

The Senate

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Standing Committee on  
Legal and Constitutional Affairs

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Migration Amendment (Maritime Crew)  
Bill 2007 [Provisions]

April 2007

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# ABBREVIATIONS

ACS	Australian Customs Service
DIAC	Department of Immigration and Citizenship
EM	Explanatory Memorandum
MCV	maritime crew visa
MUA	Maritime Union of Australia
the Bill	Migration Amendment (Maritime Crew) Bill 2007
the Minister	the Minister for Immigration and Citizenship





# **RECOMMENDATIONS**

## **Recommendation 1**

**3.18 The committee recommends that the Senate pass the Bill.**



# CHAPTER 1

## INTRODUCTION

### Background

1.1 On 1 March 2007 the Senate referred to the Senate Committee on Legal and Constitutional Affairs the provisions of the Migration Amendment (Maritime Crew) Bill 2007 (the Bill), for inquiry and report by 20 April 2007.

1.2 The Bill proposes to amend the *Migration Act 1958* to create a new class of temporary visa, the maritime crew visa. The maritime crew visa will replace special purpose and other visas which are currently granted by operation of law to foreign crew of non-military ships, foreign crew of ships being imported into Australia, foreign supernumerary crew and the spouses and dependent children accompanying such crew.<sup>1</sup>

1.3 The Explanatory Memorandum (EM) sets out that, unlike the current system, the grant of a maritime crew visa will require a formal application by foreign crew members and their families:

Currently foreign crew and their families are not required to make a formal application for a visa before coming to Australia. The grant of a maritime crew visa will require a formal application to be made, which will allow each foreign crew member and the spouses and dependent children of such crew, to be subjected to an appropriate level of security checking before visa grant.<sup>2</sup>

1.4 In the second reading speech for the Bill, the Hon. Kevin Andrews, Minister for Immigration and Citizenship (the Minister), stated: '[t]hese statutory reforms are needed to strengthen the integrity of Australia's borders...The application process for the new visa will enable crew to be appropriately security cleared before they enter Australia'.<sup>3</sup>

### Conduct of the inquiry

1.5 The committee advertised the inquiry in *The Australian* newspaper on 21 March 2007, and invited submissions by 23 March 2007. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to over 40 organisations and individuals informing them of the inquiry.

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1 EM, paragraph 2.

2 EM, paragraph 3.

3 *House of Representatives Hansard*, 15 February 2007, p. 4.

1.6 The committee received 6 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.7 The committee held a public hearing in Canberra on 29 March 2007. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://www.aph.gov.au/hansard/index.htm>.

### **Acknowledgement**

1.8 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

### **Note on references**

1.9 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

# CHAPTER 2

## OVERVIEW OF THE BILL

### **Maritime crew visas**

2.1 Item 5 of Schedule 1 of the Bill inserts new section 38B into the Migration Act. Proposed subsection 38B(1) provides for a new class of visa, the 'maritime crew visa', a class of temporary visa allowing the holder to travel to and enter Australia by sea and remain in Australia.

2.2 In the course of the second reading speech on the Bill, it was stated:

As with most other visas, the detail governing the new maritime crew visa will be set out in the Migration Regulations. In constructing the regulations for maritime crew visas, care will be taken to minimise the impact and cost to the industry after the new maritime crew visa regime commences.

The visa application process will be available electronically and there will be no charge for the visa. Shipping agents will be able to apply on behalf of members of crew.<sup>1</sup>

### ***Declarations in respect of maritime crew visas***

2.3 The Minister may make a declaration that it is undesirable that a person, or any person in a class of persons, travel to, enter or remain in Australia (proposed subsection 38B(3)). The effect of a declaration made in respect of a person, pursuant to subsection 38B(3), is that a maritime crew visa held by that person ceases to have effect (proposed subsection 38B(4)).

2.4 The Minister may revoke a declaration made under proposed subsection 38B(4). The effect of revocation is that the Minister is taken to have never made the declaration (proposed subsection 38B(5)).

### **Entry into Australia on a maritime crew visa**

2.5 Item 8 of Schedule 1 inserts new subsections 43(1A) and (1B) into the Migration Act.

2.6 Proposed subsection 43(1A) provides that a maritime crew visa gives the holder permission to enter Australia:

- at a proclaimed port;

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1 The Hon. Kevin Andrews, Minister for Immigration and Citizenship, *House of Representatives Hansard*, 15 February 2007, p. 4.

- if the health and safety of a person make it necessary to enter Australia in another way, that way; or
- in a way authorised by an authorised officer.

2.7 Subject to proposed subsection 43(1B), the holder of a maritime crew visa is prohibited from travelling to, or entering Australia by air (proposed subsection 38B(2)). Proposed subsection 43(1B) provides that the holder of a maritime crew visa can enter Australia by air in the following circumstances:

- the health and safety of the person make it necessary to enter Australia by air (see also proposed paragraph 43(1A)(b)); or
- an authorised officer authorises the person's entry into Australia by air (see proposed paragraph 43(1A)(c)).

2.8 Proposed subsection 38B(2) does not prevent the holder of a maritime crew visa from travelling to and entering Australia by air, where they hold another visa that allows them to travel to and enter Australia by air.<sup>2</sup>

### **Coexistence of maritime crew visas and other substantive visas**

2.9 Item 9 of Schedule 1 inserts new subsection 82(2AA) into the Migration Act. Proposed subsection 82(2AA) provides:

- a maritime crew visa held by a non-citizen does not cease to be in effect when a substantive visa for the non-citizen comes into effect; and
- a substantive visa held by a non-citizen does not cease to be in effect where a maritime crew visa for the non-citizen comes into effect.

2.10 The substantive visas which can co-exist with maritime crew visas will be specified by the Minister by legislative instrument. In the second reading speech for the Bill, the Minister outlined the reason for allowing maritime crew visas to co-exist with substantive visas:

Due to the nature of the maritime crew visa, the government has provided sufficient flexibility in the visa arrangements to enable holders of maritime crew visas to be granted certain other kinds of visas to suit the purpose of their stay in Australia.

This recognises the fact that some crew members will need to fly to Australia to join their ship here. It also takes account of the fact that maritime crew visa holders may wish to spend time in Australia for other purposes, such as holidaying.

It is anticipated that transit visas and electronic travel authorities are two such visas which will be specified by legislative instrument as able to coexist with maritime crew visas.<sup>3</sup>

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2 See the note to proposed subsection 38B(2).

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## Offences in relation to maritime crew visas

2.11 Item 11 of Schedule 1 inserts a new subsection 229(1A) into the Migration Act. Proposed subsection 229(1A) provides that a person commits an offence if:

- (a) they are the master, owner, agent, charterer or operator of an aircraft; and
- (b) they bring a non-citizen into Australia by air; and
- (c) the non-citizen is the holder of a maritime crew visa.

2.12 Item 13 of Schedule 1 inserts a new subsection 229(5A) into the Migration Act. Proposed subsection 229(5A) sets out the defences to the offences in proposed subsection 229(1A), including:

- on boarding the aircraft to travel to Australia, the non-citizen had evidence that he or she held a class of visa, other than a maritime crew visa, which permitted him or her to travel to, and enter, Australia; or
- the aircraft entered Australia only because of illness of a passenger, or stress of weather, or other circumstances beyond the control of the master.

## Amendments contingent on the Migration Amendment (Visa Integrity) Act 2007

2.13 Section 173 of the Migration Act provides that if the holder of a visa enters Australia in a way that contravenes section 43 of the Migration Act, the visa ceases to be in effect. Section 43 provides that visa holders must enter at a port or on a pre-cleared flight.<sup>4</sup>

2.14 The Migration Amendment (Visa Integrity) Bill 2006 proposes to insert a new subsection 173(2) into section 173 of the Migration Act.<sup>5</sup> Essentially, Items 15, 16, 17 and 18 of Schedule 1 propose to insert a new subsection 173(1A) into the Migration Act. These items are drafted in such a way as to cover the following circumstances:

- where the Migration Amendment (Visa Integrity) Bill 2006 does pass, and subsection 173(2) is inserted into the Migration Act; and

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3 *House of Representatives Hansard*, 15 February 2007, p. 4.

4 Migration Amendment (Visa Integrity) Bill 2006, Explanatory Memorandum, p. 5.

5 While not relevant to this Bill, new subsection 173(2) of the Migration Act is a clarifying amendment. The proposed amendment puts beyond doubt that a non-citizen child born in Australia who, under section 78, is taken to have been granted a visa or visas at the time of his or her birth, is not to be taken to have entered Australia in a way that contravenes section 43 of the Act resulting in the visa issued at birth ceasing to be in effect.

- where the Migration Amendment (Visa Integrity) Bill 2006 does not pass, and subsection 173(2) is not inserted into the Migration Act.<sup>6</sup>

2.15 Proposed subsection 173(1A) provides that a maritime crew visa held by a non-citizen does not cease to be in effect under section 173 (or 173(1) as the case may be) if:

- the non-citizen travels to and enters Australia by air; and
- at the time the non-citizen travels to and enters Australia, the non-citizen holds another class of visa that is in effect.

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6 The Migration Amendment (Visa Integrity) Bill 2006 was introduced into the Senate on 21 June 2006 and the second reading debate was adjourned on that date. The committee tabled its report on the Migration Amendment (Visa Integrity) Bill 2006 on 11 September 2006.



# CHAPTER 3

## KEY ISSUES

3.1 This chapter examines the main issues and concerns raised in the course of the inquiry.

### Consultation

3.2 During the hearing, the Department of Immigration and Citizenship (DIAC) provided the committee with an outline of the consultation undertaken with stakeholders:

3.3 A representative of DIAC told the committee that:

We established an industry working group with Shipping Australia Ltd in early 2006 and we met on four occasions last year to discuss the proposed arrangements for the maritime crew visa. In addition we met here in Canberra with representatives of the Maritime Union of Australia and the Australian Shipowners Association to broadly discuss the proposed arrangements. All of those meetings indicated to us that our approach to the maritime crew visa was largely meeting the various requirements of industry. In addition to those meetings and formal processes we undertook industry consultations which started in late November last year. We had 11 industry seminars in major capital cities and at major ports around Australia.<sup>1</sup>

3.4 Shipping Australia Limited noted in its submission that it had been working with DIAC for some time to ensure that the Maritime Crew Visa (MCV) would result in minimal impost and cost to the shipping industry.<sup>2</sup>

### Issues

3.5 All submissions to the committee expressed in principle support for strengthening Australia's border security arrangements. However some submissions sought clarification on particular issues and some concerns were also raised.

3.6 In its submission to the committee, Shipping Australia Limited raised three concerns regarding the operation of the visa and ease of use for industry. During the hearing, DIAC addressed each area of concern specifically:

**CHAIR**—Shipping Australia Limited in their submission...identified three areas they wish to be clarified, so I will put those to you... They ask

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1 Mr Adrian Kelson, Director, Seaport Policy Section, DIAC, *Committee Hansard*, 29 March 2007, p. 5.

2 *Submission 2*, p. 1.

whether internet applications should be permitted, to which I assume the answer is yes.

**Mr McMahon**—Correct.

**CHAIR**—The second one is that visa applications should be able to be made by either the applicant or the third party—

**Mr McMahon**—Correct.

**CHAIR**—and, finally, that there is no charge.

**Mr McMahon**—Correct again.<sup>3</sup>

3.7 The Maritime Union of Australia (MUA) expressed a number of concerns regarding the MCV. In general, the MUA queried if the introduction of the MCV would close a gap in maritime security as stated.<sup>4</sup>

3.8 DIAC and the Australian Customs Service (ACS) advised that the proposed MCV has a number of features which would improve security over existing arrangements, these features include:

- The visa application would require more comprehensive information against which security organisations can make checks.<sup>5</sup>
- MCV applications would be an ongoing source of information on individuals seeking to travel to Australia as crew on non-military ships, thus allowing more cross checking with other information sources.<sup>6</sup>
- There would be an ability to infringe the masters, owners, charterers and operator of ships for carrying improperly documented passengers and crew to Australia.<sup>7</sup>
- There would be an increase in the number of customs officers assigned to ports to enable all ships to be physically checked within one hour of the vessel arriving.<sup>8</sup>

3.9 The MUA also articulated concern at the number of crew that may be denied shore leave. Referring to the submission of DIAC to the inquiry, the MUA stated:

...400 seafarers were refused entry to Australia in 2005-06 under the current Special Purpose Visa arrangements, which are said to be less rigorous [than] the proposed MCV process. This suggests that upwards of 400 foreign seafarers annually will be denied shore leave in Australia. Just how many seafarers are a genuine threat to Australia's security is unknown,

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3 *Committee Hansard*, 29 March 2007, p. 4.

4 *Submission 6*, p. 1.

5 *Committee Hansard*, 29 March 2007, p. 9.

6 *Submission 5*, p. 3.

7 *Submission 5*, p. 4.

8 *Committee Hansard*, 29 March 2007, p. 16.

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but shore leave is an important human right, so there needs to be a well considered balance between the security objectives of the Bill and the human rights implications for foreign seafarers.<sup>9</sup>

3.10 During the hearing DIAC told the committee that in the 2005-06 financial year there were 326,979 maritime crew arrivals, and of those around 400 were denied shore leave. DIAC expanded on this point saying:

.....If you are in the US, great numbers of people do not get off the ship because they actually require a formal written visa application process. The arrangements should work much more flexibly than that. We would expect that the overwhelming majority of people will be able to have shore leave. There will be some people who raise serious issues from a national security point of view and those issues will need to be resolved. It may well be that they are refused entry, or alternatively, for a few it may be that the issues are such that they cannot be resolved in the time period. But, on the positive side of it, bearing in mind that people tend to re-enter, at least the issue can be resolved and entry can be facilitated in the future.<sup>10</sup>

3.11 The MUA also expressed concern that the onus of compliance would rest with the masters of vessels, and that masters would unfairly become '...the target of zealous regulatory agencies'. The MUA argued that masters could be unfairly infringed for carrying improperly documented crew, even though this may be outside the control of the master.<sup>11</sup>

3.12 In response to a question from the committee DIAC advised that:

...an infringement may well be served upon the master, but it is a carrier's obligation to make sure that everyone onboard a vessel is appropriately visaed or documented. Under our legislation, we can serve an infringement on, from memory, the owner, charterer, master, or agent of the vessel-any one of those parties. It is just a means to make sure that we have an infringement regime that allows us to serve and hopefully have that fine paid at some stage, and it would usually be by the vessel owner. So in that respect the master is the conduit.<sup>12</sup>

3.13 DIAC also stated that, for the first 6 months following the implementation of the proposed MCV, DIAC would be encouraging people to use the MCV but not penalising those who did not, so that any unexpected problems could be resolved.<sup>13</sup>

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9 *Submission 6*, p. 2.

10 Mr Vincent McMahon, First Assistant Secretary, Border Security Division, DIAC, *Committee Hansard*, 29 March 2007, p. 14.

11 *Submission 6*, p. 3.

12 Mr Adrian Kelson, Director, Seaport Policy Section, DIAC, *Committee Hansard*, 29 March 2007, p. 15.

13 *Committee Hansard*, 29 March 2007, p. 11.

3.14 The committee queried the cost of the proposed MCV, in particular \$30 million for an additional 67 customs officers. A representative of the ACS explained:

[Currently] seventy-five per cent of all first-port arriving vessels will be boarded by Customs on a risk assess basis. That is the minimum. However, there is no time restriction. Under these new arrangements ... there is a requirement to undertake the physical checking within one hour of the vessel actually arriving. In order for us to meet that requirement in some of these ports we need to increase our staffing accordingly. Around Australia we have quite small ports where we need to increase our staffing to achieve that aim.<sup>14</sup>

### **Committee view**

3.15 The committee accepts the evidence of DIAC and the ACS that the bill will improve border security at Australian ports. In particular, the committee notes the evidence of DIAC and the ACS that the MCV will improve security in comparison to current arrangements by increasing the ability of agencies to conduct background checks on maritime crew, and through the increased number of customs officers assigned to ports to implement the new arrangements.

3.16 In the view of the committee, the provision for multiple entries on a single visa, internet applications, applications by third parties, and a phasing in period, provide adequate flexibility for users and address the concerns raised during the inquiry.

3.17 The committee believes that the Bill strikes an appropriate balance between the need to strengthen security at ports whilst allowing for ease of use by industry and maritime crew.

### **Recommendation 1**

**3.18 The committee recommends that the Senate pass the Bill.**

**Senator Guy Barnett**

**Chair**

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14 Mr Terry Price, Acting National Manager, Enforcement Operations, ACS, *Committee Hansard*, 29 March 2007, p. 16.

# **APPENDIX 1**

## **SUBMISSIONS RECEIVED**

- 1 Tasmanian Department of Police and Emergency Management
- 2 Shipping Australia Limited
- 3 Western Australia Police Service
- 4 Queensland Police Service
- 5 Department of Immigration and Citizenship
- 6 Maritime Union of Australia

## **APPENDIX 2**

### **WITNESSES WHO APPEARED BEFORE THE COMMITTEE**

**Canberra, Thursday 29 March 2007**

**Department of Immigration and Citizenship**

Ms Vicki Parker, Assistant Secretary, Legal Framework Branch

Mr Adrian Kelson, Director, Seaport Policy Section

Mr Vincent McMahon, First Assistant Secretary, Border Security Division

**Australian Customs Service**

Mr Rodney O'Donnell, Acting Director Seaports, Enforcement Operations

Mr Terry Price, Acting National Manager, Enforcement Operations