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Report 57

**Convention for the Safety of Life at Sea, 1974 and the
International Ship and Port Facility Security (ISPS) Code**

Joint Standing Committee on Treaties

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Canberra

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Terms of reference

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on

- a) matters arising from treaties and related National Interest Analysis and proposed treaty actions presented or deemed to be presented to the Parliament
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the Committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

AAPMA	Association of Australian Ports and Marine Authorities Incorporated
AIMPE	Australian Institute of Marine and Power Engineers
AMSA	Australian Maritime Safety Authority
DOTARS	Department of Transport and Regional Services
IMO	International Maritime Organization
ISPS	International Ship and Port Facility Security
ISSCs	International Ship Safety Certificates
JSCOT	Joint Standing Committee on Treaties
MTSB	Maritime Transport Security Bill 2003
NIA	National Interest Analysis
SOLAS	Safety of Life at Sea
RIS	Regulation Impact Statement



List of recommendations

Outstanding issues and concluding observations

Recommendation 1

The Committee recommends that a review of the Maritime Transport Security Act 2003 be conducted 12 months after its implementation, so that any operational concerns with regard to the Act or its regulations can be raised by interested parties, with a view to improving the legislative provisions.

Recommendation 2

The Committee recommends that a briefing be provided to it by representatives of the Department of Transport and Regional Services after 1 July 2004 on the possible effects to the Australian maritime industry, including a status report on the amendments to the SOLAS Convention and the ISPS Code.

Introduction

- 1.1 This report contains the findings and conclusions of the Committee's inquiry into the proposed *Amendments to the Annex to the International Convention for the Safety of Life at Sea, 1974, including consideration and adoption of the International Ship and Port Facility Security (ISPS) Code, done at London on 12 December 2002* (the SOLAS Convention). The proposed treaty action was tabled in Parliament with a National Interest Analysis (NIA) and Regulation Impact Statement (RIS) on 14 May 2003.
- 1.2 In this chapter the Joint Standing Committee on Treaties (JSCOT) makes some observations about the current international debate concerning maritime security and the context in which the Committee expedited its review. It also outlines the conduct of the inquiry and the factors which have influenced it.

Australia's maritime transport security framework

- 1.3 According to the Regulation Impact Statement (RIS), the objective of the International Maritime Organization (IMO) maritime security measures is to establish a standardised international framework through which ships and port facilities can co-operate to detect and deter acts of terrorism in the maritime sector.¹ The Department of Transport and Regional Services (DOTARS) website states that 'the implementation of Australia's preventive maritime security

1 Regulation Impact Statement (RIS), p. 2.

framework is considered to be both a matter of national security and an international obligation.²

- 1.4 As a party to the SOLAS Convention³, the Australian Government has determined that a nationally consistent approach to the provisions of the amendments is necessary. The provisions of the Convention will be enabled by the introduction of new legislation. This legislation will have implications for approximately 70 ports and around 300 port facilities in Australia.
- 1.5 The Committee is concerned about variances between the spirit and letter of the amendments to the SOLAS Convention, in particular the ISPS Code, and the implementing legislation. It also has issue with the practicality and workability of the legislation. Throughout the inquiry the Committee found that sections of the maritime industry share this concern.

Nature of proposed amendments

- 1.6 The basis of the current proposed treaty action is three amendments to the SOLAS Convention: Chapter V, Chapter XI-I, and Chapter XI-2 (the ISPS Code is annexed to Chapter XI-2). Chapter XI-2 and the ISPS Code are amendments to SOLAS which were adopted by a Conference of Contracting Governments in London on 12 December 2002. The amendments to Chapter V and Chapter XI-I were not regarded as controversial and this view was borne out in evidence to the Committee.
- 1.7 The first amendment of the proposed treaty action, in Chapter V, amends the date for compliance with a safety of navigation provision in SOLAS regarding the installation of automatic identification systems on ships.
- 1.8 Secondly amendments to Chapter XI-I require better information on ship identity, through the permanent marking of a ship's identification number in a visible place on board a ship, and the issuing of a continuous synopsis record for each ship by its flag state.

2 See www.DOTARS.gov.au, viewed 17 October 2003.

3 Australia became a party to the SOLAS Convention on 17 August 1983

- 1.9 Lastly, Chapter XI-2 and the ISPS Code set out special measures to enhance maritime security. These provisions will apply to ships and ports, and their objective is to ‘establish a standardised international framework through which ships and port facilities can co-operate to detect and deter acts of terrorism in the maritime sector’.⁴ It is these amendments on which most of the evidence has been taken by the Committee. Concerns about the implementation of the legislation to bring the ISPS Code into effect provided the impetus for the Committee’s inspections of two ports, Fremantle and Newcastle.

Conduct of the inquiry

- 1.10 The inquiry was announced on the Committee’s website soon after the proposed treaty action was tabled on 14 May 2003 and advertised in *The Australian* newspaper on 28 May 2003, inviting members of the public to prepare submissions for the Committee’s review.
- 1.11 An initial public hearing was held on 16 June 2003, at which evidence was taken from DOTARS on the amendments to the SOLAS Convention, in conjunction with other treaties tabled on 14 May 2003. Given the implications of the SOLAS amendments for the 70 ports and 300 port facilities around Australia, it was evident to the Committee that the views of the maritime industry on the proposed treaty action should be canvassed. Accordingly, letters inviting submissions were sent to port authorities, peak bodies, industry groups and other interested parties. Eighteen submissions were received.
- 1.12 Notwithstanding that in accordance with Article VIII(b)(vii)(2)(bb) of the SOLAS Convention the amendments will be deemed to have been accepted by 1 January 2004 and automatically enter into force on 1 July 2004,⁵ the Committee recognised that it would require a longer period than the standard 20 sitting days to complete its review and therefore wrote to the Minister for Foreign Affairs on 19 August 2003 advising of its decision to extend the time-frame of the inquiry.

⁴ RIS, p. 2.

⁵ According to this article of the Convention, amendments will not enter into force if objections are notified by more than one third of the Contracting Governments to the Convention, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world’s merchant fleet. The Committee is assured that objections of this nature will not be lodged.

- 1.13 On 5 September 2003 the Committee conducted an inspection at the Port of Fremantle. This enabled the Committee to gain an invaluable appreciation of how the provisions of the proposed treaty action would be implemented and to ascertain the concerns of port authorities and facilities operators.
- 1.14 The Committee recalled DOTARS to a public hearing on 8 September 2003 to allow the Department to comment on issues which had been raised in the course of the Fremantle inspection.
- 1.15 The Committee further enhanced its understanding of the implications of the amendments to the Convention in different environments during an inspection at the Port of Newcastle on 21 October 2003. The Committee canvassed the views of the Newcastle Port Corporation, facilities operators, the Association of Australian Ports and Marine Authorities (AAPMA) and the Maritime Union of Australia (MUA). As with Fremantle, the inspection in Newcastle enabled the Committee to gain some insights into how elements of the ISPS Code pose challenges for port authorities and port facilities.
- 1.16 The Committee again provided the Department with an opportunity to comment on concerns raised in discussions in Newcastle at a public hearing on the following day, 22 October 2003, in Canberra.

Introduction of enabling legislation

- 1.17 During the course of the inquiry, on 18 September 2003, the enabling legislation – the *Maritime Transport Security Bill 2003* – was introduced into Parliament. The bill was referred to the Senate Rural and Regional Affairs and Transport Committee on 8 October 2003 for review and report. The Committee noted that the Senate committee held a public hearing on 27 October 2003 and that several issues of interest to JSCOT were raised at that hearing.
- 1.18 The report of the Rural and Regional Affairs and Transport Committee was tabled in the Senate on 27 November 2003.⁶ JSCOT noted that the Senate Committee considered that ‘DOTARS has given reasonable answers to most of the concerns raised’ and that the implementation of the bill can be achieved by 1 July 2004 ‘with appropriate consideration by the Minister and DOTARS of the

6 The Report of the Senate Committee can be accessed at www.aph.gov.au/Senate/committee/rrat_cttee/maritime_security/report/report.pdf

Committee's comments, either through amendments to the bill or in the regulations.'⁷

- 1.19 The *Maritime Transport Security Bill 2003* passed, with amendment, on 1 December 2003 and at the time of writing, was awaiting Assent. The Committee notes with interest that the amendments agreed to included the formalised recognition of the role of maritime unions as a key stakeholder in the ongoing implementation of the maritime security framework, and the requirement in the regulations that security plans detail the training and knowledge required by staff with security responsibilities.
- 1.20 The introduction of the enabling legislation and its review by the Senate committee has influenced the conduct of JSCOT's review. Some of JSCOT's preliminary concerns have been addressed satisfactorily by the Senate committee and by the subsequent legislation and therefore have been omitted from this report.

Committee comment

- 1.21 In recent reports this Committee has been critical of the Government on the occasions when legislation giving effect to treaty obligations has been introduced prior to the conclusion of the Committee's review of proposed treaty actions, and has made comments and recommendations accordingly.
- 1.22 In this case, the Committee was concerned when the *Maritime Transport Security Bill 2003* was introduced on 18 September 2003, prior to the completion of the Committee's report. The Committee recognises, however, that the nature of the SOLAS amendments and their expected entry into force has imposed strict deadlines on all involved parties. The Committee accepts DOTARS' view that the timeframe for the implementation of the increased security measures and their potential impact on ports and port facilities has meant that the introduction of the legislation was necessary during the Spring sittings of Parliament to enable its passage into law.
- 1.23 The Committee also accepts the view expressed in the NIA and RIS that non-compliance by the 1 July 2004 deadline could have the potential to cause serious damage to Australia's trade interests.⁸ The DOTARS website states that international ships are likely to be

7 Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Maritime Transport Security Bill 2003*, November 2003, p. 33.

8 NIA, para. 6 and RIS, p. 9.

unwilling to visit non-compliant ports. Other effects of non-acceptance of the IMO security measures are discussed later in this report.

SOLAS Convention amendments

- 2.1 As stated in the introduction to this report, the proposed treaty action under review comprises three amendments to the Safety of Life at Sea (SOLAS) Convention, namely to Chapter V, Chapter XI-I and Chapter XI-2, including the International Ship and Port Facility Security (ISPS) Code.

Amendments to Chapter V and XI-I

- 2.2 The first two amendments, in Chapter V and Chapter XI-I, relating to improved safety measures are not considered controversial by the Committee, which understands that amendments to maritime safety provisions are made regularly by the IMO and implemented in Australia through Marine Orders under the *Navigation Act 1912*. According to the National Interest Analysis (NIA), this is the standard procedure for the introduction of ship safety measures under the SOLAS Convention into Australian law.¹
- 2.3 Amendments to Chapter V (Regulation 19) advance the date required for certain types of ships to be fitted out with an automatic identification system.²
- 2.4 Amendments to Chapter XI-I (Regulation 3) require certain types of ships to have a ship identification number permanently marked in a visible place on board the ship.³

1 NIA, para. 21.

2 NIA, para. 10.

- 2.5 Amendments to Chapter XI-I (Regulation 5) require certain types of ships to carry a continuous synopsis record on board. This is issued by its flag state, and provides a continuous record of ownership and registration details.⁴
- 2.6 The Committee understands that the Australian Maritime Safety Authority (AMSA) will integrate the requirements of these amendments into existing systems and is not expected to incur additional administrative costs for these activities.⁵
- 2.7 The NIA states that the Office of Regulation Review has determined that a Regulation Impact Statement (RIS) is not required for the amendments pertaining to maritime safety issues, as these changes are minor and machinery in nature.⁶

Amendments to Chapter XI-2 and the ISPS Code

The international maritime security framework

- 2.8 According to the NIA and the RIS, the terrorist attacks of 11 September 2001, the attack on the French tanker *Limburg* and the Bali bombing have forced a reappraisal of preventive security measures by industry, including the maritime industry.⁷ The proposed amendments to the Convention, increasing IMO security measures by the introduction of the ISPS Code are designed to
- establish a standardised international framework through which ships and port facilities can co-operate to detect and deter acts of terrorism in the maritime sector.⁸
- 2.9 The Committee was advised that
- in the post September 11 environment the US has principally worked through many international fora to advance international security type obligations—world customs

3 NIA, para. 11.

4 NIA, para. 12.

5 NIA, para. 24.

6 NIA, para. 30.

7 NIA, para. 9 and Regulation Impact Statement (RIS), p. 2.

8 RIS, p. 2.

organisations, international civil aviation organisations and international maritime organisations ... the IMO was the only appropriate vehicle that had the reach and structured process in place.⁹

- 2.10 Unlike the perfunctory safety measures outlined in the amendments to Chapters V and XI-I, which attracted little comment in submissions or evidence, the Committee's focus in its inquiry on the introduction of the ISPS Code was warranted, given the continuing level of debate on how it will be effectively and fairly implemented nationally.
- 2.11 The Committee does not consider it necessary to describe in detail the terms of a Code implemented by legislation which passed into law prior to the tabling of this report. Some brief comments will be made however about the obligations and purpose of the Code, before the changes it proposes are briefly analysed.¹⁰
- 2.12 In brief, Part A of the ISPS Code sets out mandatory requirements, including responsibilities of Contracting Governments and maritime industry participants, designation of security officers, verification of ship security, issuing of International Ship Safety Certificates (ISSCs) to verified ships, cooperative arrangements, record keeping, training requirements, efficient collection of security related information (such as through a Declaration of Security), and a methodology for security assessments and the development of security plans.
- 2.13 Part B of the ISPS Code has recommendations which refine and further clarify Chapter XI-2 and Part A of the Code. It is important to note that Part B of the Code is optional and Australia will not implement it. This has implications for a comparison of costs of and funding for the implementation of the amendments, which are discussed in Chapter 3.

Development of Australian legislation

- 2.14 The Committee heard that

in large part the [ISPS] code has been informed by a [US] coast guard style model, which in its implementation poses a

9 Mr Andrew Tongue, *Transcript of Evidence*, 16 June 2003, p. 39.

10 Further detailed information (including copies of the tabled documents and submissions for review) are available from the Committee's website at www.apf.gov.au/house/committee/jsct/solas/tor.htm.

few issues for us because our port sector is basically the responsibility of state government.¹¹

- 2.15 The Committee recognises that the legislative responsibilities of state, territory and federal governments in Australia are very different from those in the US in terms of port management. The Committee understands that ‘generally, the US does not allow non-US flagged vessels to carry cargo on domestic voyages along its coastlines’,¹² whereas Australia allows foreign-flagged ships to ply coastal trade. The legislation has therefore been developed to suit the Australian context.
- 2.16 The Committee was informed by Mr Andrew Tongue, from DOTARS, that the Australian legislation is ‘outcomes-based’, that is
- based on a risk assessment process, and we are trying to differentiate, in our application of the code, between those parts of ports that we consider to be higher risk than low-risk areas.¹³
- 2.17 Mr Jim Wolfe, also from DOTARS, stated that
- I think we recognise that there needs to be a focus on outcomes based requirements rather than overly prescriptive requirements which, from various parts, may not get us the results we want.¹⁴
- 2.18 The DOTARS website states that an outcomes-based preventive security framework enables the maritime industry to develop individual security plans that are relevant to their particular circumstances and the specific risks that they face.¹⁵
- 2.19 Submissions provided to the Committee during the first stages of this inquiry expressed substantial concern about the Code and the legislation. The Committee notes however that clarification of some elements of both the Code and the legislation, and the drafting of regulations associated with the legislation, has served to reduce levels of anxiety among stakeholders who were initially unsure of the

11 Mr Andrew Tongue, *Transcript of Evidence*, 16 June 2003, p. 33.

12 DOTARS, *Submission 14.1*.

13 Mr Andrew Tongue, *Transcript of Evidence*, 16 June 2003, p. 33.

14 Mr Jim Wolfe, *Transcript of Evidence*, 16 June 2003, p. 33.

15 See www.dotars.gov.au/transsec/index.aspx#maritime, viewed 17 October 2003.

ramifications of their compliance or compliance by their environment with the security measures.

- 2.20 While submissions were generally supportive of the amendments, some dissatisfaction was expressed over the lack of consultation, the tight timeframe for compliance and the lack of information initially available. The Committee understands that some of the issues have been resolved through further communication and consultation between the Department and the stakeholders.

Coverage of vessels under ISPS Code and legislation

- 2.21 The Committee notes that the Code and the legislation do not apply to certain categories of vessels, including naval vessels and vessels of particular specifications. The Committee became aware during its inspections of Newcastle and Fremantle of the practical implications this might have for SOLAS and non-SOLAS vessels sharing neighbouring berthing facilities, but recognises that these issues are to be taken into consideration by the port authorities during the development of their risk assessment and security plans.

Role of Department of Transport and Regional Services in implementation

- 2.22 The Committee understands that the Department, under the ISPS Code and the legislation, will become the national transport security regulator, which includes responsibility for maritime issues and the implementation of the ISPS Code in Australia.¹⁶ According to the DOTARS website, the Department will also be responsible for providing guidance to industry to assist operators to complete security assessments and develop security plans.¹⁷
- 2.23 The website further states when Australia's implementation of the ISPS Code is operational, the Department will undertake, among other roles, system-based compliance checks and monitoring throughout the sector.

16 See www.DOTARS.gov.au/transsec/index.aspx#maritime, viewed 17 October 2003.

17 See www.DOTARS.gov.au/transsec/index.aspx#maritime, viewed 17 October 2003.

Issues arising from the Committee's review

- 3.1 In the course of this inquiry the Committee received evidence and raised queries about several issues within the ISPS Code and the (at that time) exposure draft of the Maritime Transport Security Bill 2003 (MTSB). Some of these are canvassed briefly in this chapter. It will become clear that many of the problems that were identified in submissions and at port inspections were almost solely the result of a lack of available information at that stage. Others, such as terminology used in the Code and the legislation, have been addressed by the Department since the concerns were raised in the Committee's inquiry process.
- 3.2 Concerns of port authorities and operators addressed in submissions and at inspections were noted by the Committee and raised with representatives of DOTARS. The Committee is now of the view that many of these issues have been covered either by the final draft of the legislation and the regulations (which at the time of advertising had not been drafted) or will be 'ironed out' during the implementation phase.

Consultation process

- 3.3 The Committee has taken a particular interest in consultation undertaken by the Department with regard to the proposed treaty action, both with stakeholders and interested parties during negotiations on the treaty and the drafting of the legislation, and the

consultation which must occur under the terms of the ISPS Code and legislation in the event of a maritime security incident.

Consultation with stakeholders and interested parties

- 3.4 As mentioned in the introduction to this report, the Committee wrote to port authorities and other interested parties, inviting comments on this review.

Involvement of maritime unions

- 3.5 The Committee was assisted in the review by discussions with employee organisations during the meeting with the Port Corporation in Newcastle. Representatives raised concerns about seafarers' welfare and labour rights, and the lack of consultation with the relevant unions by the Department.
- 3.6 The Committee notes that the main issue for the MUA and the Australian Institute of Marine and Power Engineers (AIMPE) was the status of those organisations according to the treaty, and the role that they believed that should be played by employee organisations, given the size of their membership and the new roles faced by maritime workers in the changing security environment.
- 3.7 The concern of the maritime unions that they be given the status of maritime participants was problematic, in the Department's view
- if we were to say they were maritime industry participants, we would be effectively saying that they are regulated entities under the act and they would have to have security plans and get caught up in the operation of the act. We are not necessarily sure that this is the way to go.¹
- 3.8 The Committee trusts that the maritime unions will be satisfied with the amendments to the regulations, which codify union involvement during the security planning and implementation processes. While the Government does not consider it appropriate to recognise unions formally in the bill, nor the range of other industry associations, such as AAPMA

Maritime Industry Participants are required to demonstrate in their maritime security plans a mechanism for ongoing

1 Mr Andrew Tongue, *Senate Rural and Regional Affairs and Transport Committee Transcript of Evidence*, 27 October 2003, p. 45.

consultation with their employees...The Secretary will consider the adequacy of the consultation included in the plan when making a decision to approve a security plan.²

- 3.9 Further, the Committee notes DOTARS' recognition of unions as a key stakeholder in the ongoing implementation of the maritime security framework

DOTARS is proposing an ongoing industry consultative committee to monitor the maritime security (*sic*), and would involve the unions in this process.³

Consultation in the event of a maritime security incident

- 3.10 The Committee also received submissions and information during port inspections which highlighted concerns about the role of the Secretary of the Department of Transport in issuing directions with minimal consultation with the harbour master in a port, who may be in a better position to understand and interpret an escalating maritime incident at various security levels. The Committee received assurances from DOTARS that this situation would be addressed in the regulations and the Committee hopes that concerns of port authorities and harbour masters have been adequately addressed in this regard. The Committee heard on 22 October 2003 that

the issue really revolves around the consultation that is necessary between the harbourmaster, the port security officers and the department through the secretary. It has been recognised that there is obviously a need to consult. In fact, in the drafting instructions we have talked about inserting into the regulations something which says that the secretary must consult with the port security officer and with the harbourmaster in regard to the issuing of the direction wherever practical or feasible.⁴

2 Extract from letter from the Hon John Anderson MP, Deputy Prime Minister and Minister for Transport and Regional Services, to Mr Martin Ferguson MP, tabled in the House of Representatives on 1 December 2003.

3 Extract from letter from the Hon John Anderson MP, Deputy Prime Minister and Minister for Transport and Regional Services, to Mr Martin Ferguson MP, tabled in the House of Representatives on 1 December 2003.

4 Mr John Kilner, *Transcript of Evidence*, 22 October 2003, p. 8.

- 3.11 Further, Ms Helen Board from DOTARS stated that ‘the bill quite deliberately specifies that the secretary can only give those instructions on the basis that he has credible information’.⁵

Costs

- 3.12 The NIA states that initial cost estimates suggest that the maritime industry will need to invest up to \$313 million initially and up to \$96 million in subsequent years.⁶ The Committee is not convinced by the accuracy of these figures, and Mr Andrew Tongue stated in June that it was ‘the best estimate on the table’ but that ‘it is possibly a little bit high’.⁷ He stated that ‘in some parts of the sector there is more security in place than we had anticipated and that some of it is quite good quality’.⁸
- 3.13 The Committee also heard during informal discussions which took place in Fremantle and Newcastle that the costs involved in undertaking risk assessments were extremely difficult to quantify, as different consultants would charge different fees for similar services, and it would be difficult to ascertain a benchmark as to what constituted a reasonable fee in each circumstance.
- 3.14 Regardless of the decision each individual port authority will make with regard to engaging a maritime expert to assist in preparations for the implementation of the legislative requirements, the Committee acknowledges the oft-expressed view of the Department that ‘the government has been clear about its position in regard to cost recovery’ and that any costs should be borne by industry: ‘it is the cost of doing business’.⁹
- 3.15 The Committee notes that concerns raised about the level of financial assistance offered to industry by other national governments, or the relatively high budgetary allocation for implementation of the Code (especially by the United States) did not recognise that the US is implementing Part B of ISPS in addition to Part A. DOTARS noted that Australia

5 Ms Helen Board, *Transcript of Evidence*, 22 October 2003, p. 8.

6 NIA, para. 26.

7 Mr Andrew Tongue, *Transcript of Evidence*, 16 June 2003, p. 35 and p. 36.

8 Mr Andrew Tongue, *Transcript of Evidence*, 16 June 2003, p. 35.

9 Mr John Kilner, *Transcript of Evidence*, 22 October 2003, p. 15.

is just basing the bill on part A, which the IMO has considered as mandatory. Part B is just recommendatory, so the US model is more prescriptive than ours.¹⁰

Terminology used in the ISPS Code and the legislation

- 3.16 Of significant concern to several stakeholders was the use of different terminology within the ISPS Code and the exposure draft of the MTSB. The Committee trusts that the same stakeholders who expressed strong opinions about the confusion that may be caused by differences in terminology will be pleased that this has been rectified in the final draft of the legislation. Evidence received by the Senate Committee notes that the legislation now reflects the IMO terminology.¹¹

Jurisdiction

- 3.17 The Committee is aware of concerns from several quarters about the jurisdictional definitions in the Code and the legislation. The Committee heard that from the Department's point of view, expressed at the June hearing, 'the waterside is our toughest area' in terms of separating zones for pedestrian / recreational use as well as for various facilities, such as a cruise terminal or oil and gas facilities.¹²
- 3.18 The most recent comment available on these matters from DOTARS was made by Mr Tongue at the Senate Committee's public hearing on 27 October 2003, where he acknowledged the continuing difficulties with this issue because of the 'complexity of ports with the operation of a multitude of state and federal laws and public and private actors'¹³

That is why there is a significant focus in the legislation on the planning process and the risk assessment prior to that

10 Ms Clare Guenther, *Transcript of Evidence*, 22 October 2003, p. 11.

11 Mr John Hirst, *Senate Rural and Regional Affairs and Transport Committee Transcript of Evidence*, 27 October 2003, p. 13.

12 Mr Andrew Tongue, *Transcript of Evidence*, 16 June 2003, p. 38.

13 Mr Andrew Tongue, *Senate Rural and Regional Affairs and Transport Committee Transcript of Evidence*, 27 October 2003, p. 30.

process. So it is really a two-stage process: undertaking a risk assessment looking at both the port as a whole and individual facilities; and then looking at a planning process at both a facility level and a port level. That will inevitably raise these jurisdictional questions about who is responsible for the waterside, who can devote resources, what existing zones under state law are already in place and whether the ports wish to seek coverage under this bill to expand and enforce zones and so on.¹⁴

- 3.19 Mr Tongue stated that a key issue will be the designation of the boundary of the security regulated port, and that ‘the ports will need to come back to us and say, “here is the zone that we think needs to be encapsulated under this regulatory regime.” ’ Mr Tongue advised the Committee that these responses were expected to vary enormously from port to port.¹⁵

Effectiveness of ISPS Code

- 3.20 The Committee shares the concern raised by some maritime industry participants and commentators that the ISPS Code will have little real effect on reducing threats to maritime security if Contracting Governments (for example in countries with open registers) do not make a serious commitment to upholding and enforcing increased security measures. Given the size of the costs that will be borne by Australian industry, the Committee would like to be confident that other Contracting Governments to the IMO will share the same level of commitment to ensure the Code is adequately enforced.
- 3.21 The Committee understands that the description of the code as a ‘giant paperwork cathedral’¹⁶ has been used to criticise the obligation under the Code to have security plans on every ship and in every port, while a recent OECD report on maritime security indicated that there are literally tens of thousands of entry points in the modern

14 Mr Andrew Tongue, *Senate Rural and Regional Affairs and Transport Committee Transcript of Evidence*, 27 October 2003, p. 31.

15 Mr Andrew Tongue, *Senate Rural and Regional Affairs and Transport Committee Transcript of Evidence*, 27 October 2003, p. 31.

16 Mr William Langewiesche, correspondent for *Atlantic Monthly*, on ABC Radio National *Background Briefing*, 31 August 2003.

supply chain.¹⁷ The Committee looks forward to receiving detailed information about the successful implementation and operation of the ISPS Code in other shipping nations in the future (see Recommendation 2).

17 *Report on Security in Maritime Transport, Risk Factors and Economic Impact*, Organisation for Economic Cooperation and Development, Paris, 31 July 2003.

Outstanding issues and concluding observations

- 4.1 As mentioned in the introduction to the report, many of the issues that arose during the Committee's review were satisfactorily resolved by the time the legislation was passed. The Committee trusts that some of the issues that were raised earlier on in the public hearing process contributed to the debates which were held between stakeholders and other interested parties as to the way in which operational issues of the legislation and regulations were implemented.
- 4.2 The Committee believes that, by coordinating port inspections with public hearings, it provided an additional conduit for consultation between port authorities, port facilities operators, maritime unions and the Department of Transport and Regional Services; given the tight timeframe imposed by the IMO in the implementation of the increased security measures in the ISPS Code, the Committee trusts that this role may have been of some benefit to ensuring that stakeholders' views were taken into account, by including them in the public record and hence the public debate.
- 4.3 Some of the concerns have been outlined in preceding chapters, and while several have been resolved, there remain some which are of continuing interest to the Committee, the progress of which it believes should be monitored.

Impact of treaty on 'flags of convenience' registries

- 4.4 The Committee heard several opinions regarding a possible incidental effect of the treaty, namely, an improvement in the regime of ship registration

The evidence is that this is the one IMO treaty that is actually going to make a difference to flags of convenience, mainly because of the zero tolerance that will be exercised by the United States and the costs, and because of other border protection measures.¹

- 4.5 In relation to the Committee's deliberations on the issuing of International Ship Security Certificates (ISSCs), the Committee had concerns about the possibility of flag of convenience states cutting the costs of security in the interests of competition, and issuing certificates that might not comply with international standards. Mr John Kilner, from DOTARS, advised the Committee that

under the ISPS Code, we cannot ask for and review a ship's security plan, so there are limitations in that respect on the Australian government.²

- 4.6 Ms Board however informed the Committee that provisions exist in the IMO for port state control regimes which permit the sharing of some risk information on which ships have been inspected. The Committee was pleased to note that Australia is

allowed to board ships if we have information that suggests that they are not in compliance, and we are able to take further action in looking at what security is in place... we cannot look at their whole plan but we can look at elements of their plan. Also, if we have any suspicions, we can then contact the contracting government that issued that certificate to verify whether or not that ship has appropriate security in place and that they are in compliance.³

Post-implementation review

- 4.7 In the third reading speech notifying the acceptance of government amendments to the MTSB on 1 December 2003, the Shadow Minister

1 Ms Helen Board, *Transcript of Evidence*, Tuesday 9 September 2003, p. 23.
2 Mr John Kilner, *Transcript of Evidence*, Wednesday 22 October 2003, p. 6.
3 Ms Helen Board, *Transcript of Evidence*, Wednesday 22 October 2003, p. 6.

for Transport asked the government to agree to conduct a post-implementation review of the legislation after its first 12 months of existence. The Committee considers that this would be a useful measure at that time, in order that any outstanding concerns with regard to the implementation of the ISPS Code and the operations of the regulations might be raised by stakeholders.

- 4.8 A review should include coverage of issues such as the effectiveness and practicability of consultation between DOTARS, state and territory authorities and harbour masters, and the efficiency of the allocation of roles within a security environment. The review would also be well placed to compare the experiences of a selection of ports and how they perceive the changes, if any, in their operations prior to the introduction of the IMO amendments. The Committee considers that a budgetary analysis (including a summary of costs borne by each port in installing or upgrading and maintaining security equipment required under the SOLAS amendments) would be valuable in the post-implementation review process.

Recommendation 1

The Committee recommends that a review of the Maritime Transport Security Act 2003 be conducted 12 months after its implementation, so that any operational concerns with regard to the Act or its regulations can be raised by interested parties, with a view to improving the legislative provisions.

Continuing consultations with stakeholders

- 4.9 The Committee notes that a valuable element of its review included several opportunities which existed for free and frank communication on matters such as the drafting of legislative regulations and the beneficial effects of information sharing between interested parties. The Committee acknowledges the extent and depth of expertise among maritime employees at the ports of Newcastle and Fremantle, and expects that similar levels of experience and knowledge exist in other ports where employees have in-depth and extensive experience of maritime issues and the maritime industry.
- 4.10 The Committee recommends that DOTARS continue to consult closely with harbour masters and other employees in Australian ports to ensure that the benefit of this knowledge is maximised, especially

given that DOTARS is also striving to improve its own corporate knowledge. Mr John Hirst, of the AAPMA, noted that

it seems to us that DOTARS has run down its maritime expertise over recent years such that I doubt whether there would be a qualified mariner in the department now, and so we have a number of very well-meaning bureaucrats trying to come to grips with understanding a fairly complex industry—that is, the maritime industry.⁴

4.11 The Committee was pleased that DOTARS recognised

the need to build capability within the department, just like the port and port authorities will need to build their own capability in this particular area.⁵

4.12 The Committee will maintain a watching brief in the future about the way in which existing knowledge is maintained and developed by the Department in the new maritime security environment.

Recommendation 2

The Committee recommends that a briefing be provided to it by representatives of the Department of Transport and Regional Services after 1 July 2004 on the possible effects to the Australian maritime industry, including a status report on the amendments to the SOLAS Convention and the ISPS Code.

Dr Andrew Southcott
Chair

4 Mr John Hirst, *Senate Rural and Regional Affairs and Transport Committee Transcript of Evidence*, Monday 27 October 2003, p. 12.

5 Mr John Kilner, *Transcript of Evidence*, Wednesday 22 October 2003, p. 16.



Appendix A – Submissions

- 1 Spirit of Tasmania
- 2 Shipping Australia Limited
- 3 P & O Ports
- 4 ACT Government
- 5 Queensland Government
- 6 The Association of Australian Ports and Marine Authorities
- 6.1 The Association of Australian Ports and Marine Authorities
(Supplementary)
- 7 Tasmanian Government
- 8 Australian Patriot Movement
- 9 Victorian Sea Freight Industry Council
- 10 Fremantle Ports
- 11 Sydney Ports
- 12 Bunbury Port Authority
- 13 Department for Planning and Infrastructure WA
- 14 Department of Transport and Regional Services
- 14.1 Department of Transport and Regional Services
(Supplementary)
- 14.2 Department of Transport and Regional Services
(Supplementary)

- 15 Maritime Union of Australia and the Australian Institute of Marine and Power Engineers



Appendix B – Witnesses

Monday, 16 June 2003 – Canberra

Attorney-General Department

Mr Stephen Bouwhuis, Acting Assistant Secretary

Australian Maritime Safety Authority

Mr David Baird, General Manager, Australian Search and Rescue

Department of Foreign Affairs and Trade

Mr Russell Wild, Executive Officer, International Law and
Transnational Crime Section, Legal Branch

Department of Transport and Regional Services

Ms Clare Guenther, Policy Officer

Mr Andrew Tongue, First Assistant Secretary, Transport Security
Division

Mr Jim Wolfe, Assistant Secretary, Maritime Security

Tuesday, 9 September 2003 – Canberra

Department of Transport and Regional Services

Ms Helen Board, Director, Maritime Policy and Legislation

Mr Stephen Borthwick, Acting Assistant Secretary, Maritime Security

Ms Clare Guenther, Policy Officer

Ms Jann Ollerenshaw, Senior Legal Officer

Wednesday, 22 October 2003 – Canberra

Department of Transport and Regional Services

Ms Helen Board, Director, Maritime Policy and Legislation

Ms Clare Guenther, Policy Officer

Mr John Kilner, Assistant Secretary, Maritime Security