- acquittal of any ships' stores.