



AAPMA

## *Association of Australian Ports & Marine Authorities Inc*

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Ms Jackie Morris  
Committee Secretary  
Senate Legal & Constitutional Affairs Committee  
Parliament House  
CANBERRA ACT 2600

Email: [LegCon.Sen@aph.gov.au](mailto:LegCon.Sen@aph.gov.au)

Dear Ms Morris,

### **Inquiry into the AusCheck Bill 2006**

Thank you for the invitation to make a submission to the Senate's inquiry into the AusCheck Bill 2006.

#### **The Association of Australian Ports and Marine Authorities**

The Association of Australian Ports and Marine Authorities (AAPMA) is the peak body representing the interests of government owned and privately owned ports as well as marine regulatory authorities in Australia. The Association provides leadership and support in areas of common interest related to ports, their interfaces and the achievement of their trade facilitation objectives. A list of our members is included at Appendix I.

#### **AusCheck and Maritime Security Identification Cards (MSICs)**

Australian ports have welcomed the new maritime security legislation and worked closely with DOTARS on the implementation of the Maritime Transport and Offshore Facilities Security Act 2003. Maritime Security Identification Cards (MSICs) are an important and integral part of the maritime security environment.

MSICs have been implemented into a completely different operating environment from ASICs. For instance, the list of crimes against which background checks are carried out by the AFP and ASIO is different from those applicable to ASICs. The MSIC list focuses on crimes involving terrorism and include crimes involving a bomb threat,

espionage (and other offences against Part 5 of the *Criminal Code*), involvement in the sale of a weapon of mass destruction, inciting mutiny, hijacking, endangering the security of ports, money laundering and other crimes associated with organized crime or racketeering, people smuggling, crimes involving counterfeiting or falsification of identity documents.

Another difference is that in the aviation environment the Issuing Body assesses anyone against whom an “orange flag” has been raised by the AFP. We are aware, from a number of sources, that consistency has not been applied to this discretionary process given the number and range of aviation Issuing Bodies. In the maritime sector, industry argued successfully for an independent arbiter to carry out this discretionary function. DOTARS accordingly formed the Background Checking Unit (BCU) which has been the determining body for assessing eligibility for MSIC from 1 October 2005 to 30 June 2007. The BCU has worked efficiently and applied the legislation consistently.

However, the BCU was never going to be a permanent fixture within DOTARS and again the maritime industry argued successfully that an independent Government assessor must continue this determination post 1 July 2007, hence the formation of AusCheck within the Attorney-General’s Department. It was recognized that delegating this role back to MSIC Issuing Bodies would not only give rise to inconsistency but it could also give rise to “forum shopping” by applicants for MSICs. For instance, a situation could arise in which an applicant was refused an MSIC by one Issuing Body only to go elsewhere in the country (perhaps to a regional area where his or her skills and qualifications were urgently required) and obtain an MSIC. The Government acknowledged that delegation of this role back to Issuing Bodies would involve a transfer of risk that was unacceptable.

The AusCheck model, which was in fact proposed by the maritime industry, requires a high level of confidentiality for the MSIC applicant. For reasons of privacy, Issuing Bodies do not want to know any of the detail of the crimes listed on an applicant’s MSIC consent form. A number of Maritime Industry Participants, who foreshadowed a willingness to take on the role of an Issuing Body, have indicated that they would not continue to do so if they were exposed to knowledge of an applicant’s criminal past.

AusCheck will build and maintain a central database which will be essential for the efficient operation of MSICs. This database will include photographs of each MSIC holder; this is not currently a feature of the BCU.

### **Privacy Issues**

Privacy is a very important aspect of the successful management of MSICs. We note, with some concern that s 14 permits AusCheck to disclose all of the personal information about applicants for the purposes of “the collection, correlation, analysis or dissemination of criminal intelligence or security intelligence” [s 14 (2) (iii)]. We are aware that the Australian Crime Commission is collecting this information for a study into crime in the maritime transport sector. Whilst we acknowledge the importance of analysis and study, we are nonetheless concerned that there may be other government organizations which may require the divulgence of these personal records.

AusCheck commissioned the carrying out of a Privacy Impact Assessment. I was interviewed as part of that process on 8 February, well after the introduction of the



AusCheck Bill into the Parliament. It was of some concern that only three or four people were being consulted within the maritime industry by the consultant. We were also concerned to learn that the consultant knew nothing of the AusCheck legislation or its history. A considerable amount of time was therefore expended on briefing the consultant. We trust that their report will be made available to this Senate inquiry.

#### **AusCheck Regulations**

The Regulations to the Bill have not been drafted. We look forward to being consulted by AusCheck both during and following the drafting process. DOTARS have in place a series of Working Groups through which they regularly consult with both industry and the unions. This consultative model has been extraordinarily successful and we urge AusCheck to follow this model.

#### **AusCheck Cost Recovery Impact Statement**

We have been consulted by AusCheck concerning their Cost Recovery Impact Statement and believe that the cost recovery model is appropriate.

If you require any further information, please do not hesitate to contact me.

Yours sincerely,



**Susan Blackwell**  
**Executive Officer**



## Appendix 1 – List of AAPMA Port Corporation Members

- Albany Port Authority
- Broome Port Authority
- Bunbury Port Authority
- Bundaberg Port Authority
- Cairns Port Authority
- Central Queensland Port Authority (Ports of Gladstone & Rockhampton)
- Darwin Port Corporation
- Esperance Port Authority
- Flinders Ports, South Australia
- Fremantle Port Authority
- Geraldton Port Authority
- Mackay Port Authority
- Newcastle Port Corporation
- NSW Maritime
- Port Hedland Port Authority
- Port Kembla Port Corporation
- Port of Brisbane Corporation
- Port of Melbourne Corporation
- Port of Portland Pty Ltd
- Ports Corporation of Queensland
- Sydney Ports Corporation
- TasPorts Pty Ltd
- Toll Ports
- Townsville Port Authority

