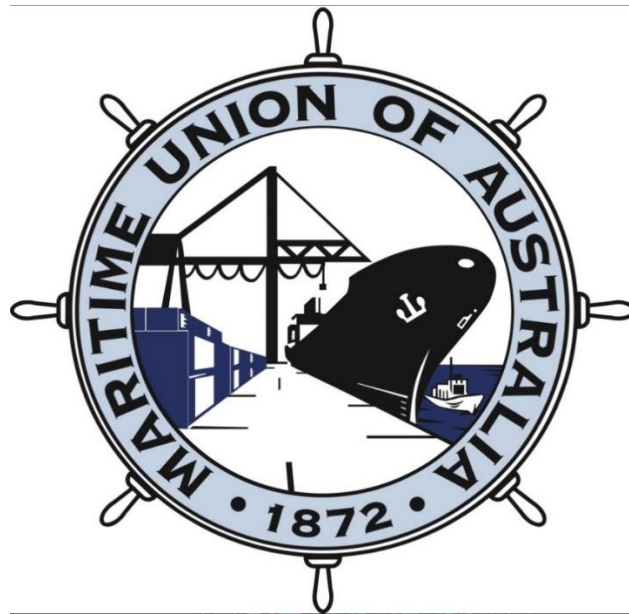


Supplementary Submission by the Maritime Union of Australia

Parliamentary Joint Committee on Intelligence and Security

Review of the Security Legislation Amendment (Critical Infrastructure) Bill 2020 and Statutory Review of the *Security of Critical Infrastructure Act 2018*



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Introduction

We welcome the opportunity to appear before the Committee as part of the trade union panel.

We have prepared this supplementary submission to assist the Committee in exploring the key matters which we want to draw to the attention of the Committee.

The MUA supports the submissions of the ACTU and other unions on the panel regarding the impact on human rights and in particular the concerns about the proposed extension of the AusCheck background checking process to thousands of additional workers beyond the maritime, aviation, health and major events sectors.

We know first-hand the serious impact that the Maritime Security Identification Card (MSIC) approval process is having on maritime workers. The MSIC has effectively become a right to work card and there has been serious overreach in the list of offences that could prevent a worker obtaining an MSIC and therefore being able to work in their chosen occupation, that go way beyond addressing threats to national security.

We say the key to any uplift in the security and resilience of critical infrastructure is proportionality, particularly in relation to impacts on workforces and their human rights, transparency around the reasons for such an uplift, and the way it is managed and regulated. In relation to human rights, we made the point our initial submission that the workforce be protected in relation to:

- Worker's privacy;
- Workers access to information to ensure the effective performance of functions under the Fair Work Act, work health and safety and maritime security Acts;
- Whistle blower protection; and
- That one of the best safeguards is to ensure the participation of the workforce and their trade unions in all aspects of the proposed critical infrastructure framework.

The importance of the timing of this Review

This Review of the Security Legislation Amendment (Critical Infrastructure) Bill 2020 (the Bill) is occurring at an important political and economic juncture when the nation is preparing for a post COVID-19 world where the pandemic revealed serious weaknesses in our national sovereignty and security in our supply chains. Those supply chains are a central feature of the nation's infrastructure. The pandemic also revealed weaknesses in the global multi-lateral architecture – for example in the regulation of international shipping leading to the seafarer crew change crisis.

We now face a new geopolitical environment, an imperative to decarbonise the economy and address national productivity and industrial development. The policies and approaches of the past are no longer adequate.

We note for example the statement of the Deputy Prime Minister last weekend about the need for creation of a fleet of Australian-flagged merchant ships to make the nation more self-reliant and to achieve full sovereignty. Such a policy shift is indicative of the new thinking the nation needs, centered on a smarter role for government and greater coordination of the nation's strengths and capabilities in advancing the national interest, including respect for the contribution of the workforce.

A key gap or omission in the Bill – the omission of ships, shipping and sea freight corridors

We acknowledge the importance of the Bill in seeking to extend coverage to parts of the transport and logistics sector beyond ports which are already covered, given that a security induced breakdown in any part of the transport and logistics system, particularly ships and ports, can have almost immediate consequential impacts through the supply chain, impacting on many businesses and households.

However, the Bill has seriously underestimated the criticality of ships, shipping and sea freight corridors as critical infrastructure in the functioning of the economy and in ensuring Australian citizens and businesses are supplied with goods and services, and that our sovereignty is protected.

In our view the Bill is deficient in that it has not adequately included ships, shipping and sea freight corridors. That omission must be rectified and we urge the Committee to recommend such an improvement.

Because the Bill does not create certainty about the application of the *Security of Critical Infrastructure Act 2018* (SOCI Act) to ships and shipping, it camouflages and leaves a gap in Australia's critical infrastructure risk mitigation system which the Bill seeks to strengthen.

We have identified a number of areas where we propose that the Bill strengthened in relation to ships and shipping, particularly definitions. For example:

- The meaning of critical liquid fuel asset – ships are excluded yet they are the critical infrastructure transporting oil for Australian refineries and refined petroleum products for domestic storage and distribution for use by businesses and households; and
- The meaning of critical freight infrastructure asset – which specifically refers to road and rail networks, but omits a reference to ships and sea freight corridors, yet ships transport some 17 per cent of Australia's domestic freight and some 98 per cent of the nation's international freight.

We also believe amendments are required to:

- The meaning of critical freight services asset; and
- The meaning of critical food and grocery asset.

This submission outlines the specific amendments we propose to the Bill in **Attachment A**.

In relation to that section of the Bill that specifies the criteria for determining the criticality of freight infrastructure assets which includes a reference to alternative transport provision we have identified the need for the availability of Australian registered (flagged) ships.

The lack of Australian flagged ships in the current mix of ships undertaking sea freight transportation is a threat to national supply chain security and stability. This the point that the Deputy Prime Minister is making when he refers to achieving full sovereignty.

This is why there is wide industry support for the establishment of a strategic fleet. We refer the Committee to the submission of Maritime Industry Australia Ltd (MIAL) which deals with the need for a strategic fleet of Australian ships.

Creating a level playing field between nationals and non-nationals working on ships

We also submit that the Bill be strengthened by requiring that the security standards to be applied to non-nationals employed by an entity responsible for a critical infrastructure asset must comply with similar standards of security and background checking for accessing a critical infrastructure asset, as required by Australian nationals.

This is currently not the case in relation to non-national seafarers employed on ships in Australian sea freight corridors and in ports, where those non-national seafarers' access wharfside maritime security zones on nothing more than a Subclass 988 Maritime Crew visa (MCV).

An MCV does not require an AusCheck coordinated process as does the MSIC, but rather, assessment against a set of public interest criteria. Furthermore an MCV is typically issued in less than 48 hours in contrast to the AusCheck process which publicly indicates can take up to 6 weeks, but we know can take many months.

Unless that inconsistency is addressed, there will be a major flaw in the SCOI Act and a gap in Australian maritime security will remain.

Conclusion

It is vital for national infrastructure security that the Australian shipping and maritime sectors are regarded as a vital component of national transport infrastructure, integrated with the functionality, productivity and efficiency of other industries such as manufacturing, agriculture/aquaculture, resources, energy and tourism.

Ships, shipping and sea freight corridors are the overwhelming or critical vulnerability point that underpins all other supply chain vulnerabilities given Australia is an island nation geographically located at the end of global supply chains and in a region with both physical and geopolitical characteristics that increase the vulnerability of ships and the sea freight corridors they ply.

There is high level of exposure of maritime assets to security threats such as:

- Offshore oil and gas assets and the emerging offshore wind turbines and the ships that will be vital for construction and maintenance of that energy infrastructure that will form part of the energy for future manufacturing and for the national electricity grid;
- Subsea electricity cables and the ships that lay and maintain those cables; and
- Ships transporting oil for Australian refineries and refined petroleum products to onshore storage facilities for use by industry and consumers for some years before new transport propulsion fuels dominate.

We urge the Committee to recommend the changes proposed in this submission to ensure the Bill is fit for purpose and leaves no gaps in its objective to enhance security of Australia's vital infrastructure assets, and that the workforce that construct, operate and maintain those assets are treated with respect in accordance with Australia's international human rights obligations.

MUA proposals to strengthening the Security Legislation Amendment (Critical Infrastructure) Bill 2020 - July 2021 – specific changes marked in red font

1. Amend Clause 32 which amends s12A of the Act (Meaning of critical liquid fuel asset) so that s12A reads as follows:

12A Meaning of critical liquid fuel asset

(1) An asset is a critical liquid fuel asset if it is any of the following:

- (a) a liquid fuel refinery that is critical to ensuring the security and reliability of a liquid fuel market, in accordance with subsection (2);
- (b) a liquid fuel pipeline that is critical to ensuring the security and reliability of a liquid fuel market, in accordance with subsection (3);
- (c) a liquid fuel storage facility, **including a ship in the Territorial Sea**, that is critical to ensuring the security and reliability of a liquid fuel market, in accordance with subsection (4).

Note: The rules may prescribe that a specified critical liquid fuel asset is not critical infrastructure asset (see section 9).

2. Amend Clause 32 which amends s12B of the Act (Meaning of critical freight infrastructure asset) so that s12B reads as follows:

12B Meaning of critical freight infrastructure asset

(1) An asset is a critical freight infrastructure asset if it is any of the following:

(a) a road network that, in accordance with subsection (2), functions as a critical corridor for the transportation of goods between:

- (i) 2 States; or
- (ii) a State and a Territory; or
- (iii) 2 Territories; or
- (iv) 2 regional centres;

(b) a rail network that, in accordance with subsection (3) functions as a critical corridor for the transportation of goods between:

- (i) 2 States; or
- (ii) a State and a Territory; or
- (iii) 2 Territories; or
- (iv) 2 regional centres;

(c) a sea freight corridor that, in accordance with subsection (4) functions as a critical corridor for the transportation of goods between:

- (i) 2 States; or**
- (ii) a State and a Territory; or**
- (iii) 2 Territories; or**
- (iv) 2 regional centres;**

(d) an intermodal transfer facility that, in accordance with subsection (5), is critical to the transportation of goods between:

- (i) 2 States; or**
- (ii) a State and a Territory; or**
- (iii) 2 Territories; or**
- (iv) 2 regional centres.**

Note: The rules may prescribe that a specified critical freight infrastructure asset is not a critical infrastructure asset (see section 9).

Add a new subsection (4) as follows:

(4) For the purposes of paragraph (1)(c), the rules may prescribe:

(a) specified sea freight corridors that function as a critical corridor for the transportation of goods between:

(i) 2 States; or

(ii) a State and a Territory; or

(iii) 2 Territories; or

(iv) 2 regional centres; or

(b) requirements for a sea freight corridor to function as a critical corridor for the transportation of goods between:

(i) 2 States; or

(ii) a State and a Territory; or

(iii) 2 Territories; or

(iv) 2 regional centres.

3. Amend Clause 32 which amends s12C of the Act (Meaning of critical freight services asset) so that s12C reads as follows:

12C Meaning of critical freight services asset

(1) An asset is a critical freight services asset if it is a network or sea freight corridor that is used by an entity carrying on a business that, in accordance with subsection (2), is critical to the transportation of goods by any or all of the following:

(a) road;

(b) rail;

(c) inland waters;

(d) sea.

Note: The rules may prescribe that a specified critical freight services asset is not a critical infrastructure asset (see section 9). The rules may also prescribe that Australian ships registered under the *Shipping Registration Act 1981* be requisitioned to provide alternative critical sea freight services.

4. Amend Clause 32 which amends s12K of the Act (Meaning of critical food and grocery asset) so that s12K reads as follows:

12K Meaning of critical food and grocery asset

(1) An asset is a critical food and grocery asset if it is a network that:

(a) is used for the distribution or supply of:

(i) food; or

(ii) groceries; and

(b) is owned or operated by an entity that is:

(i) a critical supermarket retailer, in accordance with subsection (2); or

(ii) a critical food wholesaler, in accordance with subsection (3); or

(iii) a critical grocery wholesaler, in accordance with subsection (4); or

(iv) a critical freight services asset provider, in accordance with subsection (5).

Note: The rules may prescribe that a specified critical food and grocery asset is not a critical infrastructure asset (see section 9).

Add a new subsection (5) as follows:

(5) For the purposes of subparagraph (1)(b)(iv), the rules may prescribe:

(a) specified entities that are a critical freight services asset provider; or

(b) requirements for an entity to be a critical freight services asset provider.

5. Insert a new provision in the Bill relating to the security standards to be applied to non-nationals employed by an entity responsible for a critical infrastructure asset

We propose that a new provision be inserted in the Bill that would require an entity responsible for a critical infrastructure asset to ensure that non-nationals employed by the entity so responsible must comply with the same standards of security and background checking for accessing a critical infrastructure asset as Australian nationals.

This is designed to ensure that non-nationals employed as seafarers on ships in a sea freight corridor transporting goods between (i) 2 States; or (ii) a State and a Territory; or (iii) 2 Territories; or (iv) 2 regional centres; or employed on ships involved in the production and distribution offshore oil and gas and or production of offshore wind energy for electricity provision would be required, in order to enter a port covered by the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA) and or Maritime Transport and Offshore Facilities Security Regulations 2003, to hold a Maritime Security Identification Card (MSIC). This should be an important feature of the entity's risk management program.