

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 191

Issued by the Minister for Immigration
and Citizenship

Subject - *Migration Act 1958*

Migration Amendment Regulations 2007 (No. 6)

Subsection 504(1) of the *Migration Act 1958* ('the Act') provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, regulations may be made pursuant to the provisions of the Act in **Attachment A**.

The purpose of the Regulations is to amend the *Migration Regulations 1994* ('the Principal Regulations') to create a new maritime crew visa (MCV). The MCV replaces special purpose visas which are currently granted by operation of law to members of the crew of non-military ships and the spouses and dependent children of such crew. In summary, the Regulations amend Schedules 1 and 2 to the Principal Regulations to:

- prescribe requirements and criteria for making an application for an MCV, including a provision that an applicant for an MCV must be outside Australia at the time of application;
- create primary criteria for grant of an MCV for members of the crew of non-military ships and persons who are under offer to become members of the crew;
- create secondary criteria for grant of an MCV for spouses or dependent children of members of the crew of non-military ships and spouses and dependent children of persons under offer to become a member of the crew of a non-military ship;
- provide that the MCV may be granted either inside or outside Australia; and
- prescribe when an MCV will cease.

In addition to the amendments to Schedules 1 and 2 to the Principal Regulations, the Regulations amend the Principal Regulations and insert new regulations to:

- amend the definitions for "member of the crew" and "non-military ship";
- create new arrangements for maritime crew and their spouses and dependent children who continue to use the special purpose visa arrangements during the transitional period of 1 July 2007 to 31 December 2007;

- remove from 1 January 2008 the special purpose visa regulations which relate to maritime crew and their spouses and dependent children;
- allow third parties to complete and lodge an MCV application on behalf of applicants;
- qualify the ways in which an MCV holder may enter Australia;
- create passenger card exemptions for members of the crew and their spouses and dependent children, who enter Australia by sea on a non-military ship;
- provide immigration clearance officers with the discretion to require members of the crew of non-military ships and their spouses and dependent children to produce evidence that establishes that they are in fact a member of the crew of a non-military ship or spouse or dependent child of a member of the crew of a non-military ship;
- create a new work condition that prohibits MCV holders from working in Australia, other than as a member of the crew on a non-military ship and attach this condition to persons who satisfy the primary criteria;
- attach condition 8101 to persons who satisfy the secondary criteria to prohibit spouses and dependent children from engaging in any type of work in Australia; and
- make consequential changes to other visa subclasses that are affected by the change from special purpose visas to MCVs.

Details of the Regulations are set out at **Attachment B**.

Amendments to the Act were also necessary to implement the new MCV. The *Migration Amendment (Maritime Crew) Act 2007* ('Maritime Crew Act') received Royal Assent on 28 May 2007. Part 1 of the Maritime Crew Act will commence by Proclamation on 1 July 2007.

The Act, as amended by the Maritime Crew Act does not specify any conditions that need to be satisfied before the power to make the regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Regulations 1, 2 and 3 and Schedule 1 commence on 1 July 2007 while regulations 4 and Schedule 2 commence on 1 January 2008. The period between 1 July 2007 and 31 December 2007 is a transitional period which allows members of the crew of non-military ships and their spouses and dependent children to continue to use the special purpose visa arrangements until the new MCV becomes compulsory from 1 January 2008.

A regulation impact statement (RIS) is at **Attachment C**. The RIS was prepared in consultation with the Office of Best Practice Regulation (OBPR) and it outlines both the direct and indirect effect the regulations will have on business. In addition to consultation with OBPR, the following government agencies were consulted about the new MCV:

- Australian Customs Service;
- Attorney-General's Department;

- Australian Security Intelligence Organisation
- Department of Transport and Regional Services;
- Department of Foreign Affairs and Trade;
- Treasury;
- Department of Finance and Administration;
- Department of Families, Community Services and Indigenous Affairs;
- Department of Employment and Workplace Relations; and
- Department of Industry, Tourism and Resources.

An industry-government working group was established in early 2006 involving the Department of Immigration and Citizenship (DIAC) and Shipping Australia Limited to inform the development of the new MCV. In addition, DIAC also consulted with the Australian Shipowners' Association, the Australian Maritime Safety Authority and the Maritime Union of Australia to outline the proposed MCV arrangements.

ATTACHMENT A

Regulations may be made pursuant to the following provisions of the Act:

- Subsections 29(2) and (3) provide that a visa to travel to, enter and remain in Australia may be one to travel to and enter Australia during a prescribed or specified period.
- Subsection 31(3) provides that the regulations may prescribe criteria for a visa of a specified class.
- Subsection 31(4) provides that regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both.
- Subparagraph 33(2)(a)(ii) provides that a non-citizen is taken to have been granted a special purpose visa if they are a member of a class of persons that has a prescribed status.
- Section 40 provides that the regulations may provide that a visa of a specified class may only be granted in specified circumstances.
- Section 41 provides that the regulations may provide that visas of a specified class are subject to specified conditions.
- Subsection 43(1A) provides that subject to the regulations, a maritime crew visa that is in effect is permission for the holder to enter Australia at certain places and in certain ways.
- Subsection 45B(2) provides that the amount prescribed in relation to an application charge may be nil.
- Paragraph 46(1)(b) provides that an application for a visa is valid if, and only if it satisfies the criteria and requirements prescribed under section 46 of the Act.
- Subsection 46(3) provides that the regulations may prescribe criteria to be satisfied for an application of a specified class to be a valid application. Subsection 46(4) provides that without limiting subsection 46(3), the regulations may also prescribe:
 - the circumstances that must exist for an application for a visa of a specified class to be a valid application;
 - how an application for a visa of a specified class must be made;
 - where an application for a visa of a specified class must be made;
 - where an applicant must be when an application for a visa of a specified class is made.
- Subsection 71(1) provides that evidence is to be given in a way prescribed for giving the evidence.
- Paragraph 166(1)(b) provides that a non-citizen must present to a clearance officer any information required by the Act or the regulations.
- Subsection 166(3) provides that subject to section 167, the regulations may prescribe the ways that a person is required to comply with paragraphs 166(1)(a) and (b).

ATTACHMENT B

Details of the Migration Amendment Regulations 2007 (No. 6)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Migration Amendment Regulations 2007 (No. 6)*.

Regulation 2 – Commencement

This regulation provides that regulations 1, 2 and 3 and Schedule 1 commence on 1 July 2007 while regulation 4 and Schedule 2 commence on 1 January 2008. The period between 1 July 2007 and 31 December 2007 is a transitional period which will allow members of the crew of non-military ships and their spouses and dependent children to continue to use the special purpose visa arrangements until the new MCV becomes compulsory from 1 January 2008.

Regulation 3 – Amendment of Migration Regulations 1994

This regulation provides that Schedule 1 amends the Principal Regulations and applies in relation to a person who proposes to enter Australia on or after 1 July 2007.

Regulation 4 – Amendment of Migration Regulations 1994

This regulation provides that Schedule 2 amends the Principal Regulations and applies in relation to a person who proposes to enter Australia on or after 1 January 2008.

Schedule 1 – Amendments relating to maritime crew visas – commencing on 1 July 2007

Part 1 – General amendments of the Migration Regulations 1994

Item [1] – Regulation 1.03, definition of member of the crew

This item substitutes the definition of “member of the crew” in regulation 1.03 in Division 1.2 of Part 1 of the Principal Regulations with a new definition of “member of the crew”.

Paragraph (a) of the definition provides that a member of the crew means any of the persons listed in the subsequent subparagraphs. Subparagraph (a)(i) provides that a member of the crew is a person, who is involved in the usual day to day routine maintenance or business of the ship while it is at sea. This may include supernumerary members of the crew. Examples of supernumerary members of the crew include:

- a person who performs specialist repair or maintenance work while it is at sea (for example, an electrical engineer);
- an entertainer who works on the ship while it is at sea;
- a chef who works on the ship while it is at sea; or
- a hairdresser who works on the ship while it is at sea.

Subparagraph (a)(ii) provides that persons who are engaged to perform scientific research on or from the ship are included as members of the crew. These persons are currently included in paragraph (c) of the definition of “member of the crew”.

The regulation has been drafted in a manner that does not require the person to be in a particular type of work relationship with a master of the ship. This is because members of the crew may not be “employed” by the master in the strict legal sense of the word and may be a contractor, subcontractor or work in another capacity.

To avoid doubt, paragraph (b) provides that certain persons are not included in the definition of “member of the crew”. Persons who only perform work on a ship while it is in port or in dry dock and who do not travel with the ship either before the ship enters at the port or after it has completed the work at the port, will not be considered a member of the crew. This will mean that an MCV is not available to persons who are flown into and out of Australia for the only purpose of performing work on the ship when it is in dry dock.

Item [2] – Regulation 1.03, definition of *non-military ship*

This item substitutes the definition of “non-military ship” in regulation 1.03 in Division 1.2 of Part 1 of the Principal Regulations with a new definition of “non-military ship.”

The current definition of “non-military ship” includes ships that are being imported into Australia. The new definition excludes ships that are imported into Australia under section 49A of the *Customs Act 1901* (‘the Customs Act’) or entered for home consumption under section 71A of the Customs Act.

Under current paragraph 2.40(1)(ka) of the Principal Regulations, a prescribed status for special purpose visas is given to members of the crew of non-military ships being imported into Australia. Under the new MCV regulations, a holder’s MCV will cease if they have not signed on to another non-military ship as a member of the

crew or as the spouse or dependent child of a member of the crew or departed Australia within a prescribed period of their last ship being imported under section 49A of the Customs Act or entered for home consumption under section 71A of the Customs Act.

The primary reason for excluding ships that have been imported under section 49A of the Customs Act or entered for home consumption under section 71A of the Customs Act, is to prevent a person from “signing on” to or remaining on a ship as a member of the crew or spouse or dependent child of a member of the crew that has been imported under section 49A or entered for home consumption under section 71A unless another visa is held. The MCV is not intended to provide foreign crew with the authority to work on a ship that is no longer in the course of its international voyage.

Item [3] – After regulation 2.06

This item inserts new regulation 2.06AAA in Division 2.2 of Part 2 of the Principal Regulations.

This item qualifies the ways in which an MCV holder may enter Australia for the purposes of subsection 43(1A) of the Act as inserted by the Maritime Crew Act. Subsection 43(1A) of the Act is expressed to be ‘subject to the regulations’.

Subregulation 2.06AAA(1) permits an MCV holder to enter Australia at a proclaimed port which is not an excised offshore place.

If an MCV holder is on a non-military ship and the operator of the ship complies with certain reporting requirements under sections 64, 64ACA and 64ACB of the Customs Act and the *Customs Regulations 1926* (‘the Customs Regulations’), then subregulation 2.06AAA(2) permits the holder to enter Australia at an excised offshore place if that place is:

- a proclaimed port; or
- a place where permission has been given in advance for the ship to be brought to that place under section 58 of the Customs Act.

The note after subregulation 2.06AAA provides a summary of the reporting requirements under sections 64, 64ACA and 64ACB of the Customs Act and the Customs Regulations. Generally, the operator of a ship must report to the Australian Customs Service (‘Customs’):

- the impending arrival of the ship; and
- the passengers and crew who will be on board the ship at the time of its arrival in port.

The Customs Act and Customs Regulations also specify the time that these reports must occur and range in time from 12 hours to 96 hours before the ship's arrival in Australia, depending on the likely duration of the ship's journey.

Subregulation 2.06AAA(3) permits an MCV holder to enter Australia other than in the circumstances contained in subregulations 2.06AAA(1) and (2) if health or safety reasons require entry in that other way and the MCV holder does not enter at an excised offshore place.

Subregulation 2.06AAA(4) permits entry to Australia by an MCV holder, other than in the circumstances contained in subregulations 2.06AAA(1), (2) and (3), if an authorised officer authorises the holder to enter Australia in this way. This ensures that an MCV holder will be able to enter at any place in Australia, including an excised offshore place, providing an authorised officer has authorised them to enter at this place.

Item [4] – After regulation 2.07AO

This item inserts new regulation 2.07AP in Division 2.2 of Part 2 of the Principal Regulations.

Regulation 2.07AP allows third parties to apply for an MCV on behalf of an applicant. This regulation aims to increase the convenience to members of the crew of non-military ships and their spouses and dependent children by allowing people such as shipping and manning agents to apply for an MCV on their behalf. However, the applicant must be outside Australia at the time the application is made (see item [16]).

Item [5] – Paragraph 2.40(6)(b)

This item substitutes paragraph 2.40(6)(b) in Division 2.8 of Part 2 of the Principal Regulations with new paragraphs 2.40(6)(b) and (ba).

Paragraph 2.40(6)(b) currently provides passport and documentary requirements for when a person will have a prescribed status for a special purpose visa as a crew member of a visiting non-military ship.

New paragraph 2.40(6)(b) retains the requirement that a person must have been issued with a passport that is in force. However, new paragraph 2.40(6)(ba) removes the reference to crew members being *issued* with a document that identifies the person as a seafarer being employed on the ship by providing that this document need only be in existence. Not all crew members will have been individually issued with such a document and they may be able to prove their identity as a seafarer employed on the ship by providing, for example, a crew list. This item ensures that the documentary requirements for members of the crew who continue to use the special purpose visa arrangements during the transitional period between 1 July 2007 and 31 December 2007 are consistent with those requirements for members of the crew who obtain an MCV.

Item [6] – Subparagraph 2.40(6)(c)(ii)

This item substitutes subparagraph 2.40(6)(c)(ii) in Division 2.8 of Part 2 of the Principal Regulations with new subparagraph 2.40(6)(c)(ii).

Paragraph 2.40(6)(c) currently provides that to have a prescribed status for a special purpose visa, crew members of visiting non-military ships must have been issued with a passport that is in force and a document that identifies them as being a seafarer employed on the ship, at the time their ship enters Australia or when they sign on to a ship in Australia.

New subparagraph 2.40(6)(c)(ii) removes the reference to crew members being *issued* with a document that identifies the person as a seafarer employed on the ship. Not all crew members will have been individually issued with such a document and they may be able to prove their identity as a seafarer employed on the ship by providing, for example, a crew list. This item ensures that a person will satisfy the evidence of identity requirements for a prescribed status as a member of the crew of a non-military ship if there is a document that identifies them as being a seafarer employed on the ship, regardless of whether that document has been issued to them. It also ensures that the documentary requirements for persons who continue to use the special purpose visa arrangements during the transitional period between 1 July 2007 and 31 December 2007 are consistent with those requirements for members of the crew who obtain an MCV.

Item [7] – After paragraph 2.40(6)(c)

This item inserts new paragraph 2.40(6)(d) in Division 2.8 of Part 2 of the Principal Regulations.

The effect of new paragraph 2.40(6)(d) is to provide that a person will not during the transitional period between 1 July 2007 and 31 December 2007, have a prescribed status for a special purpose visa as a member of the crew of a non-military ship if they have held or been refused an MCV. This will include persons who have had their MCV ceased or cancelled. This item ensures that crew members of non-military ships will not be eligible for both an MCV and special purpose visa during the transitional period.

Item [8] – Paragraph 2.40(6A)(b)

This item substitutes paragraph 2.40(6A)(b) in Division 2.8 of Part 2 of the Principal Regulations with new paragraphs 2.40(6A)(b) and (c).

Subregulation 2.40(6A) provides when a person is taken to have signed on to a ship. Paragraph 2.40(6A)(b) currently provides that a person will be taken to have been signed on to a ship if they have been issued with a passport that is in force and a document that identifies them as a seafarer employed on the ship. New subparagraph 2.40(6A)(b) retains the requirement that the person must have been issued with a passport that is in force. However, new paragraph 2.40(6A)(c) removes the requirement that the person must have been *issued* with a document that identifies them as being a seafarer employed on the ship by providing that this document need only be in existence. Not all crew members will have been individually issued with such a document and they may be able to prove their identity as a seafarer employed on the ship by providing, for example, a crew list.

This item ensures that a person will be taken to have been signed on to a ship for the purpose of special purpose visas, if there is a document that identifies them as being a seafarer employed on the ship, regardless of whether that document has been issued to them.

Item [9] – Subparagraph 2.40(8)(a)(ii)

This item substitutes subparagraph 2.40(8)(a)(ii) in Division 2.8 of Part 2 of the Principal Regulations with new subparagraphs 2.40(8)(a)(ii) and (ia).

Subregulation 2.40(8) provides when crew members of imported ships will have a prescribed status for a special purpose visa. Subparagraph 2.40(8)(a)(ii) currently provides that these crew members must have been issued with a passport that is in force and a document that identifies them as being a seafarer employed on the ship.

New subparagraph 2.40(8)(a)(ii) retains the requirement that the person must have been issued with a passport that is in force. However, new subparagraph 2.40(8)(a)(ia) removes the reference to crew members being *issued* with a document that identifies them person as being a seafarer employed on the ship by providing that this document need only be in existence. Not all crew members will have been individually issued with such a document and they may be able to prove their identity as a seafarer employed on the ship by providing, for example, a crew list. This item ensures that a person will satisfy the evidence of identity requirements for a prescribed status as a member of the crew of an imported ship if there is a document that identifies them as being a seafarer employed on the ship, regardless of whether that document has been issued to them.

Item [10] – After subparagraph 2.40(8)(a)(iii)

This item inserts new subparagraph 2.40(8)(a)(iv) in Division 2.8 of Part 2 of the Principal Regulations.

The effect of new subparagraph 2.40(8)(a)(iv) is to provide that a person will not during the transitional period between 1 July 2007 and 31 December 2007, have a prescribed status for a special purpose visa as a member of the crew of an imported ship if they have held or been refused an MCV. This will include persons who have had their MCV ceased or cancelled. This item ensures that crew members will not be eligible for both an MCV and special purpose visa during the transitional period.

Item [11] – After subparagraph 2.40(8A)(a)(iii)

This item inserts new subparagraph 2.40(8A)(a)(iv) in Division 2.8 of Part 2 of the Principal Regulations.

The effect of new subparagraph 2.40(8A)(a)(iv) is to provide that a person will not during the transitional period between 1 July 2007 and 31 December 2007, have a prescribed status for a special purpose visa as a spouse or dependent child of a member of the crew of a non-military ship if they have held or been refused an MCV. This will include spouses and dependent children who have had their MCV ceased or cancelled. This item ensures that spouses and dependent children of

members of the crew of a non-military ship will not be eligible for both an MCV and special purpose visa during the transitional period.

Item [12] – After regulation 2.40

This item inserts new regulation 2.40A in Division 2.8 of Part 2 of the Principal Regulations.

This regulation provides that the definitions of “member of the crew” and “non-military ship” as in force immediately before the commencement of these regulations apply to persons who continue to use the special purpose visa arrangements during the transitional period between 1 July 2007 and 31 December 2007. Items [1] and [2] of this Schedule amend the definitions of “member of the crew” and “non-military ship”.

The new definition of “member of the crew” is too broad to apply to special purpose visas which are granted by operation of law. The current definition provides much greater certainty as to when a person will be considered a member of the crew which is important when there is no formal application process before the visa is granted. By comparison, the new definition for “member of the crew” focuses on the features of a member of the crew.

The current definition of “non-military ship” will apply to persons who continue to use the special purpose visa arrangements during the transitional period. This is necessary because paragraph 2.40(1)(ka) of the Principal Regulations gives a prescribed status to members of the crew of ships being imported into Australia and the new definition of non-military ship as inserted by item [2] of this schedule omits ships that have been imported into Australia under section 49A of the Customs Act or entered for home consumption under section 71A of the Customs Act.

Item [13] – Paragraph 3.01(2)(d)

This item inserts “and” at the end of paragraph 3.01(2)(d) in Division 3.1 of Part 3 of the Principal Regulations.

This is a technical amendment which is required due to the insertion of new paragraph 3.01(2)(e) by item [14] of these amendments.

Item [14] – After paragraph 3.01(2)(d)

This item inserts new paragraph 3.01(2)(e) in Division 3.1 of Part 3 of the Principal Regulations.

This item provides that regulation 3.01 does not apply to MCV holders or applicants for an MCV who enter Australia on a non-military ship as a member of the crew of that non-military ship, or as the spouse or dependent child of a member of the crew of that non-military ship. Subregulation 3.01(3) requires a person to give a completed passenger card to an officer while subregulation 3.01(4) requires a person to provide to an officer certain information when required by the officer.

As a result, the effect of new paragraph 3.01(2)(e) is that MCV holders will not be required to give a passenger card to an officer or provide the information contained

in subregulation 3.01(4). However, the table in new subregulation 3.03AA(2) inserted by item [14] of this schedule, will allow a clearance officer to require from MCV holders any information mentioned in subregulation 3.01(4). Subregulation 3.01(4) allows an officer to require that a person provide to an officer information such as:

- name;
- date of birth
- citizenship;
- sex and marital status;
- usual occupation;
- passport number.

Members of the crew of non-military ships and the spouses and dependent children of such crew are currently not required to complete a passenger card under the special purpose visa arrangements. This item, together with new subregulation 3.03AA(3) inserted by item [15], ensures that MCV holders also do not have to provide passenger cards.

The exemption from producing a passenger card will also apply to any other visas held by an MCV holder, irrespective of whether that other visa has passenger card requirements. Subsection 82(2AA) of the Act (inserted by the Maritime Crew Act), allows MCVs to be held at the same time as other substantive visas that have been specified by the Minister by legislative instrument.

Item [15] – After regulation 3.03

This item inserts regulation 3.03AA in Division 3.1 of Part 3 of the Principal Regulations.

Subregulation 3.03AA(1) provides that the regulation applies to persons who hold MCVs and persons who continue to use, during the transitional period between 1 July 2007 and 31 December 2007, the special purpose visa arrangements for members of the crew of non-military ships and their spouses and dependent children.

The effect of subregulation 3.03AA(2) is to provide a clearance officer with the discretion to ask a person listed in subregulation (1) to provide certain information. The information is contained in a table in subregulation 3.03AA(2) and it includes information which will prove that the person is a member of the crew of a non-military ship, under offer to become a member of the crew of a non-military ship ('prospective member of the crew'), or the spouse or dependent child of a member of the crew or a prospective member of the crew of a non-military ship. The person is required to provide as much information as required by a clearance officer. For example, a clearance officer may require more than one piece of information in the table or they may not require any of the information.

The table distinguishes between persons who arrive in Australia by sea and persons who arrive in Australia by air. This distinction is necessary as persons may travel to Australia by air on another type of visa in order to join a non-military ship. These persons may only be a prospective member of the crew, or be the spouse or dependent child of a prospective member of the crew.

If the person claims to be a member of the crew of a non-military ship (or prospective member of the crew if they arrive by air), the information they may be asked to provide is:

- a document that identifies them as being a member of the crew of the non-military ship (or prospective member of the crew if they arrive by air); or
- a statement from the master, owner, agent, charterer or operator of the non-military ship that the person is a member of the crew of the ship (or prospective member of the crew if they arrive by air).

If the person claims to be a spouse (including a de facto spouse) of a member of the crew of a non-military ship (or prospective member of the crew if they arrive by air), the information they may be asked to provide is:

- a document that indicates they are a spouse of a member of the crew of the ship (or prospective member of the crew if they arrive by air), for example, a marriage certificate; or
- a statement from the master, owner, agent, charterer or operator of a non-military ship that they are the spouse of a member of the crew of the ship (or prospective member of the crew if they arrive by air).

If the person claims to be a dependent child of a member of the crew of a non-military ship (or prospective member of the crew if they arrive by air), the information they may be asked to provide is:

- a document which indicates that they are a dependent child of a member of the crew, for example, a birth or adoption certificate; or
- a statement from the master, owner, agent, charterer or operator of a non-military ship that the person is a dependent child of a member of the crew of the ship (or prospective member of the crew if they arrive by air).

In addition, the table in subregulation 3.03AA(2) also allows a clearance officer to require a person to provide any information mentioned in subregulation 3.01(4). Relevantly, information mentioned in subregulation 3.01(4) includes:

- name;
- date of birth
- citizenship;
- sex and marital status;
- usual occupation;
- passport number.

A person who refuses or who is unable to give a clearance officer this information when required will be refused immigration clearance under subparagraph 172(3)(b)(iii) of the Act. In addition, a person's visa will cease under section 174 of the Act if they do not comply with a requirement of a clearance officer to provide this information. In practice, clearance officers will informally ask a person what documentation they are carrying before requiring this documentation to ensure that the person's MCV will not cease unnecessarily.

Subregulation 3.03AA(3) provides that the passenger card requirements in subregulations 3.03(3) and (4) do not apply to a person who enters Australia as a member of the crew on a non-military ship or as a spouse or dependent child of a member of the crew on a non-military ship. This subregulation, in conjunction with new paragraph 3.01(2)(e) inserted by item [14], ensures that MCV holders and persons who continue to use the special purpose visa arrangements during the transitional period between 1 July 2007 and 31 December 2007, do not have to provide a clearance officer with a completed passenger card, irrespective of whether they hold another visa that has passenger card requirements.

Persons to whom subregulation 3.03AA(3) applies will be exempted only from the passenger card requirements in subregulations 3.03(3) and (4). These persons will continue to have to comply with evidence of identity requirements contained in these subregulations. For example, if a person holds an MCV and an Electronic Travel Authority (ETA) (Class UD) visa, they will still be required to provide an ETA-eligible passport.

Part 2 – Amendment of Schedule 1 to the *Migration Regulations 1994*

Item [16] – After item 1226

This item inserts new item 1227 Maritime Crew (Temporary) (Class ZM) in Schedule 1 to the Principal Regulations.

This item creates the new maritime crew visa class. It sets out the specific ways a non-citizen may apply for an MCV. An application for an MCV that is not made in accordance with item 1227 is not valid and cannot, in accordance with subsection 47(3) of the Act, be considered.

Sub-item 1227(1) provides that the application form for the MCV is form 1273 or 1273 (Internet). This means that the visa can be applied for using a paper form, or over the Internet.

Sub-item 1227(2) provides that there is no visa application charge for the MCV.

Sub-item 1227(3) sets out the other requirements for a valid MCV application. Paragraph 1227(3)(a) provides that the application for the MCV may be made in or outside Australia, but paragraph 1227(3)(b) provides that the applicant must be outside Australia. Paragraph 1227(3)(c) provides that an applicant for an MCV must not be the holder of a permanent visa.

Paragraph 1227(3)(d) provides 4 ways for making an MCV application. Subparagraph 1227(3)(d)(i) provides that an MCV application may be made by posting the application to the post office box address specified by the Minister in an instrument in writing. Subparagraph 1227(3)(d)(ii) provides that an MCV application may be made by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing. Subparagraph 1227(3)(d)(iii) provides that an MCV application may be made by having the application sent by facsimile to the address specified by the Minister in an instrument in writing. Subparagraph 1227(3)(d)(iv) provides that an MCV application may be made as an Internet application.

Paragraph 1227(3)(e) creates additional application requirements for persons who seek to satisfy the secondary criteria for grant of an MCV, that is, persons who claim to be spouses and dependent children of members of the crew of non-military ships or prospective members of the crew. Paragraph 1227(3)(e) provides that a person who seeks to satisfy the secondary criteria must claim to be the spouse or dependent child of an MCV holder who has satisfied the primary criteria for grant of the visa, or someone who seeks to satisfy or has satisfied the primary criteria for grant of the MCV. This paragraph ensures that spouses and dependent children of members of the crew cannot make a valid application for an MCV unless their spouse or parent holds an MCV or has made an application for an MCV. Persons seeking to satisfy the secondary criteria cannot make a combined application with persons seeking to satisfy the primary criteria, each person must make an individual application.

Sub-item 1227(4) provides that the subclass for the MCV is 988 (Maritime Crew).

Part 3 – Amendment of Schedule 2 to the *Migration Regulations 1994*

Item [17] – Sub-subparagraph 457.211(a)(ii)(D)

This item omits the word “or” in sub-subparagraph 457.211(a)(ii)(D) in Schedule 2 to the Principal Regulations.

This is a technical amendment which is necessary because item [18] inserts new sub-subparagraph 457.211(a)(ii)(E).

Item [18] – After sub-subparagraph 457.211(a)(ii)(D)

This item inserts new sub-subparagraph 457.211(a)(ii)(E) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant will satisfy the time of application criteria for primary applicants for a subclass 457 – Business (Long Stay) visa if they are the holder of a subclass 988 (Maritime Crew) visa.

Item [19] – After subparagraph 570.211(2)(a)(ix)

This item inserts new subparagraph 570.211(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of application criteria for a subclass 570 – Independent ELICOS Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [20] – After sub-subparagraph 570.227(c)(i)(I)

This item inserts new sub-subparagraph 570.227(c)(i)(IA) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of decision criteria for a subclass 570 – Independent ELICOS Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of decision criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [21] – After subparagraph 570.312(2)(a)(ix)

This item inserts new subparagraph 570.312(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a secondary applicant will satisfy the time of decision criteria for a subclass 570 – Independent ELICOS Sector visa if they are the

holder of Maritime Crew (Temporary) (Class ZM). Secondary applicants who hold a special purpose visa satisfy the time of decision criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [22] – After subparagraph 571.211(2)(a)(ix)

This item inserts new subparagraph 571.211(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of application criteria for a subclass 571 – Schools Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [23] – After sub-subparagraph 571.227(c)(i)(I)

This item inserts new sub-subparagraph 571.227(c)(i)(IA) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of decision criteria for a subclass 571 – Schools Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of decision criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [24] – After subparagraph 571.312(2)(a)(ix)

This item inserts new subparagraph 571.312(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a secondary applicant will satisfy the time of application criteria for a subclass 571 – Schools Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Secondary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [25] – After subparagraph 572.211(2)(a)(ix)

This item inserts new subparagraph 572.211(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of application criteria for a subclass 572 – Vocational Education and Training Sector

visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [26] – After sub-subparagraph 572.227(c)(i)(I)

This item inserts new sub-subparagraph 572.227(c)(i)(IA) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of decision criteria for a subclass 572 – Vocational Education and Training Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of decision criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [27] – After subparagraph 572.312(2)(a)(ix)

This item inserts new subparagraph 572.312(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a secondary applicant will satisfy the time of application criteria for a subclass 572 – Vocational Education and Training Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Secondary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [28] – After subparagraph 573.211(2)(a)(ix)

This item inserts new subparagraph 573.211(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of application criteria for a subclass 573 – Higher Education Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [29] – After sub-subparagraph 573.227(c)(i)(I)

This item inserts new sub-subparagraph 573.227(c)(i)(IA) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of decision criteria for a subclass 573 – Higher Education Sector visa if they are the

holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of decision criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [30] – After subparagraph 573.312(2)(a)(ix)

This item inserts new subparagraph 573.312(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a secondary applicant will satisfy the time of application criteria for a subclass 573 – Higher Education Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Secondary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [31] – After subparagraph 574.211(2)(a)(ix)

This item inserts new subparagraph 574.211(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of application criteria for a subclass 574 – Postgraduate Research Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [32] – After sub-subparagraph 574.227(c)(i)(I)

This item inserts new sub-subparagraph 574.227(c)(i)(IA) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of decision criteria for a subclass 574 – Postgraduate Research Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of decision criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [33] – After subparagraph 574.312(2)(a)(ix)

This item inserts new subparagraph 574.312(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a secondary applicant will satisfy the time of application criteria for a subclass 574 – Postgraduate Research Sector visa if they are

the holder of Maritime Crew (Temporary) (Class ZM). Secondary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [34] – After subparagraph 575.211(2)(a)(ix)

This item inserts new subparagraph 575.211(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of application criteria for a subclass 575 – Non-award Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [35] – After sub-subparagraph 575.227(c)(i)(I)

This item inserts new sub-subparagraph 575.227(c)(i)(IA) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of decision criteria for a subclass 575 – Non-award Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of decision criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [36] – After subparagraph 575.312(2)(a)(ix)

This item inserts new subparagraph 575.312(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a secondary applicant will satisfy the time of application criteria for a subclass 575 – Non-award Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Secondary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [37] – After subparagraph 576.211(2)(a)(ix)

This item inserts new subparagraph 576.211(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of application criteria for a subclass 576 – AusAID or Defence Sector visa if they are

the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [38] – After subparagraph 576.312(2)(a)(ix)

This item inserts new subparagraph 576.312(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a secondary applicant will satisfy the time of application criteria for a subclass 576 – AusAID or Defence Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Secondary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [39] – After subparagraph 580.211(2)(a)(ix)

This item inserts new subparagraph 580.211(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of application criteria for a subclass 580 – Student Guardian Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [40] – After sub-subparagraph 580.227(c)(i)(I)

This item inserts new sub-subparagraph 580.227(c)(i)(IA) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a primary applicant will satisfy the time of decision criteria for a subclass 580 – Student Guardian Sector visa if they are the holder of Maritime Crew (Temporary) (Class ZM). Primary applicants who hold a special purpose visa satisfy the time of decision criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [41] – After subparagraph 580.312(2)(a)(ix)

This item inserts new subparagraph 580.312(2)(a)(ixa) into Schedule 2 to the Principal Regulations.

The effect of this item is to provide that a secondary applicant will satisfy the time of application criteria for a subclass 580 – Student Guardian Sector visa if they are the

holder of Maritime Crew (Temporary) (Class ZM). Secondary applicants who hold a special purpose visa satisfy the time of application criteria for this visa (which currently includes members of the crew of non-military ships and their spouses and dependent children) and this item ensures that these persons will continue to satisfy this criteria following the introduction of the MCV.

Item [42] – Sub-subparagraph 773.511(a)(ii)(A)

This item substitutes sub-subparagraph 773.511(a)(ii)(A) in Schedule 2 to the Principal Regulations with new sub-subparagraph 773.511(a)(ii)(A).

The effect of this item is to add subclass 988 (Maritime Crew) visa to the exception to substantive visas in the “when visa is in effect” for subclass 773 – Border visa so that it will be treated in the same way a special purpose visa. Subparagraph 773.511(a)(ii) relevantly provides that if an applicant holds another substantive visa (other than a special purpose visa) that is in effect at the date of grant of a Border visa and the other substantive visa ceases during the period beginning at the grant of a Border visa and ending at the end of the period specified in the Border visa, then the Border visa will come into effect when the other substantive visa ceases. This item adds MCVs to the exception to substantive visas.

Item [43] – After paragraph 845.211(e)

This item inserts new paragraph 845.211(ea) into Schedule 2 to the Principal Regulations.

The effect of this amendment is to add Maritime Crew (Temporary) (Class ZM) to the list of visas that a primary applicant may hold to satisfy the primary criteria for a subclass 845 – Established Business in Australia visa.

Item [44] – After subparagraph 855.211(1)(a)(ii)

This item inserts new subparagraph 855.211(1)(a)(ia) into Schedule 2 to the Principal Regulations.

The effect of this amendment is to add Maritime Crew (Temporary) (Class ZM) to the list of visas that a primary applicant must not hold to satisfy the primary criteria for a subclass 855 – Labour Agreement visa. Currently special purpose visas (which may include members of the crew of non-military ships and their spouses and dependent children) are listed as a visa that a primary applicant must not hold and this item ensures that these persons will continue to not be able to satisfy the time of application criteria for a subclass 855 visa.

Item [45] – After sub-subparagraph 855.211(2)(a)(i)(B)

This item inserts new sub-subparagraph 855.211(2)(a)(i)(BA) into Schedule 2 to the Principal Regulations.

The effect of this amendment is to add Maritime Crew (Temporary) (Class ZM) to the list of substantive visas that a primary applicant must not have last held to satisfy the primary criteria for subclass 855 – Labour Agreement visa. Currently special purpose visas (which may include members of the crew of non-military ships and

their spouses and dependent children) are listed as a visa that a primary applicant must not have last held and this item ensure that these persons will continue to not be able to satisfy the time of application criteria for a subclass 855 visa.

Item [46] – After subparagraph 856.211(1)(a)(ii)

This item inserts new subparagraph 856.211(1)(a)(ia) into Schedule 2 to the Principal Regulations.

The effect of this amendment is to add Maritime Crew (Temporary) (Class ZM) to the list of visas that a primary applicant must not hold to satisfy the primary criteria for a subclass 856 – Employer Nomination Scheme visa. Currently special purpose visas (which may include members of the crew of non-military ships and their spouses and dependent children) are listed as a visa that a primary applicant must not hold and this item ensure that these persons will continue to not be able to satisfy the time of application criteria for a subclass 856 visa.

Item [47] – After sub-subparagraph 856.211(2)(b)(i)(B)

This item inserts new sub-subparagraph 856.211(2)(b)(i)(BA) into Schedule 2 to the Principal Regulations.

The effect of this amendment is to add Maritime Crew (Temporary) (Class ZM) to the list of substantive visas that a primary applicant must not have last held to satisfy the primary criteria for a subclass 856 – Employer Nomination Scheme visa. Currently special purpose visas (which may include members of the crew of non-military ships and their spouses and dependent children) are listed as a visa that a primary applicant must not have last held and this item ensure that these persons will continue to not be able to satisfy the time of application criteria for a subclass 856 visa.

Item [48] – After subparagraph 857.211(1)(a)(ii)

This item inserts new subparagraph 857.211(1)(a)(ia) into Schedule 2 to the Principal Regulations.

The effect of this amendment is to add Maritime Crew (Temporary) (Class ZM) to the list of visas that a primary applicant must not hold to satisfy the primary criteria for a subclass 857 – Regional Sponsored Migration Scheme visa. Currently special purpose visas (which may include members of the crew of non-military ships and their spouses and dependent children) are listed as a visa that a primary applicant must not hold and this item ensure that these persons will continue to not be able to satisfy the time of application criteria for a subclass 857 visa.

Item [49] – After sub-subparagraph 857.211(2)(a)(i)(B)

This item inserts new sub-subparagraph 857.211(2)(a)(i)(BA) into Schedule 2 to the Principal Regulations.

The effect of this amendment is to add Maritime Crew (Temporary) (Class ZM) to the list of substantive visas that a primary applicant must not have last held to satisfy the primary criteria for a subclass 857 – Regional Sponsored Migration Scheme visa.

Currently special purpose visas (which may include members of the crew of non-military ships and their spouses and dependent children) are listed as a visa that a primary applicant must not have last held and this item ensure that these persons will continue to not be able to satisfy the time of application criteria for a subclass 857 visa.

Item [50] – After subparagraph 858.211(1)(a)(ii)

This item inserts new subparagraph 858.211(1)(a)(ia) into Schedule 2 to the Principal Regulations.

The effect of this amendment is to add Maritime Crew (Temporary) (Class ZM) to the list of visas that a primary applicant must not hold to satisfy the primary criteria for a subclass 858 – Distinguished Talent visa. Currently special purpose visas (which may include members of the crew of non-military ships and their spouses and dependent children) are listed as a visa that a primary applicant must not hold and this item ensure that these persons will continue to not be able to satisfy the time of application criteria for a subclass 858 visa.

Item [51] – After sub-subparagraph 858.211(2)(b)(i)(B)

This item inserts new sub-subparagraph 858.211(2)(b)(i)(BA) into Schedule 2 to the Principal Regulations.

The effect of this amendment is to add Maritime Crew (Temporary) (Class ZM) to the list of substantive visas that a primary applicant must not have last held to satisfy the primary criteria for a subclass 858 – Distinguished Talent visa. Currently special purpose visas (which may include members of the crew of non-military ships and their spouses and dependent children) are listed as a visa that a primary applicant must not have last held and this item ensure that these persons will continue to not be able to satisfy the time of application criteria for a subclass 858 visa.

Item [52] - Sub-subparagraph 956.511(a)(ii)(A)

This item substitutes sub-subparagraph 956.511(a)(ii)(A) in Schedule 2 to the Principal Regulations with new sub-subparagraph 956.511(a)(ii)(A).

The effect of this item is to add subclass 988 (Maritime Crew) visa to the exceptions to substantive visas in the “when visa is in effect” for a subclass 956 – Electronic Travel Authority (ETA) (Business Entrant – Long Validity) visa. Subparagraph 956.511(a)(ii) relevantly provides that if an applicant holds another substantive visa (other than a special purpose visa) that is in effect at the date of grant of ETA and the other substantive visa ceases during the period beginning at the grant of the ETA and ending at the end of the period specified in the ETA, then the ETA will come into effect when the other substantive visa ceases. This item adds MCVs to the exception to substantive visas.

Item [53] - Sub-subparagraph 976.511(a)(ii)(A)

This item substitutes sub-subparagraph 976.511(a)(ii)(A) in Schedule 2 to the Principal Regulations with new sub-subparagraph 976.511(a)(ii)(A).

The effect of this item is to add subclass 988 (Maritime Crew) visa to the exception to substantive visas in the “when visa is in effect” for a subclass 976 – ETA (Visitor) visa. Subparagraph 976.511(a)(ii) relevantly provides that if an applicant holds another substantive visa (other than a special purpose visa) that is in effect at the date of grant of this ETA and the other substantive visa ceases during the period beginning at the grant of this ETA and ending at the end of the period specified in the ETA, then the ETA will come into effect when the other substantive visa ceases. This item adds MCVs to the exception to substantive visas.

Item [54] - Sub-subparagraph 977.511(a)(ii)(A)

This item substitutes sub-subparagraph 977.511(a)(ii)(A) in Schedule 2 to the Principal Regulations with new sub-subparagraph 976.511(a)(ii)(A).

The effect of this item is to add subclass 988 (Maritime Crew) visa to the exception to substantive visas in the “when visa is in effect” for a subclass 977 – ETA (Business Entrant – Short Validity) visa. Subparagraph 977.511(a)(ii) relevantly provides that if an applicant holds another substantive visa (other than a special purpose visa) that is in effect at the date of grant of this ETA and the other substantive visa ceases during the period beginning at the grant of this ETA and ending at the end of the period specified in the ETA, then the ETA will come into effect when the other substantive visa ceases. This item adds MCVs to the exception to substantive visas.

Item [55] – After Part 977

This item inserts new Part 988 into Schedule 2 to the Principal Regulations. The new Part sets out the criteria for grant, circumstances applicable to grant, when visa is in effect, conditions and way of evidencing for subclass 988 (Maritime Crew) visas

Interpretation

Division 988.1 defines a number of terms used in connection with the MCV.

Clause 988.111 provides that a person is taken to “sign on” to a non-military ship in Australia on the day notified to the Department by the Australian Customs Service (‘Customs’). Note 2 at the end of clause 988.111 provides that a person will “sign on” to a non-military ship in Australia when they:

- travel to Australia on another visa in order to join the ship as a member of the crew;
- join the ship after signing off another ship in Australia; or
- join another ship in Australia after the ship on which they travelled to Australia is imported under section 49A of the Customs Act or entered for home consumption under section 71A of the Customs Act.

The primary purpose of the definition is to establish a definitive time for when “sign on” to a non-military ship in Australia occurs, as new clause 988.512 will provide that an MCV ceases if, amongst other things, a person has failed to sign on to a non-military ship in Australia after certain prescribed periods and after the specified

events indicated in note 2. Customs officers closely supervise the sign on process of all members of the crew and their spouses and dependent children and place a “sign on stamp” in the passport of persons signing on to non-military ships once the officer is satisfied that the person is a genuine member of crew or a spouse or dependent child of a member of crew. Customs officers then make an electronic record of the date that the crew member signed on which is electronically communicated to the Department’s computer systems.

Clause 988.112 provides that a person is taken to have “signed off” a non-military ship on the day notified to the Department by Customs. The primary purpose of the definition is to establish a definitive time of when a person “signs off” a non-military ship. This is important because clause 988.512 provides that an MCV will cease if, amongst other things, after signing off a non-military ship and after a prescribed period, the person:

- fails to sign on to another non-military ship; and
- has not departed Australia.

Clause 988.113 provides that a non-military ship is “imported under section 49A of the Customs Act or entered for home consumption under section 71A of the Customs Act” on the day notified to the Department by Customs. The primary purpose of the definition is to establish a definitive time of when a non-military ship is imported under section 49A of the Customs Act or entered for home consumption under section 71A of the Customs Act. This is important because clause 988.512 provides that an MCV will cease if the non-military ship on which the holder is a member of the crew is imported under section 49A or entered for home consumption under section 71A of the Customs Act, unless during a prescribed period, the person:

- signs on to another non-military ship; or
- departs Australia.

Sections 49A and 71A of the Customs Act are the provisions used by Customs to import a vessel into Australia or enter a vessel for home consumption.

Primary criteria

Division 988.2 inserts the primary criteria for the grant of an MCV. The note at the commencement of the clause provides that spouses and dependent children of members of the crew need only satisfy the secondary criteria for the MCV.

Subdivision 988.21 creates the criteria to be satisfied at time of application of an MCV for persons seeking to satisfy the primary criteria. An applicant will be able to satisfy this time of application criteria in two ways. The first, provided for by paragraph 988.221(a), is that the applicant is a member of the crew of a non-military ship. The second, provided for by 988.221(b), is that the applicant has received an offer from the master, owner, agent, charterer or operator of a non-military ship to become a member of the crew, provided that offer is current and the person will become a member of the crew when they sign on to that ship.

Subdivision 988.22 creates the criteria to be satisfied at the time of decision of an MCV application for persons seeking to satisfy the primary criteria. This includes all

the criteria that are required to be satisfied at time of application. In addition, persons seeking to satisfy the primary criteria at the time of decision must satisfy the following public interest criteria set out in Schedule 4 of the Principal Regulations:

- 4001 (character test);
- 4002 (applicant is not assessed by ASIO to pose a security risk to Australia);
- 4003 (applicant is not determined by the Foreign Minister to be a person whose presence in Australia is contrary to Australia's foreign policy interests or whose presence in Australia is directly or indirectly associated with proliferation of weapons of mass destruction);
- 4013 (within the last 3 years, a visa previously held by the applicant has not been cancelled); and
- 4014 (within the last 3 years, applicant did not leave Australia as an unlawful non-citizen or as the holder of certain bridging visas).

Finally, to meet the criteria at the time of decision, persons seeking to satisfy the primary criteria must satisfy the following special return criteria set out in Schedule 5 of the Principal Regulations:

- 5001 (applicant has not been deported on criminal or security grounds or had a previous visa cancelled on character grounds); and
- 5002 (applicant has not been removed from Australia within last 12 months).

Secondary criteria

Division 988.3 inserts secondary criteria for the MCV. The note at the commencement of division 988.3 provides that these criteria must be satisfied by the spouses or dependent children of a member of the crew of a non-military ship or prospective member of the crew of a non-military ship.

Subdivision 988.31 provides that persons who seek to satisfy the secondary criteria for the MCV do not need to satisfy any criteria at the time of application.

Subdivision 988.32 inserts the criteria to be satisfied by persons who seek to satisfy the secondary criteria at the time of decision for the MCV. Paragraph 988.321(a) refers to the criteria to be satisfied by spouses while paragraph 988.321(b) refers to criteria to be satisfied by dependent children. Persons will satisfy the time of decision criteria if they are the spouse or dependent child of a person who is the holder of an MCV having satisfied the primary criteria, that is, who is a member of the crew of a non-military ship or under offer to become a member of the crew of a non-military ship.

Clause 988.322 provides that to satisfy the time of decision criteria for the MCV, secondary applicants must satisfy the same public interest criteria as primary applicants, that is, 4001, 4002, 4003, 4013 and 4014.

Clause 988.323 provides that to satisfy the time of decision criteria for the MCV, secondary applicants must satisfy the same special return criteria as primary applicants, that is, 5001 and 5002.

Circumstances applicable to grant

Division 988.4 inserts the circumstances applicable to grant of an MCV. Clause 988.411 provides that the applicant may be either inside or outside Australia when the MCV is granted.

When visa is in effect

Division 988.5 provides for when the visa is in effect.

Clause 988.511 provides that the MCV is a temporary visa which comes into effect when it is granted.

Clause 988.512, including the table, creates events that will cease an MCV and if those events occur, the time at which the visa ceases to be in effect. Paragraph 988.512(a) provides that an MCV ceases to be in effect on the occurrence of the earliest circumstances mentioned in an item in the subsequent table. In such an instance, paragraph 988.512(b) provides that the MCV will cease at the time mentioned in the item in the table.

The circumstances in item 1 of the table relate to an MCV holder who enters Australia other than as a member of the crew on a non-military ship or as the spouse or dependent child of a member of the crew on a non-military ship (paragraph (a) of column 2 of item 1). This includes situations where a person obtains a visitor visa or transit visa to enter Australia by air in order to join a non-military ship that is already in Australia. In such circumstances, paragraph (b) provides that the MCV will cease if the holder has not signed onto a non-military ship by the latest of three times:

- 5 days after the day on which the holder last entered Australia;
- 30 days after the holder last entered Australia if they were required to enter Australia for health and safety reasons; or
- if they hold another visa, the day on which this other visa ceases.

This ensures that an MCV holder who enters Australia by air or for health and safety reasons, for example being airlifted from a ship for urgent medical treatment, must sign on to a non-military ship as a member of the crew, or spouse or dependent child of a member of the crew within the specified periods. It will prevent an MCV holder from staying in Australia for the maximum period (3 years under item 4 of the table) unless they sign on to a non-military ship. It will also allow an appropriate period for a crew member to recuperate from any treatment before having to sign on to a ship.

If the MCV ceases because the circumstances in item 1 occur, then the MCV will cease at the end of the day or period worked out under paragraph (b) (column 3 of item 1 of the table). For example, if the MCV ceases under dot point 2 above, the MCV will cease at the end of the day when that 30 day period concludes.

Item 2 of the table relates to an MCV holder who has entered Australia on a non-military ship as a member of the crew or spouse or dependent child of a member of the crew, and that ship is imported under section 49A of the Customs Act or entered for home consumption under section 71A of the Customs Act. The MCV will cease unless the holder:

- signs on to another non-military ship within 5 days (or a longer period of up to 30 days when authorised to do so by an authorised officer) after the date of importation or entry for home consumption;
- departs Australia within 5 days (or a longer period of up to 30 days when authorised to do so by an authorised officer) after the date of importation or entry for home consumption; or
- if they hold another visa that is in effect, departs Australia by the day that other visa ceases.

Column 3 of the table for item 2 provides that the MCV will cease at the end of the day of the longest period that applies to the holder after importation or entry for home consumption. For example, if the person has not been authorised by an authorised officer to stay beyond 5 days and they do not hold another visa, then the MCV will cease at the end of the day when this 5 day period concludes. Alternatively, if the person has been authorised by an authorised officer to remain in Australia for 30 days after their ship has been imported or entered for home consumption and they do not hold another visa, then the MCV will cease at the end of the day when this 30 day period concludes. If the person holds another visa, and it does not cease until after the 5 day period (or 30 days, if that period has been extended), then the visa will cease at the end of the day that this other visa ceases. This other visa may be one that was granted before the ship was imported or entered for home consumption, or it may be a visa that was granted during the 5 day period (or 30 days, if that period is extended) after the ship was imported or entered for home consumption.

Item 3 of the table applies to MCV holders who have entered Australia and who sign off a non-military ship in Australia as a member of the crew or as the spouse or dependent child of a member of the crew. Column 2 of item 3 provides that in such circumstances, the MCV will cease unless the holder:

- signs on to another non-military ship within 5 days of the date of sign off from the last ship, or a longer period of up to 30 days when authorised to do so by an authorised officer;
- departs Australia within 5 days of the date of sign off from the last ship, or a longer period of up to 30 days when authorised to do so by an authorised officer; or
- if they hold another visa that is in effect, departs Australia by the day on which that other visa ceases.

Column 3 of the table in item 3 provides that the MCV will cease at the end of the day of the longest period that applies to the holder after sign off from the last ship. For example, if the person has not been authorised by an authorised officer to stay beyond 5 days and they do not hold another visa, then the MCV will cease at the end of the day when this 5 day period concludes. Alternatively, if the person has been authorised by an authorised officer to remain in Australia for 30 days after they have signed off from their ship and they do not hold another visa, then the MCV should cease at the end of the day when this 30 day period concludes. If the person holds another visa, and it does not cease until after the 5 day period (or 30 days, if that period has been extended), then the visa will cease at the end of the day on the day when this other visa ceases. This other visa may be one that was granted before the ship was imported or entered for home consumption, or it may be a visa that was

granted during the 5 day period (or 30 days, if that period is extended) after the ship was imported or entered for home consumption.

Item 4 of the table provides that an MCV ceases 3 years after the day on which the visa is granted. Consequently, an MCV will remain in effect for a maximum period of 3 years, unless it ceases before this time under one of the other cessation events, is ceased by the Minister under subsection 38B(3) of the Act or is cancelled under the cancellation provisions in the Act.

Column 2 of item 5 of the table provides that an MCV held by a spouse or dependent child of a member of the crew will cease if the MCV granted to their spouse or parent ceases to be in effect. Column 3 of item 5 provides that in such circumstances, the MCV of the spouse or dependent child will cease at the end of the day on which their spouse or parent's MCV ceases. The visa will cease at the end of the day because subsection 82(7) of the Act relevantly provides that a visa to remain in Australia until a particular date (which includes the date a specified event occurs), ceases to be in effect on that date.

Column 2 of item 6 of the table provides that an MCV ceases if the holder holds another visa which is cancelled otherwise than under sections 501, 501A or 501B of the Act. It is not necessary to have a cessation event for visas cancelled under sections 501, 501A or 501B of the Act because subsection 501F(3) of the Act relevantly provides that where the Minister cancels a visa under these sections, the Minister is taken to cancel any other visa held by the person. Column 3 of item 6 of the table provides that visas which cease under column 2, will cease at the end of the day on which the other visa is cancelled. The visa will cease at the end of the day because subsection 82(7) of the Act relevantly provides that a visa to remain in Australia until a particular date, ceases to be in effect on that date.

Conditions

Division 988.6 provides the conditions which attach to the MCV.

Clause 988.611 provides that condition 8113 is attached to persons who satisfy the primary criteria for grant of the MCV, that is, a member of the crew of a non-military ship or persons under offer to become a member of the crew of a non-military ship. Condition 8113 is a new condition inserted by item [56] of this schedule. It provides that the holder of an MCV must not work in Australia, other than as a member of the crew of a non-military ship.

Clause 988.612 provides that condition 8101 applies to MCV applicants who satisfy the secondary criteria, that is, spouses and dependent children of members of the crew of non-military ships and spouses and dependent children of persons under offer to become a member of the crew of a non-military ship. Condition 8101 is an existing condition in Schedule 8 of the Principal Regulations which provides that the holder must not engage in work in Australia. Consequently, MCV holders who are spouses and dependent children of members of the crew of non-military ships will not be able to work in Australia unless they hold another visa which permits work.

Way of giving evidence

Clause 988.711 provides that no evidence need to be given for the MCV.

Part 4 – Amendment of Schedule 8 of the *Migration Regulations 1994*

Item [56] – After 8112

This item inserts condition 8113 into Schedule 8 to the Principal Regulations.

Condition 8113 provides that the holder of an MCV must not work in Australia other than as a member of the crew of a non-military ship. As mentioned in clause 988.611, this condition will attach to MCV holders who satisfied the primary criteria. Persons who satisfy the primary criteria as a member of the crew of a non-military ship or under offer to become a member of the crew and who wish to work in Australia other than as a member of the crew of a non-military ship, will need to apply for another visa which permits work in Australia.

Schedule 2 - Amendments maritime crew visas – commencing on 1 January 2008

Item [1] – Paragraphs 2.40(1)(k), (kaa) and (ka)

This item removes paragraphs 2.40(1)(k), (kaa) and (ka) from Division 2.8 in Part 2 of the Principal Regulations.

Subregulation 2.40(1) provides that certain classes of people have a prescribed status for grant of a special purpose visa for the purposes of paragraph 33(2)(a) of the Act. Relevantly, a prescribed status is given to members of the crew of non-military ships (other than ships being imported into Australia) under paragraph 2.40(1)(k), spouses and dependent children of members of the crew of non-military ships (other than ships being imported into Australia) under paragraph 2.40(1)(kaa) and members of the crew of ships being imported into Australia under paragraph 2.40(1)(ka).

At the conclusion of the 6 month transitional period on 1 January 2008, each of the classes of persons listed in these paragraphs will need to apply for an MCV or another visa and will not be eligible for a special purpose visa. Consequently, paragraphs 2.40(1)(k), (kaa) and (ka) are to be removed from 1 January 2008.

Item [2] – Subregulation 2.40(4)

This item removes the reference to paragraphs 2.40(1)(k)(kaa) and (ka) in subregulation 2.40(4) in Division 2.8 of Part 2 of the Principal Regulations. As item [1] of this Schedule removes paragraphs 2.40(1)(k), (kaa) and (ka), this subregulation no longer needs to refer to these paragraphs.

Item [3] - Subregulations 2.40(6) to (8B), including the subheadings and the note

This item removes subregulations 2.40(6), (6A), (7), (8), (8A) and (8B) from Division 2.8 of Part 2 of the Principal Regulations.

Subregulation 2.40(6) outlines when a person listed in paragraph 2.40(1)(k) (members of the crew of non-military ships other than ships being imported into Australia) has a prescribed status for a special purpose visa. Subregulation 2.40(6A) indicates when a person is taken to have signed off a ship. Subregulation 2.40(7) indicates when a crew member who signs off a ship has a prescribed status for a special purpose visa. Subregulation 2.40(8) indicates when crew members of imported ships have a prescribed status. Subregulation 2.40(8A) indicates when spouses and dependent children of crew members have a prescribed status for a special purpose visa. Subregulation 2.40(8A) creates a definition of “relevant primary person” for the purposes of paragraph 2.40(1)(kaa).

Each of these subregulations relate to, or are incidental to having a prescribed status for special purpose visas for members of the crew of non-military ships and the spouses and dependent children of such crew. They can therefore be removed from 1 January 2008 when paragraphs 2.40(1)(k), (kaa) and (ka) are removed.

Item [4] – Regulation 2.40A

This item removes regulation 2.40A from Division 2.8 of Part 2 of the Principal Regulations.

Regulation 2.40A is inserted by item [12] of Schedule 1 of these amendments. This regulation creates special arrangements for members of the crew of non-military ships and the spouses and dependent children of such crew who continue to use the special purpose visa arrangements during the 6 month transitional period between 1 July 2007 and 31 December 2007. As a result, it can be removed from 1 January 2008 when the special purpose visa arrangements for members of the crew of non-military ships and spouses and dependent children of such persons are removed by these regulations.

Item [5] – Subregulation 3.03AA(1)

This item substitutes subregulation 3.03AA(1) in Division 3.1 of Part 3 of the Principal Regulations with new subregulation 3.03AA(1).

The effect of this item is to provide that the evidence of identity and providing information requirements in regulation 3.03AA only apply to MCV holders from 1 January 2008. Regulation 3.03AA is inserted by item [15] in Schedule 1 of these amendments. During the transitional period between 1 July 2007 and 31 December 2007, this regulation will apply to both MCV holders and persons who satisfy the prescribed criteria for a special purpose visa on the basis of being a member of the crew of a non-military ship or as their spouse or dependent child of a member of the crew. The reference to special purpose visas can be removed from 1 January 2008 when special purpose visas will no longer be available to members of the crew of non-military ships and their spouses and dependent children.

Item [6] – Schedule 9, items 16 and 16A

This item removes items 16 and 16A of Part 1 of Schedule 9 to the Principal Regulations.

Items 16 and 16A of Part 1 of Schedule 9 create special immigration clearance arrangements for members of the crew of non-military ships and spouses and dependent children of members of the crew of non-military ships. Under these items, these persons are not required to complete and provide a passenger card. Also, these items provide that such persons must show as evidence of their identity a passport that is in force and for members of the crew of non-military ships, a document that identifies the person as a seafarer employed on that ship.

Passenger card exemptions and evidence of identity requirements for MCV holders will now be provided for by new regulation 3.03AA, inserted by item [15] of Schedule 1 of these amendments. Items 16 and 16A will continue to apply special immigration clearance arrangements to members of the crew of non-military ships and spouses and dependent children of members of the crew of non-military ships who use the special purpose visa arrangements during the transitional period. It can therefore be removed from 1 January 2008 when these special purpose visa arrangements are removed.

ATTACHMENT C

REGULATION IMPACT STATEMENT

What is the problem being addressed?

1. In December 2004, the Government asked agencies to report on whether a sea crew visa should be introduced for foreign sea crew and to advise on the costs and implementation arrangements. This examination reflected a concern that the existing visa and entry arrangements for seafarers provided more limited opportunity for security checking than arrangements for other non-citizens temporarily entering Australia.

Objective

2. To improve the security arrangements for foreign sea crew entering Australia.

Current arrangements

3. The current arrangements for sea crew involve a visa that is granted by operation of law (that is, without a visa application process) provided the seafarer meets a prescribed description of a person entitled to a special purpose visa (SPV) and meets certain documentary requirements (that is, they hold a valid passport and seafarers identity document) and are part of the vessel's crew when the vessel enters Australia. All crew are checked against alert lists of known persons of concern prior to their arrival (based on the details of vessels, crew and passengers provided in pre-arrival reporting obligations under the *Customs Act 1901*) but there is no visa application process and no means of conducting the security checking undertaken for other non-citizens as part of their visa applications.

4. Vessels are currently checked on a risk basis rather than 100 per cent of vessels. Currently, about 76 per cent of vessels are checked at their first-port. The arrival checking is not necessarily immediately on arrival but at some time during the first-port stay. Not all crew are face-to-passport checked – it may be limited to verifying the identity of crew that have not been previously verified against a particular document. There is therefore a heavy reliance on the master accurately reporting on arrivals and departures. This contrasts with air crew who are all face-to-passport checked on every entry to Australia.

5. Retaining the current arrangements was not considered to be an option because of potential security concerns about foreign sea crew on non-military ships.

Options

6. After consideration of various alternatives, Government decided that the most cost and resource effective way of achieving its objective (to improve security arrangements for foreign sea crew entering Australia), was to implement a staged approach to the introduction of a new maritime crew visa. A staged approach has involved a pre-implementation period which is to be followed by a transitional period to enable carriers and crew to adapt to the new visa arrangements.

7. The introduction of the new maritime crew visa will also continue to rely on Australia's ability to check crew bona fides before they enter Australia. Under Customs legislation obligatory pre-arrival reports have to be submitted by the master of a vessel seeking to enter Australia. Under the reporting arrangements, all crew and passenger information has to be supplied to Customs within the prescribed time frames. The prescribed reporting times depend on the length of the journey being undertaken by the vessel. They are 96 hours in the case of a vessel whose journey to Australia is in excess of that period of time; 72 hours if the journey is 72 hours or more in duration but less than 96 hours; 48 hours where the journey is 48 hours or more in duration but less than 72 hours; 24 hours where the journey is 24 hours or more in duration but less than 48 hours; and 12 hours where the journey is less than 24 hours duration. These time frames will allow officials to conduct bona fides checks on crew intending to enter Australia. The new application process will also afford officials a database of information about crew which can be used for comparison in this bona fides checking process.

Impact analysis

8. The parties that will be affected by the the introduction of a maritime crew visa are the maritime industry (masters, owners, operators, charterers and agents), foreign seafarers entering Australia, Australian industry utilising maritime services, the Government (DIAC, Customs, ASIO, and DOTARS) and the broader Australian community.

The Maritime industry

9. The decision to adopt a new maritime crew visa will mean a change to industry practice. Concerted industry consultation and education has been needed and this has been underway since March 2006 in order to afford industry the time to adapt to the new requirements, the lead times necessary to comply and assimilate the consequences of failure to comply with the new visa arrangements. Prior to the Government's decision to introduce a maritime crew visa, industry was consulted on the principle of introducing a new visa for foreign crew. As well as adjustment costs for industry, there will be ongoing compliance costs for industry – in terms of conforming to a new application process in which critical biographical data on all crew members will be required, verification of visa status and loss of flexibility to change crew shortly before arrival in Australia. Consultations with industry since March 2006 have focused industry's attention on the need for crew to apply for visas in sufficient time before coming to Australia where that is possible in order to minimise the number of restrictions onboard. Reduced flexibility in crewing arrangements may be a problem for "tramp vessels" which undertake ad hoc cargo contracts and enforcement arrangements need to make allowance for the way these vessels operate. Due to the changes required to industry practice, fairness dictated that a staged approach to implementation has been necessary, to allow industry time to adjust to the new requirements.

10. The staged approach has involved more than a 12 months pre-implementation period. A further six months transition period will be available from 1 July 2007 to phase out the special purpose visa regime as it now applies to crew on non-military ships. During the transitional phase, carriers (masters, owners, operators, agents and charterers of vessels) will have to ensure that their crew obtain the new maritime crew visa by 31 December 2007. During the six months transitional period, crew without the new maritime crew visa will continue to be entitled to the grant of the current special purpose visa if they do not acquire a maritime crew visa and are qualified for a special purpose visa.

11. Carriers – that is masters, owners, operators, agents and charterers of vessels – will become responsible for ensuring that all sea crew hold visas before arrival in Australia, where this is possible. This will involve lodging applications by or on

behalf of crew and checking visa status of crew. There is to be no visa application charge in recognition of the particular circumstances of the maritime industry in meeting a visa requirement although there will be an administrative cost in applying for visas and validating visa status for crew (using 2004/05 statistics, there were around 136,000 individual sea crew arrivals, on around 11,000 vessel arrivals).

12. The application process will generally be quick because of the availability of an online internet application process. In addition, a downloadable electronic application form will be available for use for paper based applications. Online applications will be processed electronically and, provided there is no security issue or match with alert systems, the visas will be granted quickly and electronically. There will be no need to evidence the visa in a crew member's passport or other seafarers' identity document. Applications that require a detailed security check will be delayed by an estimated 1-2 weeks.

13. The Department of Industry Tourism and Resources (DITR) estimated that a large cruise ship would have \$8,360 of labour costs for assembling the information, lodging the applications online, checking results and advising responsible ships officers. An additional \$62,650 has been avoided by not introducing a \$50 visa application charge. Additional costs are likely to be passed on to passengers.

14. After full implementation of the new maritime crew visa, carriers who do not take reasonable steps to obtain visas for their crew will be subject to infringement (currently \$5,000 per case). This cost will be avoidable with appropriate care exercised by carriers. During the six months transition period considerable flexibility will be shown to carriers whose crew do not immediately acquire the new maritime crew visa. Such crew who do not hold a maritime crew visa will, for the transitional period, fall within the special purpose visa safety net.

15. There will be compliance costs (for the masters, owners, operators, agents and charterers of vessels) for restricting persons on vessels, and, in some cases, for onshore detention or guard costs, where it is determined that these are the appropriate form of detention required. This reflects current practice and is not expected to present a difficulty for industry which, since March 2006 has been conditioned to the introduction of the new maritime crew visa in July 2007.

16. All businesses which operate vessels that use non-Australian crew and who enter Australia would be impacted by a sea crew visa requirement in the same way, that is by the sea crew visa application and verification processes. Smaller operators might be more affected if they do not have access to the Internet or Email and need to use a shipping agent to apply for visas on behalf of their crew and to check the visa status of particular crew. The availability of a third party process which will allow parties such as shipping or manning agents to lodge applications on behalf of crew will diminish this potential difficulty. While the intention is to allow a paper visa application option, this will not be capable of being processed as quickly as an electronic visa. There will be no paper equivalent of the visa verification arrangements. The Office of Small Business has estimated that small shipping agents could face compliance costs of around \$360 in the first year, (lower in subsequent years because the visa would be valid for three years. This is based on an estimate that each of 200-300 small shipping agents handling around 54 applications each (10 per cent of total visa applications) and allowing 15 minutes per application for assembling the information, lodging the application online, checking the results and advising responsible ships officers.

17. Representatives of the maritime industry raised concerns that there could be an impact on Australian export industry from the introduction of a sea crew visa. Given the dependence of the Australian economy on exports, the imposition of a visa requirement (and associated administrative costs) with practical and operational implications for ship operators, may lead to some operators, at a time of high demand for their shipping services, moving their business to markets without such requirements. It could also lead to a premium being placed on chartering vessels for Australian trade. The Department of Transport and Regional Services (DOTARS) considers that the impact would be less for liners (which generally operate on fixed schedules) and greater for vessels carrying bulk cargoes which often have no fixed schedule and which may arrange shipments at short notice. Australia's exports rely heavily on this sector of the industry. DOTARS have advised that it is not possible to quantify the possible impact on the industry. The direct impact on industry would be a function of the number of visas not able to be granted within a ship's normal sailing time to Australia, the proportion of crew restricted onboard and their functions.

Sea crew

18. The use of the pre-implementation period and a further six months transitional period in the staged approach to the introduction of the new maritime crew visa is expected to be reflected in a high degree of compliance by sea crew compared to any option not involving a transitional period to phase in the new visa.

The Australian community

19. While the new visa arrangements will be more expensive for both industry and government, it will allow for security assessments to be completed before arrival in the majority of cases and identify those who receive an unfavourable security assessment before arrival. It would also be responsive to changes in security checking requirements over time.

20. It is difficult to assess the impact in terms of reducing security risks – security risks do not lend themselves readily to a cost-benefit analysis in the financial sense. The risks are not easily measured now and any reduction in risks would be difficult to measure. There is a difficulty in measuring prevented events. However the new arrangements will reduce risk. This assumes that such people would not use false identities to enter Australia as a seafarer or, if they did, Customs would detect them before their entry.

21. During the lead times for implementing the visa arrangements, such risks as there are associated with foreign sea crew entering Australia without security checking currently will continue to exist.

22. The impact on the Australian community under the new arrangements will afford better security because foreign sea crew seeking to enter on a false or stolen passport would be more likely to be identified. Any persons using false passports to avoid security checking would be more likely to be detected. The availability of biographical data tapped in the application process and the added ability to cross-check this in the pre-arrival reporting process will enhance Australia's ability to filter out persons who may threaten Australia's border security.

Government

23. The introduction of the new maritime crew visa has been the subject of an inquiry by the Senate Legal and Constitutional Affairs Committee when that committee inquired into the Migration Amendment (Maritime Crew) Act 2007 which received the Royal Assent on 28 May 2007. The cost implications for Government were summarised thus:

“The Maritime Crew Visa initiative is funded to a total of \$100.3 million over 5 financial years (2005-06 to 2009-10). This funding is allocated across three agencies: the Department of Immigration and Citizenship; the Australian Customs Service; and the Australian Security and Intelligence Organisation. The relevant expenses for these agencies are outlined below.

Department of Immigration and Citizenship (DIAC)

DIAC’s funding is to provide an implementation team to manage the MCV initiative; to employ and equip additional Regional Seaports Officers to assist industry with the new visa, conduct vessel boardings and manage industry compliance; to employ additional staff to process the visa applications and provide application enquiry support to the shipping industry; to design and implement the IT systems associated with the new visa and to record sea crew movement records; and to provide funding for compliance and detention operations associated with the new visa regime.

Description	Funding \$M
Maritime Crew Visa (MCV) Project Implementation Team, National Training Strategy and Stakeholder Consultation	3.3
Additional Seaports Officers and supporting equipment	11.4
Additional MCV Processing Staff and Visa Activity	3.0
MCV IT Systems Solution Design and Implementation	17.9
Compliance and Detention Operations	18.3

(Indexation)	1.1
TOTAL	55.0

Australian Customs Service

Funding of the Australian Customs Service is for additional Customs Officers to enforce the new provisions as part of Customs' vessel clearance process, and to effect systems changes associated with the checking of crew visa data and the recording and sending of crew movements to DIAC.

Description	Funding \$M
Additional 67 Customs staff (66 regional Seaports officers and 1 Central Office) and supporting equipment to enhance levels of first-port boarding	30.3
Customs IT systems changes and accommodation requirements for new MCV and boarding regime	6.2
IT Systems solution design and implementation for sea crew movements data capture and transmission	1.7
Customs IT systems changes to allow for sea crew movements data capture and transmission	1.4
TOTAL	39.6

Australian Security Intelligence Organisation

The Australian Security Intelligence Organisation has been funded for systems development and staff resources to effect security checking.

Description	Funding \$M
Systems and staff costs to undertake security checking	5.5
TOTAL	5.5

Impact on regulations and the roles of existing regulatory authorities

24. Current visa arrangements for sea crew are administered by DIAC. Customs act on behalf of DIAC in checking crew at the border, in monitoring pre-arrival and other reporting by vessels and in administering detention of inadequately documented crew. DIAC supports Customs arrival and departure checking. State police are occasionally involved in detention of non-citizens in remote locations where there are no alternate detention options.

25. Significant change to the respective roles of Customs and DIAC are not expected. There will be a greater role for ASIO in sea crew visa arrangements as the main processing for visas would be security assessments and the main reason for visa refusal would be an unfavourable security assessment (although refusals could also be based on matching of persons of concern records or illegitimate passport records).

Distributional Impacts

26. There are no distributional impacts in the staged introduction of the maritime crew visa.

Consultations

27. The main parties affected are foreign sea crew working on vessels that travel to Australia, and masters, owners, operators, agents and charterers of those vessels. Consultation has been conducted with key representatives of the maritime industry and the relevant maritime unions.

28. Prior to the Government's decision to introduce a new maritime crew visa, industry consultations were limited to Australian industry representatives and relevant Australian unions. Consultation with international organisations ahead of the Government decision was not considered necessary or appropriate because it would not have been possible to achieve confidentiality. A visa requirement will not contravene the Convention of Facilitation of International Maritime Traffic, provided the Secretary General of the International Maritime Organisation (IMO) is notified of the new arrangements. Steps have already been taken to inform the Secretary-General

of the IMO via a Third Person Note delivered by the Department of Foreign Affairs and Trade in London.

29. Since March 2006, there have been ongoing consultations with industry in the form of an industry working group convened by the Department of Immigration and Citizenship with Shipping Australia Ltd, the peak shipping industry body in Australia. In addition, there have been industry seminars conducted around Australia and information about the forthcoming maritime crew visa has been posted on the Department's internet website. Editorials have been prepared for industry publications and interested parties are able to subscribe to information about the development of the maritime crew visa regime.

30. Industry has been generally supportive of the Government's consideration of security arrangements for foreign sea crew. In the lead up to the Government's decision to introduce a sea crew visa requirement, mixed views were expressed about the potential impact of the introduction of such a visa.. Industry was concerned about technical aspects of making electronic applications over the Internet while at sea and the lead times for visa decisions, particularly for tramp vessels travelling to Australia at short notice. While it was understood that tramp vessels cannot be exempted from the visa requirement, there will be scope to waive infringements where operators have taken reasonable steps to obtain visas for their crew before arrival. Technical limitations in the use of Internet connections at sea will be addressed through the availability of an electronic application form that may be downloaded and completed offline.

31. Industry has expressed concern about possible trade impacts – no other country except the United States of America (which recently introduced a sea crew visa requirement) has a sea crew visa requirement. Australia does not share the unique position of the USA in imposing unilateral requirements. Industry is concerned the Australian maritime industry could be singled out for retaliatory measures or may suffer, for example by facing a premium for bulk exporters. They did indicate a preference for Australia to pursue sea crew security through international or regional discussions.

32. Industry stressed the need to avoid the USA model if a sea crew visa is

introduced, in particular the need to lodge applications at an overseas post and the need to obtain evidence of the visa in the travel document.

33. Industry also noted its preference for there to be no charge for the visa. There would be logistical difficulties in obtaining payment from crew for a visa while they are at sea as many do not possess credit cards, and there could be compliance implications of a charge. Visa charges would have added an extra impost on industry in addition to the adjustment and ongoing compliance costs.

34. Industry was generally supportive of government measures to improve the security arrangements for foreign sea crew and the current lack of departure checking which was raised as a risk area that ought to be addressed.

Views of government departments and agencies

35. The Interdepartmental Committee for the development of its report to government comprised the Departments of Prime Minister and Cabinet (PM&C), Transport and Regional Services (DOTARS), Foreign Affairs and Trade (DFAT), Citizenship and Immigration (DIAC) (known at the time as Immigration and Multicultural Affairs (DIMIA)), the Australian Customs Service (Customs), the Australian Federal Police (AFP) and the Australian Security Intelligence Organisation (ASIO). The Australian Maritime Safety Authority was also involved as required. In addition, the Departments of the Attorney General, Treasury, Finance, Family and Community Services (in relation to family impacts) and Industry, Tourism and Resources (DITR) (in relation to impact on small business) were consulted.

36. All members who contributed to compiling the report to Government supported the measures identified for consideration by government. ASIO are of the view that the security risks would justify introduction of the measures. Customs are strongly of the view that if a sea crew visa is implemented, it would be appropriate to increase the arrival and departure checking. Potential impacts on the maritime industry in particular and the export industry in general have been raised by DOTARS. The Tourism Division of DITR noted the administrative burden of managing compliance with the visa requirement for large cruise ships and noted the costs would be passed on to passengers. Treasury raised concerns about the impact of the Memorandum on Australian businesses and industry. Other departments consulted

have not raised any concerns with the measures.

Implementation

37. The adoption by Government of a staged approach to implementation has allowed industry time to adjust to the forthcoming requirement and associated lead times. The staged implementation has involved:

- (i) A more than 12-month period before implementation of the visa requirement during which industry has been consulted and informed and educated about the forthcoming requirements and arrangements, including lead times for obtaining visas. This phase ends with the introduction of the new maritime crew visa on 1 July 2007.
- (ii) A transitional period of six months after the introduction of the new visa will allow crew to apply for the new visas, while still being covered by the current 'operation of law' Special Purpose Visas. During this phase crews and carriers, particularly the masters of vessels, will be warned about the new requirements but would not be infringed for bringing to Australia crew without the new maritime crew visa. This period will also allow for DIAC and ASIO to process the anticipated surge of applications from 1 July 2007 (which could be around 126,000 in the first six months following implementation based on available arrivals data), when normal processing standards may not be achievable. This period will also allow industry an additional period to adapt to the new requirements.
- (iii) After the transitional phase ends on 31 December 2007, access by crew on non-military vessels to Special Purpose Visas will lapse. Thereafter, those who arrive without a maritime crew visa or another appropriate visa will have entered Australia unlawfully and will be restricted onboard (or detained onshore) and their master, owner, operator, agent and charterer will be subject to infringement. A discretion exists for officers making decisions about infringements to take into account particular circumstances of a vessel/journey which may justify withdrawal of an infringement notice.

38. The introduction of the maritime crew visa has been preceded by a comprehensive industry information strategy before implementation. The transitional period will provide an extended time to adjust to the new requirements. It is anticipated that the information campaign will have made, the new visa requirement clear to all maritime operators.

39. Access to both an Internet and downloadable electronic applications, which will serve as a paper visa application alternative will assist service delivery. Moreover, third parties such as shipping and manning agents will be able to lodge applications on behalf of crew or crew could lodge applications themselves.

40. The new arrangements will be responsive to changing security risks and will allow changes to be reflected immediately without revealing the security checking requirements. This is a key requirement of the arrangements as the requirements are dynamic.

41. The enforcement regime for infringements will include, as it does under current arrangements, discretion to take into account particular reasons why some crew arrive in Australia without a visa. Such discretion currently exists for officers to take into consideration whether to infringe or not. This flexibility would be particularly relevant to the circumstances of tramp vessels which may need to travel to Australia at short notice (with insufficient lead time for visa processing for all crew).

Impact on business, including small business

42. There would be a number of impacts on business:

- maritime operators need to be aware of the new visa requirement and set up arrangements to ensure the visa status of crew is checked before arrival, and, where crew do not already hold a visa, to lodge a visa application for that seafarer.
- Masters, owners, operators, agents and charterers of vessels would be liable to infringement for bringing unvisaed sea crew to Australia (as is currently the case in relation to documentary requirements) so there would need to be arrangements in place to allow masters/owners/operators/agents/charterers to

check on the visa status of sea crew (because, for electronic visas, there is usually no physical evidence of the visa). An internet-based visa verification arrangement will be available.

- Operators will need to make adjustments for the lead time for visa processing (most applications would be processed quickly but a small percentage would take around 1-2 weeks and a small portion of those could take longer).

43. Small business will be affected in the same way as other businesses, but those businesses which do not have Internet access will need to either lodge electronic applications, use a shipping agent to lodge the applications, or use the paper application process. This may be the case for those who use small (single operator) shipping agents to handle their government reporting and compliance requirements.

44. Industry consultations, the information campaigns prior to implementation and transitional arrangements after implementation are designed to minimise the impact on industry and to assist industry to adapt to the new requirements.

45. Compliance costs for industry will be minimised by:

- not imposing the usual visa application charge in consideration of the particular circumstances of the maritime industry;
- providing for the visa applications to be made over the Internet or electronically, and allowing for the visa applications to be made en route to Australia;
- providing for the visas to be valid for multiple entry for three years;
- providing transitional arrangements for enforcement following implementation;
- allowing for third parties such as shipping agents or manning agents to lodge applications on behalf of foreign crew;
- providing discretion in arrangements for infringements to allow for waiver where reasonable efforts have been made to comply with the visa requirement.

Review

46. Security checking procedures are under constant review and change regularly to reflect changes in risks. The arrangements will allow for these changes to be effected quickly.

47. The operations of seaport officers and seaport activities are subject to close monitoring. For example, monthly statistical monitoring on undocumented arrivals, infringements, infringements withdrawn, deserters, stowaways, etc allow any trends to be determined and appropriate remedial action to be taken quickly.

48. The question of review for the visa arrangements will be a matter for Government policy in the future. It is anticipated that the maritime crew visa will be an ongoing requirement although subject to usual policy review arrangements.