



**Australian Government**  
**Department of Immigration and Citizenship**

SECRETARY

22 July 2008

Michael Crawford  
Inquiry Secretary  
Standing Committee on Infrastructure, Transport,  
Regional Development and Local Government

Dear Mr Crawford

**Response for the Standing Committee on Infrastructure, Transport, Regional  
Development and Local Government**

I am responding to your request of 17 July 2008, for information relating to the Maritime Crew visa and the Subclass 457 Business (Long Stay) visa as they apply in the coastal shipping environment.

I will outline for the Committee the policy and operational framework for the Maritime Crew visa and also provide information on the Subclass 457 Business (Long Stay) visa and Subclass 456 Business (Short Stay) visas which are also relevant to the Committee's enquiry. I will also briefly comment on the Superyacht visa which will be implemented later this year.

**Maritime Crew visa**

The Maritime Crew visa (MCV) was devised and implemented to accommodate foreign crew on commercial vessels temporarily visiting Australia in the context of an international voyage. In this context, the validity of the MCV is linked, under migration legislation, to the status of the vessel and, in particular, whether the Australian Customs Service deems a vessel to have ended an international voyage as evidenced by the vessel being 'imported' or required to lodge an entry declaration under Customs legislation. Any MCV held by foreign crew will cease 5 days after Customs' importation of a vessel, at which point crew may be unlawful if they have not obtained, or applied for, an appropriate visa to remain in Australia such as the Subclass 457 visa.

Current arrangements in relation to coastal trading vessels, as understood by the Department, allow a vessel not to be 'imported' by Customs where it holds a Single or Continuing Voyage Permit as granted by the Department of Infrastructure, Transport, Regional Development and Local Government. This has the effect of such a vessel retaining its international voyage status for up to 3 months as allowed by such permits and before the vessel is required to depart Australia. Therefore, foreign crew on such vessels retain their MCV status during this period and until such time that Customs otherwise requires 'import' of the vessel.

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The Department of Infrastructure, Transport, Regional Development and Local Government, and the Australian Customs Service would need to consider the feasibility and impacts of permits and 'import' policy. It is these factors that determine the validity of the MCV and the extent to which it might allow foreign crew to remain on vessels that seek to remain operating in Australian waters, and without requiring a longer-term visa such as the Subclass 457 Business (Long Stay) visa.

### **Subclass 457 Business (Long Stay) visa**

The Subclass 457 Business (Long Stay) visa program allows Australian or overseas businesses who have been unable to meet their skill needs from the Australian labour market to sponsor, on a temporary basis for up to four years, overseas skilled workers to come to Australia to fill skilled positions.

The Committee has requested specific information relating to:

- gazetted occupations relevant to the coastal shipping environment in addition to the Ship's Master, Ship's Engineer and Ship's Officer; and
- the accuracy of the statement that *'457s are the exception rather than the rule in ships in Australia and Australian crews predominate'*.

Allowable occupations under the standard Subclass 457 Program arrangements are listed in the Legislative Instrument (Gazette Notice), IMMI07/078 at:

<http://www.immi.gov.au/skilled/skilled-workers/sbs/occupations.pdf>. The gazetted list of Subclass 457 occupations is a subset of the Australian Standard Classification of Occupations (ASCO) Major Group 1 to 4 for which the entry requirement for, and the usual pathway to employment in, the Australian labour market is an AQF certificate III or higher level qualification with some minor exceptions including:

- occupations where Australian citizenship (as distinct from permanent residence) is a pre-requisite to employment
- occupation where the educational profile shows it has been aligned in terms of duties to an ASCO Major Group 1 to 4, but where an AQF certificate III does not represent the usual pathway to employment – ie the majority of people employed in the occupation do not possess a post-secondary qualification; and/or
- occupations where there is low incidence of employees and most persons in the occupation are self-employed or independent contractors.

The occupations that are listed on the Gazetted Notice which may relate to the coastal shipping environment include but are not limited to:

<b>Number</b>	<b>ASCO</b>	<b>Occupation</b>
1	2129-21	Naval architect
2	2542-11	Ship's master
3	2542-13	Master fisher
4	2542-15	Ship's engineer
5	2542-17	Ship's surveyor
6	2542-19	Ship's officer
7	2542-79	Sea transport professional not elsewhere classified
8	3322-11	Chef
9	4513-11	Cook
10	4999-13	Diver

Additionally, Australian employers located in regional or low population growth areas may apply for a regional concession in order to access skills which correspond to the tasks of an occupation in the ASCO Major Groups 1 to 7.

The Department is unable to provide data on whether “457s are the exception rather than the rule in ships in Australia and Australian crews predominate”. However, it would be reasonable to believe that this is the case. For example, during 2007 – 08 there were approximately 490 Subclass 457 visas granted to the above occupations 1 – 7, with Ship’s engineers having the highest number of Subclass 457 visas granted at 190.

Sponsoring overseas skilled workers to Australia is not a low-cost option for employers as they must pay Subclass 457 visa holders a minimum salary level, employ them under the same conditions as Australian workers, in addition to costs not normally associated with employing Australian citizens. Additionally, to become an approved sponsor, employers must demonstrate a commitment to training Australians or introducing new technology to Australia.

### **Business Visitor visas**

Business Visitor visas, Subclass 456 - Business (Short Stay) and Subclass 977 - Electronic Travel Authority (Business Entrant - Short Validity), which is the electronic equivalent, are the most appropriate visas for crew working for very short periods in Australia or transiting through the Migration Zone to work on a vessel outside the Migration Zone.

The Business Visitor visas allow very-short term work only in strictly limited circumstances and is subject to condition 8112 which provides that *the holder must not engage in work in Australia that might otherwise be carried out by an Australian citizen or an Australian permanent resident*. Primarily, Business Visitor visas are used by travellers who intend to visit Australia to:

- explore existing or future business opportunities in Australia;
- attend a conference or meeting relevant to applicant’s occupation or business;
- undertake training relevant to the applicant’s occupation or business activities (this would not generally include work placements).

However, under policy, work consistent with this condition is limited to when it is:

- highly specialised in nature *and* not ongoing; or
- an emergency or urgent situation *and* not ongoing; or
- in Australia's interest.

A position is 'not ongoing' where it is filled on a short term basis, preferably not exceeding six weeks. Longer periods up to the maximum stay period of up to three months could be considered in cases where the position is highly specialised or urgently required. An example would be the marine salvage experts who assisted in Newcastle following the severe storms in 2007.

Business Visitor visas are not appropriate for rotating a number of overseas workers through a position on a short-term basis. Where this occurs the position is considered to be ongoing even if individual employment contracts are not. Additionally, Business Visitor visas are not aimed at unskilled/semi-skilled labour, or as a means of bypassing Subclass 457 visa requirements.

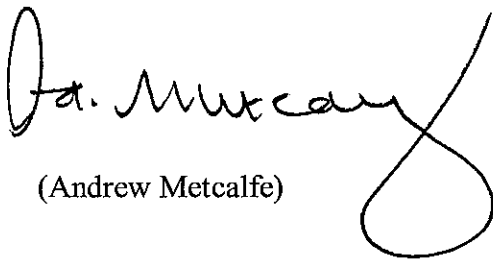
The Department has no jurisdiction to require crew to hold work visas when they are located outside the Migration Zone. As crew who are in Australia simply to transit to or from their vessel outside the Migration Zone are visiting for business rather than tourist purposes, the Business Visitor visas are the most appropriate option.

**Superyacht crew**

Maritime Crew who are found to be working in Australia for prolonged periods on a Subclass 456 or Subclass 977 will be subject to compliance action. The only exception relates to Superyacht crew members who are able to work in Australia on a Subclass 456 in the lead up to the implementation of a specific visa for Superyacht crew in October 2008. For this group, work is strictly limited to the crew member's duties and may not include any other work-related activities.

I trust that this information is of assistance to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Metcalfe', with a large, stylized loop at the end of the signature.

(Andrew Metcalfe)