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# Official Committee Hansard

## SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
LEGISLATION COMMITTEE

**Reference: Maritime Transport and Offshore Facilities Security Amendment  
(Maritime Security Guards and Other Measures) Bill 2005**

MONDAY, 29 AUGUST 2005

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BY AUTHORITY OF THE SENATE



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**SENATE**  
**RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION**  
**COMMITTEE**

**Monday, 29 August 2005**

**Members:** Senator Heffernan (*Chair*), Senators Ferris, McEwen, McGauran, Milne and Sterle

**Participating members:** Senators Abetz, Adams, Allison, Bartlett, Mark Bishop, Boswell, Brown, George Campbell, Carr, Chapman, Coonan, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Hogg, Hutchins, Lightfoot, Ludwig, Lundy, Sandy Macdonald, Mason, McLucas, Nash, Nettle, O'Brien, Payne, Robert Ray, Santoro, Stephens, Trood, Watson and Webber

**Senators in attendance:** Senators Ferris, Heffernan, McEwen, McGauran, O'Brien and Sterle

**Terms of reference for the inquiry:**

Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005.

**WITNESSES**

**HALLINAN, Mr Ross, Acting General Manager, Maritime Security Branch,  
Department of Transport and Regional Services..... 1**

**KILNER, Mr John Anthony, Acting Executive Director, Office of Transport  
Security, Department of Transport and Regional Services ..... 1**

**PARKINSON, Mr Jeremy, Section Head, Maritime Security Policy, Department of  
Transport and Regional Services ..... 1**



**Committee met at 1.31 pm****KILNER, Mr John Anthony, Acting Executive Director, Office of Transport Security, Department of Transport and Regional Services****HALLINAN, Mr Ross, Acting General Manager, Maritime Security Branch, Department of Transport and Regional Services****PARKINSON, Mr Jeremy, Section Head, Maritime Security Policy, Department of Transport and Regional Services**

**CHAIR**—Welcome. I declare open this public hearing of the Senate Rural and Regional Affairs and Transport Legislation Committee. The committee is hearing evidence on its inquiry into the Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005. This is a public hearing, and a *Hansard* transcript of proceedings will be made. The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings, in accordance with the rules contained in an order of the Senate dated 23 August 1990 concerning the broadcasting of committee proceedings. Before the committee starts to take evidence, I place on the record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given. I remind witnesses that parliamentary privilege does not extend to statements repeated outside the committee's proceedings. Any act by any person which may disadvantage a witness on account of evidence given by him or her before the Senate or a Senate committee is a breach of privilege. While the committee prefers to hear all evidence in public, the committee may agree to take evidence confidentially. If the committee takes confidential evidence, it may still publish or present all or part of that evidence to the Senate at a later date. The Senate also has the power to order the production and/or publication of confidential evidence. The committee would consult the person whose evidence the committee is considering publishing before taking such action. I also draw to your attention the continuing resolution relating to claims of commercial confidentiality. Under the resolution, a claim to withhold information on the basis that it is commercial-in-confidence can only be made by a minister and must include a statement setting out the basis for the claim, including a statement of any commercial harm that may result from the disclosure of that information. I now invite the department to make an opening statement.

**Mr Kilner**—The Department of Transport and Regional Services welcomes the opportunity to contribute to this inquiry. This submission outlines the rationale for the Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005. It focuses on the proposed extension of the powers of maritime security guards. The submission we have provided to the committee explains the process by which the bill was developed and the process by which it is proposed to be implemented.

I will not go through the bill in detail, but can I say that the act provides maritime industry participants with a number of mechanisms to assist them to develop security plans that are effective in those maritime industry participants addressing identified risks. Apart from the mechanisms that already exist within the act, another mechanism is the provision for certain persons to exercise special powers to exercise compliance with the act. Maritime security

guards are defined as one of those classes of persons provided with special powers under the act. This bill proposes to extend the powers of maritime security guards to provide the maritime industry participants who choose to employ maritime security guards with further options for managing their security arrangements and implementing security plans.

As part of its review of Australia's maritime security policy settings conducted in 2004, the Secretaries' Committee on National Security considered options for strengthening the capacity of maritime industry participants to deal effectively with intruders, particularly where law enforcement officers are not immediately available. Following its consideration of this review, the government decided to extend the powers of maritime security guards, providing them with a limited power to request intruders to remove themselves from maritime security zones and, if necessary to maintain the security of the zone, to physically remove the intruders. Providing maritime security guards with move-on powers will not relieve the states and territories of their responsibility for providing policing services within ports. Rather it extends the powers of maritime security guards in the event that the law enforcement capacity, particularly the on-water capacity, is not available in some locations and for some time.

Thirty-four organisations were invited to comment on the exposure draft. Twenty-two of these organisations have provided submissions. From these submissions, a number of ways were identified to improve the bill. These have been incorporated in the bill you see before you. DOTARS is seeking to establish a working group to progress development of the regulations provided for by the bill. Agreement has been sought from respective organisations within the maritime industry to be a part of that working group. That working group will commence shortly.

In regard to the communication of the proposed amendments to the act, DOTARS is developing a communication strategy, working with the maritime industry to increase their understanding of these amendments and of how industry will be affected by the changes. We have already consulted extensively with industry in developing this strategy, both through various working groups and industry consultative fora. This will be going through user concept testing in Melbourne on 29 August. With that, I will close.

**CHAIR**—Just say I want a change of career and I want to be a maritime security guard, what do I have to do?

**Mr Kilner**—Each of the jurisdictions has a requirement for training. You must undertake that training. The training itself is recognised through the NATA process—the National Association of Testing Authorities. Once you have undertaken the training and been accredited then you can be employed as a maritime security guard.

**CHAIR**—So if I have just got out of the can, can I apply?

**Mr Kilner**—As you know, Senator, background checking is being introduced into the maritime industry. That will start to roll out from October. Therefore the background checking arrangements that will apply more generally within the industry will also apply.

**CHAIR**—So this is not about getting the pass, where originally there was a concept that you could blow up a plane or do all those other wonderful things and they would not automatically disqualify you. For the maritime guard the same sort of thing applies.

**Mr Kilner**—That is right.

**CHAIR**—So I take it that I cannot be a convicted hijacker and be a maritime guard?

**Mr Kilner**—That is correct.

**CHAIR**—Good. That is great news.

**Senator O'BRIEN**—‘Are you now or have you ever been a convicted hijacker?’ Good afternoon and thank you for appearing to discuss maritime security guards. You probably know I have got a strong interest in the development and ongoing refinement of the maritime security framework. I will continue to monitor how the framework is implemented and how it supports industry in a safe and secure way. These proposed amendments are an important part of the framework. Security guards play, I suggest, a critically important part in keeping ports and ships secure. There needs to be some balance about protecting the employees and the guards themselves. The bill proposes to give security guards the power to require production of ID by a person in a maritime security zone; require persons to state reasons for being in a maritime security zone; direct persons to leave a maritime security zone; and remove persons, vehicles and vessels from a maritime security zone. What prompted the proposed changes in this bill?

**Mr Kilner**—As I outlined in my opening remarks, there was a review undertaken by the Secretaries Committee on National Security during 2004. In that review, we recognised that there can be a gap between an intruder being detected within a maritime security zone and the time law enforcement officers arrive. We have attempted to provide some mechanism by which the security guard themselves can restrain the person or remove them from the zone, vessel or vehicle. The previous act only enabled the security guard to effectively restrain and detain a person. They could do nothing about a vessel or a vehicle. We did identify a gap through that policy review and this bill seeks to address that gap.

**Senator O'BRIEN**—Was it raised as an issue by particular industry participants or was it something that the government initiated?

**Mr Kilner**—It was raised not only by the interdepartmental committee that met in regard to the maritime policy review but also by a number of industry participants who recognised that a gap existed.

**Senator O'BRIEN**—I have not been able to find any particular sector that is showing this interest.

**Mr Kilner**—Pardon, Senator?

**Senator O'BRIEN**—I have not been able to find any industry participants who are expressing the views that you indicate are being expressed within the sector. Is any particular part of the sector supportive of the view taken in this bill? Is it a diversely held view?

**Mr Kilner**—It is a diverse view. There are members of the maritime industry who do not think the powers are necessary. Some of them are concerned about, in particular, the waterside element. But generally, in our dealings with maritime industry participants through the inspection and compliance regime, we have had these concerns raised.

**Senator O'BRIEN**—I understand that currently maritime security guards are treated much the same as someone who might be a guard at a shop, factory or swimming pool—that is, they have the same basic level 2 qualification. Is that correct?

**Mr Kilner**—Yes, it is level 2. A certificate II in security guarding is the minimum requirement.

**Senator O'BRIEN**—These guards will carry significantly more responsibility than other guards in commercial or community locations, I would have thought.

**Mr Kilner**—They will certainly have additional powers and consequently there is a need, through the regulation-making process, to outline the training and qualifications required for them to exercise these additional powers.

**Senator O'BRIEN**—So there will be additional training to the certificate II qualification training?

**Mr Kilner**—That is what we envisage.

**CHAIR**—Are these blokes' qualifications about the same as that of bouncers?

**Mr Kilner**—No. They are required to have a certificate II in security guarding. For example, within the aviation sector they are required to have an additional qualification as well, which gives them the qualifications necessary to screen. In this particular instance, we would see that higher training qualifications would be required for these guards.

**Senator O'BRIEN**—Where is the detail of the course that they would be required to undertake, or is that not yet devised?

**Mr Kilner**—It is not yet developed. We have commenced discussion within the security industry and also with maritime industry participants about the form of training and qualifications required.

**CHAIR**—Will they work in pairs or on their own?

**Mr Kilner**—That will depend on the security guarding arrangements and the roles that they will play within the particular security zone.

**CHAIR**—Is there a risk if, as a guard, you were working on your own and some boofhead was somewhere they were not supposed to be and you said, 'Move on,' or whatever and there was need for that person to be later prosecuted—there might even be two people you want to move on—that you could somehow contaminate evidence before a court, because it would be one person's word against the other?

**Mr Kilner**—I am not sure about that. I will have to come back to you on that. But there is no doubt that one of the elements of training will be around how to gather evidence.

**Senator O'BRIEN**—So the course is not developed and the areas of training needed are not agreed?

**Mr Kilner**—We have yet to develop the training requirements for the centre. That is part of the working group that we are seeking to establish with both the security industry who are currently working within the maritime environment and maritime industry participants.

**Senator O'BRIEN**—When is it expected that this bill will come into effect?

**Mr Kilner**—Within the period of six months from the date of assent. That gives us time to undertake the consultation and development that will be needed.

**Senator O'BRIEN**—But not the time to train people, presumably?

**Mr Kilner**—No. These are additional powers to ones that are already available, and we would not see the exercise of these powers until the individual guards had undertaken the necessary training.

**Senator O'BRIEN**—How many guards would you expect would need to be trained with these additional powers?

**Mr Kilner**—That will really depend on the security plans and the way that they are implemented within the various maritime locations. There are 70 ports and 255 maritime industry participants, so I cannot really hazard a guess.

**Senator O'BRIEN**—Will there be hundreds?

**Mr Kilner**—Hundreds.

**CHAIR**—So there will not be two levels of guards? There will not be some with the power to move people on and some without the power to move people on?

**Mr Kilner**—There may very well be, because it will depend on the level of training and qualifications of the guards. It will also depend on the security plan and the way the security plan is implemented. For example, for some of the participants there is no requirement within their plan for security guards, because of the nature of their operation and their location. It is really going to get back to the requirement that that security guard is going to have.

**CHAIR**—So, in a site where there is a need for the move-on additional training power, there will not be people who do not have the additional training power with move-on capacity?

**Mr Kilner**—No. We would see that, as the plans are amended to incorporate this within those particular security zones, there would be a requirement that all people within those security zones would have that training and those qualifications. We recognise that that will take time to roll out.

**Senator O'BRIEN**—The elements of the course need to be agreed, and hundreds of guards will need to be trained to exercise these powers, you think?

**Mr Kilner**—That is right.

**Senator O'BRIEN**—As distinct from the guards that are exercising the powers currently?

**Mr Kilner**—That is right.

**CHAIR**—Will these fellows be armed?

**Mr Kilner**—Generally they are not armed. Most of the security guards I am aware of are not armed. There is a special training qualification required if you carry a weapon.

**CHAIR**—Would there be a scenario or an area that is sensitive enough to require armed guards?

**Mr Parkinson**—There are some circumstances in which maritime security plans do provide for maritime security guards to have guns.

**CHAIR**—So that is another category of guard again.

**Mr Parkinson**—Yes, but as Mr Kilner mentioned—

**CHAIR**—I always imagined it would probably be easier to move someone on with a gun than a sharp pencil!

**Senator O'BRIEN**—I imagine that too! This seems to be presenting a model of specialist maritime security guards—specially trained, qualified and appointed to special positions with special powers. I am trying to distinguish from the run-of-the-mill security guards picked up by labour hire companies who currently might end up standing on a factory gate one day, doing a round the next night, and going somewhere else the following day.

**Mr Kilner**—There is no doubt that these maritime security guards will require additional training and qualifications. They will also need to be background checked and have a maritime security identification card. In a sense, we are following a model that applies within the aviation sector, where they are required to have an ASIC, for example, and where they require special training so that they can operate the screening equipment. There is no doubt that these people end up being more qualified than your average factory guard.

**Senator O'BRIEN**—But these guys will be specialised in the maritime sector.

**Mr Kilner**—They could be, but they could also have, for example, the qualifications required to work at an airport. That will depend on the employment practices of the security company and the requirements for the security zone.

**Senator O'BRIEN**—These guys have to be in a position to move a vessel, for example, haven't they?

**Mr Kilner**—Not necessarily. For example, if they do not have the qualifications for a master's ticket or whatever else, they will not be able to move the vessel. There will have to be separate arrangements taken into account within the security plan and by the maritime industry participant in regard to that. The particular clause within the bill, section 163E(1), about power to remove vessels from zones, says, 'A maritime security guard may remove, or cause to be removed, a vessel' et cetera. So that means they do not necessarily have to perform the task within the plan itself. It may require others to do that.

**Senator O'BRIEN**—Do you see any scope for stand-alone maritime security guards as a profession, perhaps rather than guards being sourced through labour hire companies? I understand that Canada may be considering moving towards establishing a maritime police force of some kind.

**Mr Kilner**—I am not aware of the arrangements the Canadians are proposing to follow in this area. The Canadian model is somewhat different to ours. They have the use of the RCMP—the Royal Canadian Mounted Police. They are also introducing similar arrangements in terms of identity cards within the maritime sector, but I am not aware of a separate security guarding force being contemplated.

**Senator O'BRIEN**—Some industry representatives have raised issues in relation to guards not having sufficient powers even after this bill goes through. What would you say to that?

**Mr Kilner**—I am unaware of those particular powers that industry are seeking.

**Senator O'BRIEN**—You cannot think of any suggestion that has been made by industry for additional power?

**Mr Kilner**—I will ask Mr Parkinson to address this.

**Mr Parkinson**—We are aware that some industry representatives have requested that search powers be given to these people.

**CHAIR**—I forgot to raise that. So, these blokes have not got search powers?

**Mr Parkinson**—Not under the current legislation, no.

**CHAIR**—If someone has a bulge under their coat, as it were, there is nothing you can do about it?

**Mr Parkinson**—We would expect the maritime security guard to exercise his judgment and perhaps call for law enforcement officers to assist. The guard can still remove the person if the person does have a bulge—

**CHAIR**—I am pleased I am not one of these blokes. I will not take you through a horror scenario. I do that too often.

**Senator O'BRIEN**—So they will not need search powers?

**Mr Kilner**—This bill does not propose giving them search powers.

**Senator O'BRIEN**—Do they need search powers? This bill does not provide them, but do they need search powers?

**Mr Kilner**—I really cannot provide an opinion one way or the other.

**Mr Parkinson**—That is beyond the scope of the government's current proposal.

**Senator O'BRIEN**—How would these guards, who are likely to be operating alone, ascertain whether an intruder is armed? Do they wait until a firearm appears?

**Mr Kilner**—I suppose that particular scenario exists for law enforcement officers or security guards now.

**CHAIR**—But they are generally packing a gun.

**Senator O'BRIEN**—They are only patrolmen.

**CHAIR**—These blokes are not going to be packing anything, are they?

**Mr Kilner**—No, this bill does not contemplate giving guards weapons.

**CHAIR**—They are going to have a ferocious look versus a possible armed intruder?

**Mr Parkinson**—As I mentioned before, some security plans do provide for security guards to have arms, and it is entirely possible that in the future more security plans could do so. That is not the issue that this bill addresses.

**Senator O'BRIEN**—What sort of practical protection will be in place with this legislation regarding guards using undue force to detain or move on an intruder, particularly when they are operating on their own?

**Mr Parkinson**—The bill provides that the maritime security guard must not use more force than is reasonable or necessary.

**Senator O'BRIEN**—That is it?

**Mr Parkinson**—That is correct.

**Mr Kilner**—This goes back to training. That particular issue exists more broadly with security guards in the community now.

**CHAIR**—It makes it a bit difficult if you are on your own. The bloke might be what I call a smart alec and decide to say, 'You used undue force on me; I missed a turn-off from the party on the way home and wandered onto the wharf, and you grabbed me and told me to get off the premises,' which probably could happen.

**Mr Parkinson**—Yes.

**CHAIR**—'Now I'm unhappy and I've decided I'll sue the guard.'

**Mr Kilner**—People must have also climbed the fence in the meantime to get within the maritime security zone or swum ashore.

**Senator O'BRIEN**—Or got off a boat.

**CHAIR**—Or have been on their way back. Off a foreign boat, that is.

**Senator O'BRIEN**—Not necessarily; it might be any sort of boat that pulls alongside a wharf.

**Mr Kilner**—With regard to the usual arrangements that apply, there tends to be, from what I have witnessed, one guard on patrol and normally another guard sitting within radio communication range at, for example, the main gate. In the event that something is spotted, they usually radio back and seek further assistance and so on. With regard to vessels, most of the plans have a requirement that seafarers and other people exiting the vessel must be either escorted or monitored from the point at which they leave the ship until they reach the gate. Those sorts of arrangements already exist.

**Senator O'BRIEN**—By 'monitored' you mean having some form of intermittent surveillance on their progress across the wharf area, the secure area?

**CHAIR**—Or they accompany them.

**Mr Kilner**—Either accompanied—escorted—or visually—

**Senator O'BRIEN**—Escorted is one thing—that is clear—but 'monitored' might mean that there is a flickering screen in a security area that covers parts of the wharf and they will walk through those areas covered by the security television monitoring.

**Mr Kilner**—Usually what is meant by 'monitored' is continuous monitoring. That means that their progress can be continually monitored from the time that they leave the vessel until the time that they get to the gatehouse. In most instances that I have witnessed they are actually escorted and put on a bus and taken from the vessel directly to the gate.

**CHAIR**—Say I lob into wherever I lob into, I have got a bag of hootchy-kootch, I am on a foreign owned vessel and I decide I want to sell the hootchy-kootch. Do I get searched on the way out through the gate? We were told that at present you do not search, but do you? Would you propose to search me or should I continue to trade?

**Mr Kilner**—There is an assumption there that they are actually trading, but usually what occurs is that Customs board 70 to 80 per cent of all vessels and they undertake a range of activities with regard to the particular vessel. My understanding is that there is not an arrangement in place for 100 per cent of the vessels whereby everyone who enters and leaves is searched. This proposed act does not propose that.

**CHAIR**—But these guys pick the soft entry. Isn't that a soft entry?

**Mr Kilner**—A soft entry?

**CHAIR**—Yes, into the country. If I were in the business of being in that business, that is what I would be looking to do: pick the soft entry. My view is that every bugger that lands ought to be searched on the way off the ship and on the way back onto the ship, otherwise it is a soft entry.

**Mr Kilner**—This is probably more a question for Customs than for us, but they undertake risk assessments of all vessels entering the country—and that includes the crew—and they put in place arrangements based on those risk assessments.

**CHAIR**—So who should we ask?

**Mr Kilner**—I think it is a question for Customs.

**CHAIR**—It doesn't bother you blokes?

**Mr Kilner**—Our concern is with the security planning arrangements associated with that facility. We work together with Customs and Immigration and other law enforcement agencies but the primary focus of the Office of Transport Security is not on illicit—

**CHAIR**—But say I have got a device or whatever it is that I want to bring in for one of my mates to blow someone up. It does not have to be hootchy-kootch; it could be any damn thing. Isn't that a soft-entry point?

**Mr Kilner**—In one sense it is certainly a softer entry point than airports, where obviously the screening occurs before a person enters.

**CHAIR**—You never steal the car with the steering lock on it unless you are a mug—it speaks for itself.

**Mr Kilner**—I think it is a question for Customs.

**CHAIR**—It is a question also for security, though.

**Mr Parkinson**—As part of the review of maritime security that Mr Kilner mentioned, the government did consider the arrangements for boarding of vessels. You may be aware that the government has increased first port boarding of vessels seeking entry to Australia. We are advised that those vessels which are not boarded at first port are indeed boarded at subsequent ports.

**CHAIR**—The boarding is good. That is colour and movement, it looks good and all the rest of it—and it probably is good. But the world is full of smart people. There is probably some tiny part of the ship where you could plant something away and grab it when you are on your way out. You could stick it into your bag and away you go.

**Mr Kilner**—I do not think it is within the government's contemplation to search every seafarer entering and leaving a vessel or entering and leaving every maritime security zone. The costs of that would be enormous. That means you end up taking a risk based approach. That is what we do and that is what Customs does.

**Senator O'BRIEN**—It is obviously envisaged that, despite some industry representatives thinking that the best way is just to have a barrier security force and I guess call the police if someone is there who should not be inside once the barrier has been broken, these guards will have powers to control access and deal with people while they are in the maritime security zones.

**Mr Kilner**—That is correct.

**Senator O'BRIEN**—Can you confirm that all maritime security guards will be required to hold an MSIC and that no-one will be able to operate as a security guard, even as a casual, without having gone through a background checking process?

**Mr Kilner**—The requirement under the regulations and legislation is that all people working in a maritime security zone who require unescorted access will require a maritime security identification card. In this instance I cannot imagine a security guard being escorted in the pursuit of their duties. So, in that regard, I would say that all maritime security guards will require a maritime security identification card.

**Senator O'BRIEN**—And that means they will all be background checked?

**Mr Kilner**—Yes, it means they will all need to be background checked.

**Senator O'BRIEN**—So someone cannot turn up there and get a card virtually the same day without a proper checking process?

**Mr Kilner**—That is right. Some of them may already have an aviation security identity card, which means they have been background checked.

**Senator O'BRIEN**—And that is identical? It is the same background check?

**Mr Kilner**—That is right.

**CHAIR**—Are you sure of that?

**Mr Kilner**—They both have a criminal background check and a PMV check and they both have an immigration check. That is what I mean by that.

**Senator O'BRIEN**—Do you know what the supply of skilled guards is and whether it meets current demands within the industry?

**Mr Kilner**—There is no doubt that we are running into an issue with the supply of skilled guards. You may have noticed an article in the *Australian* I think last week which referred to the increase in security guards in New South Wales. I think that 14,000 had been brought on

within the last 12 months. So there is no question that there is certainly an increased demand for security guards.

**Senator O'BRIEN**—So there is a lot of training and checking that will have to be undertaken?

**Mr Kilner**—Yes, there will be.

**CHAIR**—I think it would be a great idea to have perfect harmony between a maritime security pass and an aviation security pass. But please correct me if I am wrong on this, because I think that you are wrong: the disqualifying or whatever it is that applies to maritime presently does not apply to aviation.

**Mr Kilner**—No, the point I am making is that there is a criminal background check taken under the aviation security—

**CHAIR**—It is under a different set of rules, though.

**Mr Kilner**—There are some differences between the two requirements—

**CHAIR**—So they are not the same.

**Mr Kilner**—but there is a requirement for both of them to have undergone a criminal background check.

**CHAIR**—Yes, but they are not the same set of rules at the moment. You are not comparing apples with apples. Under your set of rules—which you have now, I presume, altered—if I am a convicted aircraft hijacker, can I get a pass? Am I disqualified now?

**Mr Kilner**—That is right.

**CHAIR**—But that does not apply in aviation, because there is no disqualification, from what we can see.

**Mr Kilner**—There are some differences between the crimes that apply to the aviation security identify card and the crimes that apply to the maritime security identity card, taking into account the different environments that exist. For example, within the maritime security identify card process there are disqualifying and exclusionary offences, whereas there is simply one set of crimes and simple disqualification under the aviation security identity card.

**CHAIR**—Wouldn't it be a good idea to have that the same? If I am Group 4 and I am employing people who I would like to deploy either to the wharf or to the airfield, surely it would make sense that I could deploy them either way?

**Mr Kilner**—There is a high level of similarity in the list of crimes that exist in the aviation—

**CHAIR**—But why wouldn't you make them identical so that if there is something wrong we can bang both lots rather than bang one?

**Mr Kilner**—What we have attempted to do is to ensure that the crimes that would disqualify or exclude someone from employment within the maritime industry are applicable to the maritime industry.

**CHAIR**—But do you think there are crimes that would not worry you if you are on the airfield that would worry you on the wharf?

**Mr Kilner**—The aviation security requirement is tougher than the maritime security requirement. For example, there is a requirement for the cards to be reissued every two years within aviation and five years within maritime. It also recognises the different security environment that exists around aircraft which does not apply necessarily within the maritime environment. What we have tried to do is to take into account the different environments. I can see that there needs to be comparability between the two.

**CHAIR**—Because, whatever the activity that required the higher status at the airport, if you have a lesser security requirement at the wharf or the offshore rig then, whatever the risk was at the wharf, if you were the smarty in the business of whatever it is you are doing that required the higher security you would transfer it to the softer point. I would if I were in the business of being in the business. You would too probably. So why wouldn't you have it identical? Is it such a big deal? Bear in mind that it is very bureaucratic.

**Mr Kilner**—We consider that the risk associated with maritime is not the same as the risk associated with the protection of the aircraft, given the nature of the cargoes being moved in some of the ports. We have tried to accommodate the different environment that exists within the maritime industry. We do not think this results in a greater level of risk being transferred from the aviation sector to the maritime sector. We have attempted to look at the risk pattern for both of them and then put in place arrangements that we think mitigate the risk. I would not agree with you that simply because a slightly different criminal background checking regime exists in the aviation sector, that would mean a person's targeting would then shift necessarily from the aviation sector to the maritime sector. There is a whole range of other things that are taken into account if someone is to select a particular target.

**CHAIR**—Can you be a criminally convicted person and get a civil aviation security pass?

**Mr Kilner**—Yes.

**CHAIR**—What sorts of things can you be convicted of?

**Mr Kilner**—I do not have the list with me. For example, there are spent convictions schemes that exist within both the aviation and the maritime sectors. They apply regardless. Once you have done eight or 10 years for specific crimes, then they are considered spent. So, to answer your question: yes, you can have a criminal conviction and work in the aviation industry.

**CHAIR**—So can you be a criminally convicted hijacker?

**Mr Kilner**—No.

**CHAIR**—If it is spent?

**Mr Kilner**—Some crimes are not spent. I would have to check, but I would not think that that crime would be one of those falling into the spent scheme.

**CHAIR**—I hope we do not have to have this discussion again. Could you just check. I will come back to you at a later date, when you have done your homework on a lot of that.

**Senator O'BRIEN**—I want to follow up a bit on the issue of guards denying access to a maritime security zone. If you have a foreign seafarer who has been on board a vessel for

some time and he gets to the wharf, will there be the ability for the maritime security guard to deny that person the ability to get off the ship and across the wharf?

**Mr Kilner**—The arrangements for egressing the maritime security zone—that is, moving from the ship to the gate—are contained within the security plan. They are not rules made up by the security guard. In all instances that I am aware of, there are arrangements in place to move seafarers, whether foreign or Australian, from the ship to the gate.

**Senator O'BRIEN**—What form of identification would a foreign seafarer require to transit the secure areas that need to be transited in order to access the ship or the town in which the port is?

**Mr Kilner**—When Customs board the vessel, they check for passports and a seafarer qualification. That is the requirement that the government has implemented since November 2003. The seafarer, if they are foreign, is issued with a special purpose visa. Under the arrangements that currently exist some form of qualification would be required by that seafarer. Usually there is also a crew list that is made available to the guard house, so that they are aware, when the seafarer returns, that they are who they say they are and therefore they are entitled to access to the ship.

**Senator O'BRIEN**—So they will have a list of names, they will give a name and if it is on the list they will get through?

**Mr Kilner**—I think they are required to check the name of the seafarer against a form of identification that the seafarer may hold. There is no prescription that they are required to show a passport, if that is what you are getting to.

**Senator O'BRIEN**—Many of the foreign seafarers would not have their passports—the ship's master hangs onto them, to stop them getting away. Given the conditions on some of the ships, I am not surprised at that. So, if they do not have any other form of identification, will they be issued with some form of identification by Customs or the port security system or something?

**Mr Kilner**—I am not sure about those particular arrangements and we have not prescribed specific arrangements.

**Senator O'BRIEN**—Could you clarify for me an issue in relation to reasons a guard may remove a person from a secure zone, in the case where the person is normally authorised to be there. In particular, could the situation arise whereby a guard is able to remove people from a security zone on the basis that they are assembled for industrial action?

**Mr Kilner**—To be within a maritime security zone, they would need to have been authorised to be within that zone.

**Senator O'BRIEN**—So they have an MSIC, they are authorised by their employer to be on site, but they have stopped work to meet and to participate in some other form of industrial action. Where do they stand?

**Mr Kilner**—I will have to take that one on notice. I know that the MTSA is quite specific that the application of the MTSA should not have an impact on industrial relations, but I will have to get back to you with the specifics.

**CHAIR**—But isn't that a question of commonsense?

**Senator O'BRIEN**—No, it is a question of law.

**CHAIR**—But if you wanted to have a strike or hold placards up or block trucks, surely you would not do it on an airfield. Would you allow that to happen on an airfield, Senator O'Brien?

**Senator O'BRIEN**—Do you mean on the runway or at some point in the vast space of the—

**CHAIR**—In the secure area of the aerodrome.

**Senator O'BRIEN**—Do you mean airside, as distinct from outside?

**CHAIR**—I mean airside.

**Senator O'BRIEN**—I know that plenty of meetings have been held airside over many years at the Mascot base. So, yes, that has been the practice, and it will probably continue.

**CHAIR**—So you would have a mass assembly of people next to a 747? I would not have thought that would make a lot of sense.

**Senator O'BRIEN**—Assuming that they have an ASIC, that would probably in some senses occur in some way now. You can dramatise it if you wish.

**CHAIR**—But it would be better off on the other side of the fence, surely.

**Senator O'BRIEN**—That is just dramatising it for the sake of dramatising it.

**CHAIR**—No, it is not. Surely it would be better on the other side of the fence. Have it on the other side of the fence, mate.

**Senator O'BRIEN**—It may well be that most of them are held there. I am just asking whether, if they are authorised to be there, they are stopped from discussing whether something is going wrong. I want to know whether the fact that it is a maritime security zone authorises the security guard to say, 'You should have the meeting somewhere else.'

**Mr Kilner**—As long as that group of people were authorised to be within the security zone, I would not see a maritime security guard removing them. Whether the employer withdraws the authorisation to stay in that zone is a separate question. The point I am trying to make is that the act itself is quite clear that the rights of individuals to undertake the usual industrial action should not be impinged. But, in most cases, they will not be doing it within the zone.

**CHAIR**—I am all for demonstrations and all the rest of it, but in the right places.

**Senator O'BRIEN**—I did not use the word 'demonstration', you did.

**CHAIR**—But if you get steamed up enough—

**Senator O'BRIEN**—But you were using words I did not use. Do not put words in my mouth.

**CHAIR**—If you have a meeting inside the secure zone and someone gets steamed up as a result of the meeting, they might, for whatever reason, do their block or go berserk.

**Senator O'BRIEN**—You do not have to be at a meeting to do that.

**CHAIR**—That is true. But I am a bit uneasy about the prospect.

**Senator O'BRIEN**—We are talking about areas of many hectares, where people work and often meet to talk about what is happening at work. That is all we are asking about. I note that the bill proposes that guards be licensed to the standard that applies in the state or territory in which they are employed. I understand that what is going to happen to the offshore industry is subject to future regulation, so we do not know what is going to happen there, but presumably there will have to be a determination as to which state or territory regulations apply to that offshore location. Will that be in the regulations as well?

**Mr Kilner**—There is a question about whether or not there will be security guards at these facilities. I would not like to talk about that at a public hearing, but I am happy to address it separately. What I can say is that the offshore facilities fall under one particular jurisdiction or another. For example, the facilities in the North West Shelf fall under the WA government and therefore any facility that falls within the jurisdiction of the WA government would require the qualifications prescribed by that government.

**Senator O'BRIEN**—Is there consistency in the level of qualifications across states and territories?

**Mr Kilner**—All of them have their courses accredited through the NATA accreditation process, so there is some consistency in the approach, but they are not all identical. That is an issue that the government is aware of, and it is looking at whether or not they can move to a more standardised approach across Australia.

**Senator O'BRIEN**—What is the state of that? The government is looking at it, but when will we expect to know what is likely to happen?

**Mr Kilner**—I would expect it will be within the next couple of months.

**Senator O'BRIEN**—So there is a possibility that the government will seek to prescribe a standard of qualification for security, or is this something that will have to go through ministerial meetings and those sorts of processes, which usually takes a lot more than a couple of months?

**Mr Kilner**—I think the government's position will become clear within a couple of months. The process for moving towards standardisation, as you have noted, will require the various ministers to agree.

**Senator O'BRIEN**—I presume the desirable level would be a mandated qualification level, ensuring portability is available and removing the need for multiple licences and also removing the possibility of qualification shopping.

**Mr Kilner**—That is right.

**Senator O'BRIEN**—With regard to the provisions in the bill that allow guards to remove vehicles and vessels, given that there would possibly be some very specialised vehicles and vessels, the exercise of this power would be totally dependent on the qualification of the guard in question. Where they do not have the appropriate qualification, they would be required to call in someone with the qualification to remove it at their direction.

**Mr Kilner**—That is correct.

**Senator O'BRIEN**—Given that we have not just large vessels but locomotive engines and very large trucks, getting the person with the qualification could involve time. Is that going to impact on the intent of this provision? Presumably you want a vessel or vehicle removed because it is a security risk.

**Mr Kilner**—Obviously the plans will need to address how vessels or vehicles will be removed from within a maritime security zone. So the plans will have to reflect how they would propose to do that, whether it be through having suitably qualified guards or other people available with the right qualifications. If they are seeking to remove a vessel or a vehicle then there is, I would suggest, a security concern, but that does not make it an immediate security concern.

**CHAIR**—Especially if it is ticking.

**Mr Kilner**—Or has a mercury switch.

**Senator O'BRIEN**—Or contains a very volatile cargo and is in an area where it should not be—hence the imperative for it to be removed expeditiously.

**Mr Kilner**—Also with that is the need for them to make other interim arrangements until such time as they can arrange to mitigate the risk associated with the vessel or vehicle.

**Senator O'BRIEN**—What arrangements would be made for the disposal or storage of abandoned vessels or vehicles?

**Mr Parkinson**—Those details will be set out in the regulations. You would imagine that the specific arrangements will vary from location to location, but that will set out in the maritime security plans.

**Senator O'BRIEN**—So there will be some authorisation to hold and some ability to levy charges against those who own the vessel or vehicle for the cost of the storage. Is that what we should understand?

**Mr Parkinson**—We would certainly expect to see that in the regulations.

**Senator O'BRIEN**—If something is abandoned and in storage, I presume there will be a power to sell it and recover the costs, pay money into consolidated revenue and those sorts of things.

**Mr Parkinson**—That is normally a part—

**Senator O'BRIEN**—They are quite complex and detailed regulations that we are not seeing in the bill.

**Mr Parkinson**—Yes, they are. We would expect that they would mirror similar provisions in other legislation, both state and Commonwealth.

**Senator O'BRIEN**—At what stage is the drafting of these regulations?

**Mr Parkinson**—As Mr Kilner said, we have established a working group to develop those regulations and that working group is getting under way.

**Senator O'BRIEN**—Are these regulations a critical part of the legislative and sublegislative regime for this area? Are we proceeding more quickly than we are ready to with the legislation?

**Mr Parkinson**—The bill provides that the bill will not commence until proclamation, which sets a time frame for the development of those regulations. As previously mentioned, we would look to have those regulations settled well within that time frame.

**Senator O'BRIEN**—So we are looking at developing regulations and we are looking at developing a training course and getting people qualified, and that will not happen until some time after the bill comes into effect. As I say, there is a lot ahead of your section and the industry.

**Mr Parkinson**—There is significant detail to be covered in the regulations and we have certainly acknowledged that in our submission.

**Senator O'BRIEN**—With regard to the provision which currently allows classes of persons to be exempted from providing reasons for being in a maritime security zone, can you outline for the committee the classes of persons to be exempted from providing reasons for being in a maritime security zone and tell us how that was determined?

**Mr Parkinson**—The bill provides that certain persons—I will list them: a maritime security inspector; a duly authorised officer; a law enforcement officer; a member of the Australian Defence Force; a person who is authorised by a law of the Commonwealth, state or territory to enter a maritime security zone; or a person prescribed in the regulations—would be effectively exempted from stating their reason to be in that zone.

**Senator O'BRIEN**—With regard to the 'person prescribed in the regulations', what class of persons do you think might be prescribed in the regulations?

**Mr Parkinson**—This is a matter that the working group will consider. I am not aware of any proposals currently around for additional persons to be exempted.

**Senator O'BRIEN**—So there might be nothing that might be limited in that sense.

**Mr Parkinson**—We would expect there will be nothing, but we are certainly open to suggestions.

**Senator O'BRIEN**—The details of how the security guards will operate in secure zones will be specified in the regulations?

**Mr Parkinson**—They will be specified in the maritime security plan for that facility.

**Senator McEWEN**—So each facility will have its own plan. Did you say that each facility will have regulations specific to the disposal of vessels and trucks as well?

**Mr Parkinson**—No, the regulations will prescribe particular procedures for disposal of vehicles and vessels, but the management of a vehicle or vessel will be spelt out in the plan for the particular facility. Some facilities, you would appreciate, will have acres of space and others will have to store things elsewhere.

**Senator McEWEN**—Be towed offshore and sunk near Kangaroo Island or something.

**Senator O'BRIEN**—That is a very significant environmental issue you have raised there, Senator.

**Senator McEWEN**—Indeed. Is the same working group going to work on the regulations with regard to the disposal of vessels and the training regime? I hear a lot of talk about a working group. Is it a group or groups?

**Mr Parkinson**—The working group will certainly seek to get the appropriate expertise for those different tasks. While the core of the group may be the same, I would expect we will be sourcing expertise on those specific issues.

**Senator McEWEN**—The working group, because you are dealing with state legislation as well, will have to have representatives of the states. I know the legislation has not gone through yet but we expect that it will go through shortly. Has any work been done already to set up those groups and alert the relevant states and stakeholders about the expectation of their input into these working groups with significant responsibilities?

**Mr Parkinson**—We had a meeting of the Maritime Industry Security Consultative Forum in Sydney on 19 August at which a wide range of members of that forum indicated their interest in participating in the working group. Also, through the consultation process for the development of the bill we were interacting frequently with state police forces and we would certainly be seeking their input into the development of the regulations as well.

**Senator McEWEN**—In your opinion, has the department got adequate resources to pull all this together?

**Mr Parkinson**—This task is a priority and we do have the resources. I would have to acknowledge that we are currently recruiting staff and that recruiting staff takes some time.

**Senator O'BRIEN**—Is there a draft for this working group at the moment about what is intended to be in the regulations?

**Mr Parkinson**—We have done some preliminary work on what is likely to be in the regulations based on the regulation-making powers set out in the bill.

**Senator O'BRIEN**—The industry representatives to be consulted on the detailed regulations—is that the list of participants in the consultation process that is attached to your submission?

**Mr Parkinson**—They were the participants in the consultation process for the development of the bill. Since then we have had further expressions of interest from a number of organisations and we welcome their interest.

**Senator O'BRIEN**—Yes, so they are interested and these people are interested; will they all be consulted? Will they all be part of the consultation process?

**Mr Kilner**—Not all the people who have been consulted or who have put in submissions will find themselves on the working group. They usually self-select. It will be a smaller group of people than the 34, I think, contained in the submission or even the 22 who have put in submissions. What we tend to find is that one particular person from an organisation will represent the interests of similar organisations, so there tends to be a self-selection process involved.

**Senator O'BRIEN**—You have groupings here in this document under 'maritime industries'—industry organisations, industrial organisations, security card providers, police

forces and Commonwealth agencies. Are you suggesting that each of those groups would have some sort of representative?

**Mr Parkinson**—Yes, I am.

**Senator McEWEN**—You mentioned user concept testing, on 29 August. Is that right?

**Mr Kilner**—Yes. We have put together a communications strategy more broadly around the extension of the powers contained within the maritime security regime. As part of the work that we are doing around the maritime security identity card and those powers, we are also testing the broader communications concept.

**Senator McEWEN**—I presume there will be a report arising out of that testing which might be of interest to this committee, even though we have only got a week to consider the response. Is that right? Is there going to be a report or is it an ongoing process?

**Mr Kilner**—I do not think we have planned on a report, in a formal sense, coming back. But, yes, there will be changes, I would imagine, to the concept that we are testing following 29 August and leading up to October as we ensure that the communications strategy meets the needs.

**Senator O'BRIEN**—Is the department able to provide the committee with an indication of how the government plans to respond to the issues raised and the report tabled by this committee in relation to the regulatory framework for the MSIC scheme?

**Mr Kilner**—We are still working our way through that and preparing the response. What I can say is that we have considered the committee's recommendations and already made changes to the regulations in preparation for those regulations being made. So we have taken on board all those things that may have affected the regulations, but with regard to other recommendations contained in the report we are still putting together the response to the committee.

**Senator O'BRIEN**—When is it expected that there will be draft regulations in response to this committee's process?

**Mr Kilner**—As you would be aware, we had a draft prior to the Senate committee's consideration. Since then we have gone back and reviewed the draft and made some changes to it, and those regulations are now waiting to be made.

**Senator O'BRIEN**—When do they go before the executive council?

**Mr Hallinan**—They should be going up within the next two weeks.

**Senator O'BRIEN**—Do you still plan to commence the roll-out period on 1 October?

**Mr Kilner**—In October, Senator. Whether or not it is 1 October really depends on the work of the implementation group, but in October in Melbourne is our intention.

**Senator O'BRIEN**—In the *Australian* last Friday, Minister Truss was reported as saying that thousands of people could possibly be denied MSICs. That is not consistent with the information that was presented to this committee in mid-July. Has more information come to hand on this issue?

**Mr Kilner**—We still do not know the extent of the number of people within the maritime industry who may have criminal convictions. We have been able to look at what has gone on in aviation security—the identification card background checking process. How that translates into the question of job losses is not one that I can contemplate at this time.

**Senator O'BRIEN**—Do you know on what basis the minister made his comments?

**Mr Kilner**—I would have to take that up with the minister.

**Senator O'BRIEN**—Given the minister's comments and the high level of anxiety these comments raised at ports around the country, has any consideration been given to compensation for people who may be denied an MSIC? I assume it is a very small number of individuals who would have access to unfair dismissal provisions.

**Mr Kilner**—The denial of an MSIC could result in the person's redeployment or in the person ceasing to be employed, but that would be an arrangement under the existing collective bargaining award or agreement that exists within that workplace.

**CHAIR**—Wouldn't that be just a case of redeployment rather than no employment?

**Mr Kilner**—That will depend on the working practices of the employer. Redeployment is always considered to be the first option, but there may be circumstances, which I cannot rule out, where—

**CHAIR**—Do you think that over a period we should ensure that there is not some sort of culture when suddenly a whole lot of people become ineligible for their jobs because of the business we went through before with the convictions of all kinds? You say you have a less tough regime in maritime. It is tougher in civil aviation, is it?

**Mr Kilner**—There are crimes contained in the regulation that apply to ASIC that do not apply to MSIC, if that is the question.

**CHAIR**—Yes. Does that mean there are fewer dodgy types of people, if I can put it nicely—

**Mr Kilner**—It is not possible to determine that because, firstly, there is a difference in the size. There are up to 130,000 within the maritime industry. There are fewer within the aviation industry. We have five to seven years of history with the aviation security identity card. We do not have that information with regard to the maritime security industry. So there are a number of factors that will come into play in terms of the outcome.

**CHAIR**—But in the longer term surely it would make sense to have some sort of seamless capacity for secure aviation. If you are one of the major suppliers of security people, surely you would want to switch them from one to the other. Many of the guys in Junee who work in the jail are known to me, as well as some of the people in the jail. They do stints in other locations. Because they have qualified in one they can go to the other.

**Mr Kilner**—We have made provision whereby a person who has an ASIC can be issued an MSIC. In a sense we are moving in that direction now.

**Senator O'BRIEN**—Some concern has been raised by industry and the unions over the uncertainty that will apply to issuing bodies after the roll-out period. Do you have any idea how many organisations will want to be issuing bodies post roll-out?

**Mr Kilner**—No. At this point we do not know how many will put their hands up to be issuing bodies. We are doing that piece of work now.

**Senator O'BRIEN**—Post roll-out is July 2006?

**Mr Kilner**—It is from October 2005 to December 2006, so by 1 January we expect to have completed the roll-out.

**Senator O'BRIEN**—That is 1 January 2007?

**Mr Kilner**—Yes. We do not really have an idea about the number of issuing bodies, but we have been working with industry to make it as easy as possible for them to be issuing bodies. For example, issuing bodies can choose to use agents for particular parts of their processes. They will still be required to audit and manage that process and we will still have the ability to audit it as well, so we can try and make the scheme as flexible as possible to suit the maritime environment. It is not possible at this stage for us to look at the number of issuing bodies and also the gamut of the activities they will choose to do in-house as opposed to using agents.

**Senator O'BRIEN**—I understand that employers do not want to be responsible for the decision making and the holding of sensitive information in relation to their employees. How will this be addressed?

**Mr Kilner**—A number of organisations have made it plain that they do not want to have responsibility for knowing the criminal backgrounds of their existing employees or of prospective employees. They have also raised concerns about the security of that information. So we are quite well aware that that is the particular circumstance. That is quite different to the circumstances that exist now within the aviation industry, where they are aware and they do make judgments. So the question is an open question, really, at this stage. At this point the intention is that from 1 January 2007, when the transition arrangement for existing employees is over, the responsibilities for new employees from that date forward will be transferred back to the issuing bodies. Industry has made representations about that. The government is looking at the particular issue, but no decision has been made by government concerning any other mechanism at this time.

**CHAIR**—I think you just said that, in the aviation industry, the employer would be well aware of the records of their employees' criminal convictions. Is that what you just said?

**Mr Kilner**—The issuing bodies are well aware of the criminal convictions—

**CHAIR**—Are the issuing bodies the employers?

**Mr Kilner**—In most circumstances they are; for example—

**CHAIR**—There has been some spectacular press—well, someone has called it spectacular—about some of the people who have criminal convictions and are involved in baggage handling, for instance. Does that mean that the employer of those people would have known that they were crims and baggage handlers at the same time before they started work?

**Mr Kilner**—Except for a circumstance where the conviction has been spent, or where employees were employed by those employers in 1998 when the ASIC scheme was introduced. Within the aviation industry there were a number of employees whose convictions

had been ‘grandfathered’—that is, if they were a member, for example, of the Federal Airports Corporation when the airports were sold and the ASIC scheme was introduced, they would already have gone through public service background checking and therefore the employers may not have been aware of the criminal convictions of those people.

**CHAIR**—But, with regard to those same people, some of them would not qualify under the present security pass arrangements—right?

**Mr Kilner**—The government has announced that it is reviewing those people whose convictions had been grandfathered. That review is under way at the moment; 20,000 have been done to date and the rest—

**CHAIR**—What do the public service security checks look like? They could not have been too good if you have criminally-convicted characters who were still employed as baggage handlers and got in there before—

**Mr Kilner**—I would not have expected that there would have been a significant number of people with criminal backgrounds who would have got through the public service tests pre-1998. But, given that so many years have passed, I am not aware of the tests that those people in the Federal Airports Corporation went through at that time. That is why the government is reviewing the grandfathering at the moment.

**Senator O’BRIEN**—Given the focus on securing Australian ships and ports through the Maritime Transport and Offshore Facilities Security Act 2003, I am interested in any work that is being undertaken to extend the security framework to include foreign ships and their crews. And I understand that the administration of the coastal permits system under the Navigation Act now rests with the Office of Transport Security. Is that correct?

**Mr Kilner**—I will deal with the latter part of your question first. The issue of single-voyage permits or coastal permits is undertaken by the Office of Transport Security on behalf of the respective delegate within the department. With regard to the other matter, we are a signatory to the International Convention for the Safety of Life at Sea, under which the International Ship and Port Facility Security Code exists. Under that code, we have responsibilities for Australian flagged vessels and we have responsibilities for Australian port facilities. There is a separate set of responsibilities for foreign flagged vessels. The development of security plans for arrangements that exist for the security regulation of those vessels is the responsibility of the flag state. Our responsibilities are really around the risk profiling of those foreign vessels and dealing with a foreign vessel when it indicates its intention to come to an Australian port.

**Senator O’BRIEN**—The Australian Shipowners Association released a press release in August suggesting that the department was undertaking a review of the coastal permit guidelines. Is that correct? If so, who is involved in that review?

**Mr Kilner**—The review of the guidelines is not being undertaken by the Office of Transport Security. I will have to take on notice the question of whether a review is under way and who within the department is responsible for it.

**Senator O’BRIEN**—Is it true that in the order of 800 coastal permits are issued each year?

**Mr Kilner**—I do not have the number with me, so I will have to take that question on notice.

**Senator O'BRIEN**—If you could please. Is there a publicly available list of the ships currently operating or due to operate in the immediate future, say, in the next month, along the Australian coast?

**Mr Kilner**—A publicly available list of ships—

**Senator O'BRIEN**—With permits.

**Mr Kilner**—Do you mean foreign flagged ships with permits?

**Senator O'BRIEN**—Yes, I mean foreign flagged ships with single- or continuing-voyage permits.

**Mr Kilner**—Not that I am aware of. There is a process for applying for permits, which is, I understand, much shorter than one month. Therefore I would not have thought there would be a list indicating the number of foreign flagged vessels operating under permit. I am not aware of whether that is available publicly available.

**Senator O'BRIEN**—The Office of Transport Security manages the permit system. What happens when you have made a decision about granting a permit?

**Mr Kilner**—There is certainly a list of all ships operating on Australia's coastline which have either an SVP or a CVP. Your question as to whether it is publicly available is one I will have to check. I do not think it is publicly available.

**Senator O'BRIEN**—Can this committee have access to that list?

**Mr Kilner**—I will have to take that on notice.

**Senator O'BRIEN**—When permits are issued, do they specify the cargo to be carried?

**Mr Kilner**—When a permit is applied for, the cargo for which the permit is being applied for is specified. In that regard, when an approval is given, it is approving a particular cargo.

**Senator O'BRIEN**—I am interested in how high-consequence dangerous goods are classified on the permits. Do they simply go as general cargo? If the cargo were ammonium nitrate would the permit say that it is ammonium nitrate, or if it were some other explosive product?

**Mr Kilner**—For some categories, information is provided as to the nature of the cargo. For example, ammonium nitrate is one and fuel—oil et cetera—is another. But for the wide range of material that might be considered hazardous more generally, there is not. In some instances, that will be classified as general cargo. I think the United Nations has 180 items on its list and, really, it gets to a question of which list we are working from. We do not go into every single one of those items. With regard to ammonium nitrate, we are aware of when ammonium nitrate is being sought to be moved by a foreign flagged vessel.

**Senator O'BRIEN**—I think we have talked about this before but can you confirm for me that it is not possible to bring foreign ships under the Maritime Transport and Offshore Facilities Security Act?

**Mr Kilner**—That is correct: it is not possible for a foreign flagged vessel to be regulated under our act.

**Senator O'BRIEN**—Therefore crew members on those vessels will not be required to go through the MSIC background checking process.

**Mr Kilner**—That is correct.

**Senator O'BRIEN**—Would they be required to undergo any checking if they are handling or engaged in transporting dangerous cargoes such as ammonium nitrate on the Australian coast?

**Mr Kilner**—We do not undertake checks of individual seafarers on board foreign flagged vessels. We undertake through Customs and Immigration to check for those people when they come to Australia. So they undergo that series of checks, but there is not an additional check looking at particular seafarers when considering the approval of a single voyage permit or a coastal permit, because that has in effect already been done when the ship came to Australia.

**Senator O'BRIEN**—So if ship A has a general cargo permit and then applies for a permit for another single voyage to cart ammonium nitrate, there is no special checking?

**Mr Kilner**—Ship A must provide details—I think it is now moving towards 96 hours in advance of the ship arriving in Australia—to Customs under what is called form 3A. That information concerns the cargo on the vessel, the crew and details about the ship. Therefore those steps are taken as the ship comes to Australia. If the ship then applies for a permit to move a cargo from one port to another that will be considered in isolation. We do not go back and review the individual crew members to see whether or not we consider that they are an additional risk in relation to the risk that we would have considered them against on entry to Australia.

**Senator O'BRIEN**—So there is no cargo-specific checking done.

**Mr Kilner**—No, there is not.

**Senator O'BRIEN**—Will Australian citizens who are crew members on foreign ships be checked for an MSIC process or are they excluded like the foreign seafarers?

**Mr Kilner**—The MSIC applies to Australian flagged vessels and for people who are required to work within a maritime security zone. That therefore means that we are only going to be looking at seafarers on board Australian flagged vessels.

**Senator O'BRIEN**—So the answer is they will not be checked.

**Mr Kilner**—They will not be. They will not require an MSIC.

**Senator O'BRIEN**—Does the Office of Transport Security administer the licence scheme for coastal ships which allows foreign ships to operate on the Australian coastline for up to 12 months?

**Mr Kilner**—Are you talking about coastal permits?

**Senator O'BRIEN**—Yes.

**Mr Kilner**—Then the answer is yes.

**Senator O'BRIEN**—Do these ships fall under the Maritime Transport and Offshore Facilities Security Act?

**Mr Kilner**—No, they do not. They are still foreign flagged vessels.

**Senator O'BRIEN**—Okay. So there will be no background checking on those crews either?

**Mr Kilner**—Only as the crew enter Australia either originally with the vessel or as they go through the usual range of checks on crew changeover.

**Senator O'BRIEN**—Do you know of any instances where a ship has been denied access because of the membership of its crew?

**Mr Kilner**—Not to my knowledge. I know that there have been actions taken against individual crew—for example, they have been detained on board or other steps have been taken. I would have to refer that question to Customs.

**CHAIR**—Did that Korean ship that went down the coast that time and dropped the drugs off pull into a port somewhere?

**Mr Kilner**—Are you talking about the *Pong Su*?

**CHAIR**—Yes.

**Mr Kilner**—No, it did not. It has been arrested and I understand it is in the port of Sydney.

**CHAIR**—But had it intended just to pull in somewhere?

**Mr Kilner**—I do not think so.

**CHAIR**—Was it destined for an Australian port or was it just on a bit of a trip to do the drug run?

**Mr Kilner**—I understand that it was the latter.

**Senator O'BRIEN**—How do these foreign crews on these ships access shore leave? Do they need to apply for some sort of visa working on these ships which might be on the Australian coast for 12 months or do they just live on the ship and access the shore as and when they can and are required?

**Mr Kilner**—I understand the arrangement for crew on foreign flagged vessels is that they are granted a special purpose visa. I think that would apply for a single permit, a continual permit or just when accessing the port on a one-off basis.

**Senator O'BRIEN**—So if they are there for a day or a year, it is the same? I mean if they are on a continuing voyage permit and it ran for up to a year, there would be no difference between that and someone who was calling into port for a day?

**Mr Kilner**—I am not sure about a year.

**Senator O'BRIEN**—Well, say, 11 months?

**Mr Kilner**—For three months or whatever—I understand that they are considered the same as those on a single permit.

**Senator O'BRIEN**—Following on from the issues and difficulties associated with background checking foreign crews and the potential for inconsistencies in the system can

you update the committee on where the Australian government is up to in relation to the ILO 185?

**Mr Kilner**—The government has not ratified ILO convention 185 at this time. My understanding is that only three countries in the world have ratified ILO convention 185—those being the great seafaring nations of Nigeria, Jordan and France. There are a number of governments, including our own, which are looking at the issue of ILO convention 185 and its application, but at this stage the government has not ratified ILO convention 185.

**Senator O'BRIEN**—What are the problems with it?

**Mr Kilner**—I would have to refer that question to DIMIA and DEWR, who are responsible for ILO conventions, but my understanding in the broad is that there are concerns that ILO convention 185 may prevent the application of Australia's rules for granting visas and undertaking certain checks associated with crew.

**Senator O'BRIEN**—Those are all the questions I have. You have taken a number of questions on notice. We have a very short reporting time.

**CHAIR**—We actually need the answers by Wednesday morning.

**Senator O'BRIEN**—I was going to say that we need them within 24 hours.

**CHAIR**—I will go with Senator O'Brien—24 hours. We need them quickly.

**Mr Kilner**—We will do it as soon as we possibly can.

**CHAIR**—Thanks very much. I hope you had a good time.

**Committee adjourned at 2.58 pm**