



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE

Reference: Maritime Transport Security Bill 2003

MONDAY, 27 OCTOBER 2003

CANBERRA

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SENATE**RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE****Monday, 27 October 2003**

Members: Senator Heffernan (*Chair*), Senator Buckland (*Deputy Chair*), Senators Cherry, Colbeck, Ferris and O'Brien

Participating members: Senators Abetz, Boswell, Brown, Carr, Chapman, Coonan, Eggleston, Chris Evans Faulkner, Ferguson, Harradine, Harris, Hutchins, Knowles, Lightfoot, Mason, Sandy Macdonald, Mackay, McGauran, McLucas, Murphy, Payne, Ray, Santoro, Stephens, Tchen, Tierney and Watson

Senator Allison for matters relating to the Transport portfolio

Senators in attendance: Senator Heffernan (*Chair*), Senator Buckland (*Deputy Chair*), Senators Allison, Colbeck, Ferris, O'Brien and Tchen

Terms of reference for the inquiry:

Maritime Transport Security Bill 2003.

Committee met at 9.28 a.m.

CHAIR—I declare open this public hearing of Senate Rural and Regional Affairs and Transport Legislation Committee. The committee is meeting today to consider the [Maritime Transport Security Bill 2003](#). On 8 October the Senate referred the bill to this committee for examination and report by 27 October 2003. The committee will report on the bill as soon as possible. The purpose of the bill is to enhance maritime security arrangements and to put into effect government policy on a better and more comprehensive security environment in the changing security threat environment following 11 September 2001.

The committee has received six submissions to date and, with the committee's consent, they are now authorised for publication. Today's hearing is public and open to all. A Hansard transcript of the proceedings is being made and will be available from the committee secretariat and via the Parliament House Internet home page next week. It should be noted that the committee has authorised the recording, broadcasting and rebroadcasting of the proceedings in accordance with the rules contained in the order of the Senate of 23 August 1990 concerning the broadcasting of committee proceedings.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given before it. Any act by any person which may operate to the disadvantage of a witness on account of evidence given by him or her before the Senate or any committee of the Senate will be treated as a breach of privilege. While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Senate. The Senate also has the power to order the production and or publication of such evidence. I should add that any decision regarding publication of in camera evidence or confidential submissions would not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

[9.30 a.m.]

RUSSELL, Mr Llewellyn Charles, Chief Executive Officer, Shipping Australia Ltd

CHAIR—Welcome. Please make an opening statement first and then we will hit you with a lot of deep and meaningful questions.

Mr Russell—Shipping Australia is a peak shipowner association representing 36 major shipping lines and shipping agents, and we have an equal number of corporate associate members that provide services to the shipping industry. We represent all types of shipping and, whilst many of our members operate foreign flag lines, we do have some Australian flag line members as well, but the vast majority of our members would come within the term used in this bill of ‘regulated foreign shipowners’.

I have made a submission and I think it is reasonably self-explanatory. It is fairly brief and to the point. I would like to emphasise a couple of points in that submission. The first is that we are fully supportive of the Australian government’s approach to try to develop the most comprehensive, practical, efficient and, we hope, cost-effective security measures possible in terms of meeting the counter-terrorism task. We believe that the best way to do that is to have practical, output oriented legislation—which this is. It is fairly clearly set out at the beginning of the bill what it hopes to achieve. We feel that is very important. What is going to happen in practice does worry us a little bit because it is terribly important that all those associated with implementing the provisions of this bill equally have an output rather than process oriented approach to implementing its provisions and, importantly, those of the regulations.

We are concerned about potential costs and about potential consistency and standardisation in implementing this bill throughout Australia. Whether that be in the form of identity cards, screening, the approach from port facilities or ports themselves, we have urged the greatest degree of standardisation possible, both within Australia and in Australia’s approach to the global task and challenge that presently faces us.

Since making this submission we have had the opportunity of discussing with the Department of Transport and Regional Services in Canberra some of the drafting instructions for the regulations, and we feel that this is very important. We have appreciated the level of consultation we have had on that, but a lot of the effectiveness or, if you like, the difficulties associated with implementing this legislation will arise as a result of those regulations. We have yet to see the actual regulations. We are concerned that they meet the objectives that I have outlined. Having said that, we certainly appreciate the way they are trying to deal with some of the concerns we have raised with the department in relation to those regulations.

Senator O’BRIEN—You have seen the drafting instructions. When did you see them?

Mr Russell—On Friday.

Senator O’BRIEN—Were you given the chance to take them away and study them?

Mr Russell—Not before we arrived, but subsequently. They are the major regulations—not all of them. I believe that some of the regulations we are concerned about will not be available until perhaps early next year. What they have focused on is the declaration of security zones within ports and port facilities, how they will deal with noncompliant ships and so on. One of our worries is noncompliant ships.

Senator O’BRIEN—Did the department tell you why you could not see all of the drafting regulations?

Mr Russell—They explained that it was a matter of time. In their view, they decided to prioritise, I suppose, the bulk of the regulations, which they have tried to look at. That went over three days, so they split it up basically into ports, port facilities, state governments, effectively, and then the shipping industry, both foreign and Australian.

Senator O’BRIEN—Do you mean the time that the meeting had or the time that the department had in preparing them?

Mr Russell—The time the department had in preparing them—that is what they have said.

Senator O’BRIEN—Drafting instructions have not been prepared for some of the important areas?

Mr Russell—They have certainly prepared them for the major areas of the bill and they have addressed them, but we were a bit surprised to hear that they are not all-inclusive and, in fact, not for all the regulations.

Senator O’BRIEN—In terms of the legislation generally, what can you tell us about the extent of the change proposed for shipping lines and agents? What impact will that have?

Mr Russell—I think it will have a very major impact. One of the areas that I do not believe the IMO—therefore, we are really going back to the ISPS code itself—fully acknowledges is the role of the shipping agent. Given that probably 99 per cent of the shipping in the world is handled by shipping agents, particularly in terms of training, they will have a lot of obligations under the code and this legislation, in order to interpret it, particularly for foreign-speaking masters and crews, who most likely will have the code translated into their own language, for example, but when they come to Australia they will be asking the agent about the particular Australian requirements. This bill goes a lot further than the code. In Australian law there will be a lot more obligations—I am not saying whether they are good or bad; I am just saying there will be a lot more than is provided for in the code. Therefore, there will be an important role for agents to explain that to visiting ships' crews and masters.

One of the most important issues that concern us is vessels coming from noncompliant ports. If you have a port that is not security cleared in your last 10 port calls and you provide that as pre-advice before the ship arrives at Customs here in Australia, and that remains a concern, then that ship could be held outside until the concern is resolved. First of all, we do not know how that is going to be resolved and, secondly, we are obviously very keen to ensure that trade is not inhibited by the implementation of these provisions.

Senator O'BRIEN—Regarding the cost implications of this code, has any work been done on assessing what additional costs agents and shipowners will have to meet?

Mr Russell—Not in terms of the Australian approach but certainly internationally. The OECD has estimated very conservatively that the worldwide shipping industry will face costs of at least \$US1.3 billion initially and \$750 million ongoing. This is in terms of training, development of ship security plans, providing AIS—the automatic identification system—in ships, ship alert systems, fixing the IMO number to the stern of the vessel, and so on. These are quite dramatic costs for the shipping industry. There are something like 46,000 SOLAS sized vessels that will have to meet these obligations worldwide in a very short time. Those costs concern us. Obviously we will have to initially absorb those costs and pass them through the chain. We are concerned about levies being placed on us by, if you like, third parties such as stevedores, who may seek to initially recover their costs by way of levy. What we have said to them already, because there have been indications that they will be approaching us, is that they should deal with their individual contractors and not seek to approach us as an association, because they are issues between individual members or consortia—in other words, groups of members—and the stevedores. That is one example.

Ports are another example. We believe that a port is required to provide a safe and secure berth for us and secure passage into and from that berth, and we would urge ports to absorb their own costs in that respect; whether they can or cannot remains to be seen. One of the serious difficulties in moving from level 1 to level 2 or level 3—and hopefully we will not move to level 3—are the costs and what resources would be available to meet those requirements. At level 1 we feel it is possible that we can deal with these costs; but at level 2 and level 3 where the resources are going to come from and who is going to pay for them are serious issues for us.

Senator O'BRIEN—Have some of the changes that are considered in this legislation already been in train, as it were, because of the September 11 issue? Was the industry already picking up some of the issues that this bill encapsulates?

Mr Russell—In trading to and from the United States, for example, we have had 24-hour reporting before the containers are loaded in Australia for the United States, and Canada will be introducing a similar provision in April next year. We have met that and, I have to say, the exporters of Australia have met those requirements very well. We now cut off four days earlier than we used to, to make sure that we have the documentation in time to allow US Customs to risk assess it. They either stop the container being loaded or, if they do not reply, it means you can load. They give themselves 24 hours to do that. We have met that requirement. Many of our member lines are members of CTPAT, which is an arrangement of trusted alliance partners throughout the chain in the United States. The major ports that trade to the United States have, under CSI, met those requirements.

As far as Australia is concerned, I would say that we have not really done a lot; we have been waiting for this legislation and these regulations. We have dealt with piracy over many years, which unfortunately seems to be on the increase again. Unlike other modes of transport, we have for many years had contingency plans to meet those sorts of possible attacks. I think this makes it a little easier for the shipping industry to meet that in a contingency sense.

Senator O'BRIEN—I take it that the July 2004 deadline is exercising the minds of your members. What do shipping lines need to do to meet the deadline?

Mr Russell—Under the ISPS code they are required to be security assessed; they will be required to have a security plan, a ship security officer and a company security officer, and for the crew to be trained in implementing that plan. Having done that, they then should be issued with an international ship security certificate, which they will need to produce under a port state inspection. One of our concerns is whether all the 46,000 ships will be able to do that in the time required and, perhaps more importantly, whether the ports throughout the world will be able to meet their obligations under the ISPS code.

I have made inquiries to the International Chamber of Shipping, for example. Although they have no definitive data, they feel that the major flag states—Bermuda, Liberia and Panama—are in fact dealing with classification societies in meeting those obligations; they have no way of being sure that they will meet them, but they feel that they are getting on with it. The major national flag states of the world are trying to deal with those requirements now, but their concern was really that some areas of the world—particularly in an ‘intra’ sense, for example, intra-Asia ports or ports in India—may not be ready by the 1 July deadline, which raises the issue of noncompliant ports. When we come in after 1 July, in our pre-advice we will have to advise whether those 10 ports were compliant with the ISPS code. That is probably one of the biggest gaps we see, and it may well be one of the biggest problems we will be faced with post 1 July.

Senator O’BRIEN—Do you know what shipping agents have to do to meet the deadline?

Mr Russell—Obligations on the shipmaster and individual ships will basically be dealt with through the legislation. We believe there would be value in the shipping agents in Australia having 24-7 contact and an alternate to make sure that that communication loop is closed. As a result of seeing an initial draft of this bill they put in clause 19, which mentions the role of the agent in that respect. Another aspect is training. We are discussing with a number of possible training organisations developing some courses for early next year to take all the agents and their employees through the requirements of this bill.

They are a maritime industry participant in accordance with this bill and therefore will be required to report in the form outlined by the secretary any security incident or likely security incident that they see. We question whether it is really process oriented; it is output oriented rather than process oriented. We would have thought that, if in a remote port an employee of the agent sees something, they should report it. If it is not quite in the format required by the secretary, perhaps that could be done subsequently. That may be an area that we can discuss with the department, for example, in respect of regulation. That is the main role we see for the ships agents.

Senator O’BRIEN—I take it from what you just said that a great many security plans will have to be prepared by 1 July 2004 and that they will each have to be enterprise specific. So this is not a single batch job; there are a great many individual reports that have to be prepared, submitted and no doubt scrutinised.

Mr Russell—They will have to be ship specific.

Senator O’BRIEN—What other infrastructure work will need to be done? I am asking these questions in the understanding that you have not seen drafting instructions for all the regulations, so you can only answer to the best of your knowledge at the moment. What do you know about the infrastructure needs that are generated by the legislation and the proposed regulations?

Mr Russell—Shipowners have a lot of investment to undertake in a much shorter period of time than they would have had recently. For example, the AIS—the automatic identification system—was to be installed by 2008 but the date for that has now been brought forward. In that sense, they are developing their own infrastructure. I think the infrastructure of electronic commerce needs to be recognised. Changing our advice to Customs may seem to be a reasonably simple procedure, but again it will require investment in upgrading our software in some cases and altering existing systems in others. In the ports themselves, we are very interested in the ship security zones that may be declared and in how the infrastructure for those will be operated. Also on infrastructure I do not think road and rail operators are yet fully aware of what they are going to be required to do, not so much under this legislation but with respect to security generally. Therefore, I think there is a requirement for awareness building of what they are going to have to do in the future. That is probably where we see the major changes.

Senator COLBECK—Mr Russell, you mentioned the importance of standardisation. What is the indication of how the outcomes are working through with respect to that? Do you think there will be a fairly significant level of standardisation?

Mr Russell—The department have certainly been keen to try to promote standardisation but, as they point out, being output oriented can mean that you get differences in detail between ports based on a number of

factors, not just risk. We recognise that procedures related to risk may be different, but that is not really our concern with standardisation. Our concern with standardisation relates to the treatment of identity cards within ports, for example. We hope that we can have a port wide identity card that will allow a ship's agent into all the facilities in the ports because, as they become more widespread, an agent may require different types of identity cards to access facilities within a port. So we are very keen to see standardisation on a port wide basis. We are also keen to see that the Australian regime as a whole is as compatible as possible internationally, for obvious reasons. We are also very concerned that the border agencies have standardisation throughout Australia in their approach to implementing this bill.

Senator COLBECK—Have you had discussions with any of the other industry players about that—the ports, for example?

Mr Russell—Definitely. I have written to the Association of Australian Ports and Marine Authorities urging that as much standardisation as possible be implemented.

Senator COLBECK—What has their attitude been to that?

Mr Russell—They have not replied at this stage.

Senator COLBECK—What are your thoughts as to the possibility of achieving that standardisation on an international basis?

Mr Russell—First of all, I think the whole IMO approach was a good one. We had a situation with the United States implementing different procedures and arrangements in different ports, which was causing all sorts of problems there. Early in the piece, we urged the United States and the United States Customs to participate within the IMO and develop a code that could be applied internationally, and that is what eventuated. It is a good start to see that at least we have an internationally agreed code that people can operate under. That in itself is a good move towards standardisation. I think the biggest problem remains the issue of states and individual ports in countries implementing procedures over and above that code. You also have the opposite problem of noncompliance, where contracting governments do not meet their minimum standards under the code. It is very difficult at this relatively early stage to guess where that is going to come out. All we can do is urge states to apply as much international compatibility as possible. In that respect this proposed legislation goes beyond the code, but I cannot pinpoint any specific area that would cause a significant problem internationally.

Senator COLBECK—So obviously there are some good lessons to be learnt from the experience of the initial process in the United States.

Mr Russell—I think so. CTPAT, for example, is trying to deal with the integrity of the through transport chain, particularly as it relates to containers. This bill, quite rightly, is really related to the ship and the port facility. In our approach to security Australia wide we do need to recognise that there are other areas. Another example we are dealing with is advanced crew and passenger reporting to Immigration, and their requirements. That is still being developed. We hope that in developing those arrangements they appreciate the difference between the aviation and maritime industries. It is the same with this bill. It needs to be recognised that there are many differences between maritime and aviation, particularly in this area. We should be careful of not implementing well proven aviation security measures that may not work that well in the maritime environment.

Senator COLBECK—You mentioned that the Australian legislation goes beyond the IMO standard. Are there many other examples from around the world of that occurring?

Mr Russell—I cannot answer that. At this stage I have not seen any other country's legislation, except for the United States—and I have not actually seen their response to the ISPS code; it is to the development of their own security measures that I have previously referred. So at this stage, I cannot answer that question.

Senator O'BRIEN—This is probably a very difficult question. Is there an estimation of the anticipated cost of the introduction of the code for shipowners, by ship or by tonne of cargo or container?

Mr Russell—No. We have not sought to estimate that at this stage for the reasons I outlined earlier. We believe that the OECD's estimate of the costs that we will have to bear worldwide is very conservative. As far as Australian ports and port facilities are concerned, we are still waiting to see whether costs will flow through. We are aware that the Australian Shipowners Association has made some estimates and I believe they are in a submission the association wishes to table today.

Senator O'BRIEN—It has been published.

Mr Russell—We have no reason to believe that that is not an accurate assessment as far as the association is concerned. I think some of the association's costs in Australia will be different from ours—and when I say 'ours' I mean foreign regulated ships.

Senator O'BRIEN—Talking about foreign regulated ships, don't some foreign operators receive subsidies from their governments to deal with the new security requirements?

Mr Russell—The only ones I have heard about are in America. They have been related more to the ports and port facilities. I am not sure whether American flagged lines are going to have their security costs covered.

Senator O'BRIEN—Have your members raised with government the issue of who pays for the cost of implementing this system?

Mr Russell—We have certainly mentioned to the department that in our view it should be a sharing of costs. There are great risks in not dealing with security, and the cost of a serious security incident in Australia, for example in terms of containers, is potentially enormous. We believe that the cost should be shared with the community, the operators and the transport system generally instead of being purely left to our traders to meet at the end of the day. It is in our respective and community interests. We have advised the department that, in the ASA's view, there should be a sharing of costs and that includes community service benefits.

Senator O'BRIEN—If that does not occur, how will your members recover the cost?

Mr Russell—Obviously it will have to be through freight rates or surcharges. Although it was not fully cost recovered, a surcharge was introduced in relation to the 24-hour rule because of the very extensive additional costs that lines had to meet. Where those costs are clearly identifiable and transparent, they may well be passed on in terms of a levy. The more indirect costs I mentioned, for example fitting out ships and making them compliant with the ISPS code, I would see flowing through the system in the normal way.

Senator O'BRIEN—In your submission you talk about:

... the need for clarity as to the shipping agent in Section 19.

and the ship operator in section 10. Can you expand on that?

Mr Russell—Yes. One of the difficulties that our members raised when they saw the bill was the question of time chartering and whether it could be considered a ship operator. The basic definition is that it is the owner of the ship or that other person if that person is operating the ship. The concern of our members was that if you time charter a ship the security arrangements on that ship are part of that time charter. In other words, the agent or, if you like, the person chartering the ship has no control over the security provisions on that ship. They suggested that it be clarified. Following discussions with the department, it was quite rightly pointed out that in future this may well form new provisions or clauses in charter parties which would protect the charterer from any liability in respect of noncompliance with security provisions.

Senator O'BRIEN—And it may not. If the shipowner declined to include that in charter arrangements the security responsibilities would become the responsibilities of the time charterer.

Mr Russell—That is correct. We would prefer that to be clarified at least by regulation and we have put that to the department, but we also recognise that with the ISM code, for example, many charter parties for time charter include a provision that says, 'We will only take on this ship if it is ISM code compliant.'

Senator O'BRIEN—What about the clarity needed for shipping agents?

Mr Russell—That again we would hope would be covered by the regulation. When one talks about a ships agent, technically there could be three different people: a cargo agent, a port agent and a general ships agent. It just needs to be clear what it refers to. We feel that that hopefully will be covered by the regulations.

Senator O'BRIEN—You say that you are seeking further information regarding sections 88 and 89 with regard to who will conduct the ship inspections and whether under section 108 the views of the ship operator will be considered in declaring ship security zones. Have you received that information?

Mr Russell—We put that to the department—certainly the latter point about taking into account the ship operator—and it was noted and we hope that it does appear in the regulation. In relation to carrying out ship inspections it was clarified that in the department's view it is more likely to be their agent, which could be Customs and/or AMSA, for example, in checking whether a foreign regulated ship meets the requirements of the bill. So we received clarification in that respect. On the other one we still need to see the final regulations.

Senator O'BRIEN—You also refer to sections 122, 130 and others which refer to offensive weapons or prohibited items carried aboard an Australian regulated ship. You make the point:

... no comment is made in relation to foreign regulated ships ...

Have you received any advice from the department with regard to those concerns?

Mr Russell—Yes, this certainly was discussed last Friday. The department's view was that with a declared security zone in the port it would prohibit these weapons or items being carried across it. That would of course deal with both foreign and Australian regulated ships. If there were no declared security zone, it was suggested that concern about this could require a declaration of security that would cover that aspect. We recognise that. I make an important point: we do not want to hold up this bill going through; we are anxious that it becomes law as quickly as possible so that we can get on with implementing it. If, for example, that were the only reason that one would wish to amend the bill we would be happy with that response in terms of regulation. However, if other amendments are considered important to the bill that is one that we would like to see included—in other words, remove the word 'Australian' and just have that it is an offence to carry a prohibited weapon or prohibited item onto a security regulated ship, whether it be foreign or Australian.

CHAIR—Thank you very much, Mr Russell.

[10.05 a.m.]

HIRST, Mr John Kenrick, Executive Director, Association of Australian Ports and Marine Authorities

CHAIR—Welcome. You may make an opening statement if you wish to and then we will go to questions.

Mr Hirst—Thank you. The Association of Australian Ports and Marine Authorities represents the interests of government owned and many privately owned ports in Australia as well as the interests of some of the state maritime regulatory authorities. I would like to make a few comments to amplify the written submission.

Firstly I will talk about consultation. Ports do support the code. We recognise that there are very tight deadlines and we are acting in good faith to develop the risk assessments or security assessments, even though the guidance material from DOTARS is changing and we have no legislation or regulations. We are therefore taking a very significant cost and resource investment risk. There is no national transport threat assessment available to us from ASIO. This is a fundamental plank of the security assessments that we have to undertake, which, when it does come out, could require substantial changes to the work that has already been undertaken in developing the security assessments.

Up until about two or three weeks before the exposure draft, consultation with DOTARS was extremely good and we welcomed it. However, then there was silence and when we saw the exposure draft we were quite amazed at many of the new issues that were included in it which had not come up in consultation. It is important that we do work as a team and that, in spite of the timetable, we are given reasonable time to comment on the effectiveness and content of regulations. Regulatory drafting instructions meetings were held last week with DOTARS. They were very welcome and constructive meetings, but we are concerned as to whether we will be given adequate time to look at the written word of the regulation that emanates from those discussions.

Secondly, I want to talk about waterside protection imports. The resources for waterside protection are simply not available in most ports, especially at level 2. In some cases it is arguable as to whether what may be available would be acceptable even at level 1. This is an issue that must be addressed urgently by the Commonwealth, state and territory governments as the deadline for our plans gets closer. It is simply not an issue that can be left to ports to resolve alone.

Thirdly, I want to talk about the secretary's directions. The timely implementation of a secretary's direction is a major priority. This can only be achieved by consultation with the harbour master and/or port security officer when the direction is given, and we seek that this be included in the act as the primary instrument and not just in the regulations. There is a lack of operational maritime knowledge in DOTARS and in many states' maritime administrations. There is a high turnover of staff and therefore potential for a lack of understanding of the consequences of a failure to communicate immediately in an act which has a life of perhaps 10 to 20 years and an event that may occur very infrequently. Also, port operations are extremely variable, unlike the operations of an airport. We believe that these issues are so important with regard to the timely implementation of any direction by the secretary that they must be shown in the bill.

Fourthly, I want to talk about the issue of costs. Other than funding for DOTARS for administration costs for two years, the government is not providing any funding for implementation of the code, unlike the United States which is giving grants of about \$600 million to the ports. We will be adopting the same high standards as the USA. It is questionable whether many of our trading competitors will be adopting the same high standards. There is therefore another cost on trade; therefore a negative effect on our trading competitors.

Senator O'BRIEN—Could you again run through the areas where you believe the bill needs to be amended?

Mr Hirst—We are prepared to accept the bill as it stands. However, we would seek that the bill be amended in the section on secretary's directions to include provision for consultation with the harbour master and/or port security officer when there is a secretary's declaration. We do not believe that we can just leave it to the secretary to advise the national counter-terrorism committee and for the instructions to then come back to the port. Implementation is critical in terms of time, and we believe that you need to start immediately to consult the right people. In a port, the harbour master is the only person who really understands on a minute-by-minute basis what is happening in the port and what the constraints are in meeting any direction. We think that consultation is of such importance that there should be recognition of this in the bill, not just in the regulations.

Senator O'BRIEN—How should we address the cost issue?

Mr Hirst—I believe that there should be a recognition by the government that there is a public good issue in security. It is not simply a cost that can be passed on to the industry in its entirety to meet, as inevitably industry will pass that cost on to its customers. We have already heard that one stevedoring company will be making an announcement shortly that it intends to pass on the costs it incurs in meeting the code, and I am quite sure that other service providers will also be doing the same.

CHAIR—Do we have any idea yet on the costs for bulk wheat—whether it will be \$2 a ton?

Mr Hirst—The only figures that we have seen are figures provided earlier this year by a consultant to DOTARS. We have not been given the opportunity to comment on whether or not those figures are correct. If I recall, those figures indicated a cost of around \$300 million to ports to implement the security code. Contrast that with the United States, where the coastguard has estimated that the cost of implementation will be \$1.125 billion in the first year, with an ongoing cost of around \$500 million per year over the next 10 years. The costs in Australia will be nowhere near that level. We have not been able to give any estimation of this yet as we are still developing the security assessments that we have to do, which have yet to be accepted by DOTARS, which in turn will lead to the consequential plans that need to be developed. It is only when we can get some idea from DOTARS as to whether they accept the security assessment that we have achieved that we will have a better idea of costs.

CHAIR—So do you think the Australian Wheat Board and people like that have twigged to all of this?

Mr Hirst—I sincerely hope so because they are part of the port security committees that have been established in every port, or certainly in most ports, which are very inclusive of the whole industry.

Senator O'BRIEN—Who was involved in the meeting that took place last week, from 22 to 24 October?

Mr Hirst—There were four days of meetings. On Tuesday state governments meet with DOTARS, on Wednesday port authorities met with DOTARS, on Thursday port facilities, and on Friday the shipping companies. There was some coverage by industry associations over various of those days. I was there for the three days: Wednesday, Thursday and Friday.

Senator O'BRIEN—So key freight consigners were not part of the consultation—those who will ultimately bear the cost?

Mr Hirst—No, there were no users. The Minerals Council was there representing themselves and the National Bulk Commodities Group on Friday, the section on shipping.

Senator O'BRIEN—You talk in your submission about the Commonwealth needing a greater understanding of the very real lack of resources available in ports or at state levels with regard to waterside protection. Can you elaborate on this?

Mr Hirst—There are two issues there, Senator. Firstly, we do not see that there is any ongoing maritime expertise in DOTARS—that is, maritime expertise that relates to port operations and the practical implementation of the code. Also, in some states there has been a significant run-down in maritime knowledge in the respective transport departments or infrastructure departments. As far as waterside protection is concerned, I think there is a growing awareness in DOTARS of the extent of the problem. We have certainly given them some advice on this and even did a bit of an informal study on one port in Australia as to what would be required from the port's view at level 1 and level 2. It was an extraordinary resource ask at level 2. So they are aware of it.

Senator O'BRIEN—Could you give us a bit of detail? You are talking about a particular port and you are talking about an estimate of dollars. Can you elaborate further?

Mr Hirst—Yes.

Senator O'BRIEN—Do you have a report?

Mr Hirst—No, I haven't got a report. It is a very informal document and I would rather not even divulge the name of the port. The issue with waterside protection is at two levels: firstly, what can be done from land and, secondly, what can be done from sea. From a land perspective, you can perhaps upgrade radar facilities and you can have people standing around and looking, but this requires 24-hour surveillance. Many of our ports do have 24-hour surveillance, especially the large ones. But the smaller ones do not, and probably do not have the sophisticated facilities that you need.

When you get to the waterside the issue is: how do you detect a rogue vessel, especially if the rogue vessel is not much more than a speedboat packed with explosives, which is what occurred with the *Limburg* and the

USS *Cole*? You cannot detect such a vessel, especially at a weekend, when there are plenty of recreational vessels around. Certainly, you can put exclusion zones or protection zones around vessels, but how do you monitor those 24 hours a day, seven days a week? One port puts oil spill boom around US naval vessels. It is a deterrent, but if somebody really wanted to get over it they could do so very quickly.

The real issue is the number of boats and people for the manning of those boats that you would require and, more importantly, the resources that you would need, moving from level 1 to level 2. I think it is unrealistic for a port to have to man up and have the maritime resources to go from level 1 to level 2 when those resources may not be able to be integrated into the normal port staff for an event that might occur for eight hours once a year, if ever. So that is the type of issue that we are looking at.

Senator O'BRIEN—What sorts of numbers? I presume there is some sort of thumbnail sketch of the financial possibilities.

Mr Hirst—In the particular port where we did a study, capital costs of moving up to level 2 security would be about \$8.7 million. Running costs would be about \$7 million a year. The capital costs would be a one-off cost; the running costs are there all the time. That is quite an imposition on the port when it is not getting any return on that investment. That would be in addition to any facilities that would be available from, say, water police who are present in that port but in a limited capacity.

Senator O'BRIEN—So roughly what is the cost per tonne, container or whatever—was that worked out? Is it possible to do that?

Mr Hirst—I could certainly work it out. It would not be a huge cost to the port, but the real issue is: what do you do with the people who are there sitting around, waiting to attend an event? They are simply supernumeraries to the normal working staff of a port. Additionally, the vessels would not be necessary.

Senator O'BRIEN—What about where you need 24-hour surveillance for ports that do not have it?

Mr Hirst—We do not do it to that extent. This particular port is relying on radar; in other ports there are just the visual signs.

Senator O'BRIEN—You may not be aware of it, but Hobart's port area is fairly generally accessible to the public. Some parts of it play a key role in the community. For example, there are huge areas—businesses and markets et cetera—near Salamanca Place in Hobart. What impact would this legislation have on the type of open access arrangements that currently exist, I think, at the wharves near Salamanca, Macquarie and the like?

Mr Hirst—I am not familiar with the plans that Hobart has for protection, but I believe that with cruise ships there would have to be a very strict access arrangement for people to go onto the wharves. That would require screening of both passengers and cargo. This could be done by either the port or the vessel itself. Certainly, the public would not be allowed onto the wharf at all and there would be pretty strict requirements in terms of identification and access for all service providers, such as provedores and fuel suppliers, and crew would be subjected to screening—that type of thing. Whether that would need to extend to cargo vessels, I simply do not know. I do not see that Hobart would be regarded as a high-risk port, such as ports like Sydney or Melbourne where there could be enormous economic disruption as a result of a terrorist attack. But I would not want to be seen to be speaking on Hobart's behalf.

Senator O'BRIEN—Hobart port is not infrequently visited by US Navy vessels. It is certainly the subject of relatively frequent cruise ship visits in the first four or five months of each year. Does that mean there would be likely to be specific restrictions on access to the wharf areas by recreational vessels?

Mr Hirst—US and RAN vessels—in fact, any naval vessel—are excluded from the provisions of this bill. We are in direct dialogue with the RAN over the security arrangements to apply to their vessels, but the US vessels set their own security standards. Generally, these are agreed before the vessel arrives in the port. I think the naval criminal investigation service of the US Navy generally visits a port and agrees the security requirements with the harbour master, and they are implemented. But, when the vessel arrives, the commanding officer can decide what he wants to do with the security arrangements already set up. He can increase or decrease them. That is a bit of a problem to us from time to time, but, through dialogue with the US Navy, we are trying to remove those wild-card decisions. US naval vessels generally require waterside protection 24 hours a day, seven days a week. That is provided by contracting people in. I know that, in Fremantle, they just come from some service provider—there are small boats that whip around the vessels all the time in a fairly planned schedule.

CHAIR—Who foots the bill?

Mr Hirst—The US Navy meets all of the costs that they incur in a port. Then, of course, there are guards on the wharves and restricted access and all of those types of things.

Senator O'BRIEN—Can you tell us how many ports currently have readily accessible wharf areas which would be required to be secured under this legislation?

Mr Hirst—All ports would. The security protection that ports have at the present time is basically related to occupational health and safety issues. We do not have protection against terrorism. Obviously, some of the OH&S protection we have would be suitable in some measure against terrorism, but we do not have the access arrangements that may be required to meet terrorism. Certainly, container terminals are a lot better off than, say, a general cargo wharf. In general, the bulk facility wharves, where you have high-speed conveyor belts, bulldozers and one thing and another like that, have a fairly high level of access control. But, broadly, all ports will have to incur additional expenses to meet the requirements of the code.

Senator O'BRIEN—I realise that the security at wharves is limited, but some are completely open. Does that mean they would need to erect barriers?

Mr Hirst—Yes. There could be barriers, electronic gates or slot card machines. But, certainly, a lot of fencing will have to be put up around berths that are seen to be at a higher risk.

Senator O'BRIEN—Who will make the judgment as to whether they are at a higher risk?

Mr Hirst—That will be discussed between the ports and DOTARS.

Senator O'BRIEN—So it is not known yet.

Mr Hirst—It is not known yet.

Senator O'BRIEN—Is it satisfactory that we embark upon this legislative route without knowing what the regulatory regime that will follow it is? The parliament cannot change the regulations. It can disallow them, but it cannot change them once the bill is passed. It is a take it or leave it approach on the regulations.

Mr Hirst—We understand that, but we are being told by DOTARS that regulations can be changed after—

Senator O'BRIEN—They can be changed?

Mr Hirst—They can be changed in the future at some time. Certainly, we are working on the assumption that the bill cannot be changed. Because of the deadline—by 1 July next year—we have had to move quickly because of the size of the task. So, to an extent, we are working blind as to what will be required. We have the code and we know what is in it. Basically, the code is a sound document. However, we do not know what the threat context in Australia will be. Admittedly, that will vary over time, but we need to know what it is now, so that we can confidently go about our security assessments. Also, the bill goes beyond the ISPS code. That is a conscious decision. It has been made in Australia. Some of the provisions in the bill I guess we would rather not have, but they are there. They came upon us as a bit of a surprise, so we are still reacting a bit to that.

Senator O'BRIEN—Can you identify those areas that were not discussed? I think in your opening statement you talked about what appeared to be a satisfactory consultation process and then being surprised with a number of matters that had not been discussed in the first round.

Mr Hirst—Firstly, there are the criminal penalties that are in the bill. We had no inkling that they were going to be included in the bill. Of course, that lifts our concern with the bill to a higher level. There was a move to ignore the terminology used in the ISPS code in terms of port facilities and use some other terminology, which would have meant that Australia would be somewhat unique in the world. We saw immense communications problems with that. In the move from the exposure draft to the bill, DOTARS took on our points on that. Lastly, there is screening. Whilst we always expected that some screening would be required, we had not had any real discussions with them on that. However, we had suggested to them that there should be a common standard adopted in Australia for the screening of passengers and baggage on cruise vessels. We did not want to be in a situation where ports could compete with each other to attract cruise lines by offering a lesser level of security. It is once you get the written word that there are a lot of consequential issues in that, and we have set them out in our various submissions to them.

Senator O'BRIEN—You talked about the lack of resources in DOTARS with regard to expertise in the maritime area. To what extent would you attribute any deficiencies in the security arrangements that are being proposed to what you might see as lack of expertise?

Mr Hirst—We can only contrast it with the aviation security responsibilities they have. Admittedly, aviation is a federal responsibility, whereas ports are a state responsibility. 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. It is not something you pick up in a few short months, and this has been borne out in the discussions we have had in the last few days over the complexities in the drafting instructions. You cannot expect these people to have a detailed understanding of the ins and outs of shipping and port operations, yet they do have that in aviation. Initially, we were faced with views along the lines of, ‘Look, there is not much difference between seaports and aviation. We see the same provisions applying to seaports as they do for aviation.’ Regrettably, it has taken some time for some people in the department to come to that realisation.

Senator O’BRIEN—You talk about several issues relating to the extent of the jurisdiction in relation to port limits, and state and federal maritime boundaries, and you give some examples. Has there been any further development of that issue in discussions between your association and the department?

Mr Hirst—Yes. Whilst we have not got anything in writing, our concern was that there are a number of ports where ships sit at anchor for several weeks waiting for cargo—either waiting at that port to go into that port or sitting there waiting to be assigned another cargo elsewhere on, say, the east coast of Australia. The task of protecting those vessels at sea, which can be up to eight to nine kilometres at sea, spread over quite a wide area, is very daunting, and so we have reached agreement with DOTARS that that is a ship responsibility and that, in the advice that we give to the secretary on what should be the security regulated port, we define the boundaries that we see as appropriate to our port. In some cases that might be the existing statutory port boundary; in other cases it may include a pilot boarding ground, if it is close in to the coast. In other areas it might be to protect a certain length of channel. It will vary very much from port to port, but the ultimate decision will be with the secretary of the department.

Senator O’BRIEN—As you mentioned, the many ships sitting off Newcastle would be a prime example.

Mr Hirst—That is right.

Senator O’BRIEN—So presumably the port of Newcastle is not going to take any responsibility for the bulk loaders that are waiting for an offloading facility in that port.

Mr Hirst—That is correct.

Senator O’BRIEN—Thank you very much.

Mr Hirst—I would like to add a comment. You asked about the additional cost to a container of the normal running costs of moving to a level 2 security risk. In the port I use as an example, it would be of the order of \$15 a container and that does not include any capital costs.

CHAIR—That is the passed down cost.

Mr Hirst—That is the running cost.

CHAIR—How do you think that will be different to the United States? Even with their huge government subsidy, do you anticipate that we will be less competitive as a port with shipping charges as a result of all this?

Mr Hirst—No. I do not think we will be—

CHAIR—They will pass the costs on, surely, even if they have a subsidy.

Mr Hirst—I am sure they will. The coastguard has the primary maritime protection responsibility on the water side. I am not sure of their charging regime, but I am quite sure that ultimately the costs will be passed down the line.

CHAIR—I would be willing to punt that, despite the size of the government assistance, the charge will still be the full charge.

Mr Hirst—That government assistance—the \$600 million—was given to ports for capital expenditure, training and any other activities they saw as necessary for the implementation of the code.

Senator O’BRIEN—Set-up costs.

Mr Hirst—Basically set-up costs, yes.

Senator O’BRIEN—Should they apply here?

Mr Hirst—I think that, as a trading nation, there should be a recognition by the government that this is a fairly substantial additional cost to trade and that we feel it is not just the port that should bear the cost and the

particular trade. We are protecting the economic viability of regions and the nation and the economic development of the nation.

CHAIR—You do not think we should have had a bit of security fencing in any case to stop people walking on and off with stuff?

Mr Hirst—We have, Senator, in relation to occupational health and safety but, in some states, there are regulations that say that the public have to have free and unfettered access to wharves. From that point of view, it is very welcome to us that we can secure some of those wharves.

Senator COLBECK—You have mentioned the discussions you have had with the department, particularly with respect to the role of harbour masters. What has been the department's reaction to those discussions?

Mr Hirst—They acknowledged that it is an issue that had not been considered by them, but they are satisfied that, by putting some provision in the regulations, that should meet our needs. We still challenge that.

Senator COLBECK—How is that reflected in your discussions on the drafting instructions for the regulation so far?

Mr Hirst—The wording in the regulation is acceptable to us. There were some slight changes last week.

Senator COLBECK—How do your discussions overall, with respect to the regulations, impact on the notes that you have provided to us regarding concerns with the legislation?

Mr Hirst—Many of the issues that I set out in the appendix to my statement to you have not been resolved, to my knowledge. DOTARS has characterised the regulations as critical and noncritical, and last week we only considered what they regarded as critical. I must say we probably agreed with them that they were the most critical regulations. A lot of the other issues that we have raised have not come up for discussion as yet.

Senator COLBECK—To what extent do the critical issues that you both agreed fell into that category cover off on issues that were raised? Were you generally satisfied with the department's reaction to those?

Mr Hirst—Yes, we were generally satisfied. There were some very substantial amendments made to the drafting instructions, but it is very important that we see the actual written word of the regulation. Broadly we are satisfied so far.

Senator COLBECK—Are there any specific issues in that critical element that you remain concerned about?

Mr Hirst—Not really. I think that we can live with most of it, just by degree. We are very conscious of the time limits, and we just have to live with some of these things. Also, we are conscious that regulations can be changed at some time in the future if they are shown to be not working properly.

Senator COLBECK—Before, you specifically mentioned terminology compared to the IMO standard. What has been the outcome with respect to that?

Mr Hirst—The bill now reflects the IMO terminology.

Senator COLBECK—In previous evidence, we heard concerns with respect to common procedures and standardisation. What work have the ports done as a group with respect to that? How do you see that proceeding?

Mr Hirst—That is a very difficult issue for us at this stage, because each port is grappling with its own requirements and there has not been an opportunity to sit down and collectively see where there can be some standardisation. We are very conscious of the shipping industry's wish to have some standardisation, but I think that will have to come a little bit later down the path. If we were to focus on standardisation now, I think that by the time we got agreement from everybody—given the vast differences in all of our ports—the individual ports would not achieve the 1 July deadline.

One particular comment that has been made to me about standardisation is related to a waterside protection zone, and loosely we will call it an exclusion zone around a ship: whether that should be 50 metres, 30 metres or 40 metres. That is going to be very dependent in some ports on what space there is available. If you have got a river port such as Newcastle or Fremantle, you are very restricted in how big your exclusion zone can be.

Senator COLBECK—Taking that as an example, would that not set a minimum standard of some sort on that particular issue? In terms of the room available versus what is a physical requirement, which one of those two should be setting the standard?

Mr Hirst—We really have not discussed that at any length at this stage. The US Navy has its own requirements, which sometimes just cannot be met.

Senator COLBECK—So in the circumstances, taking the US Navy as an example, if it were to seek to berth at a port that cannot meet its security standards, would it then decide not to berth at the port?

Mr Hirst—It could or it could compromise. What we have found is that it has compromised.

Senator COLBECK—It sets an interesting concept as to what a security standard really comes to in a circumstance where you actually start making those sorts of compromises.

Mr Hirst—The legislation is outcomes based and we have been advised to focus on outcomes. So to an extent that does preclude a measure of standardisation because the outcomes will be specific to each port.

Senator COLBECK—We have heard also this morning about the impact on road and rail operators, and obviously the ports would have interaction directly with road and rail. Have you or any of your members had discussions with road and rail operators to discuss the impacts on those particular groups?

Mr Hirst—There have been very limited discussions, because the focus has been to try and secure the port and the facilities within the port. As Mr Russell said, and he is probably closer to road and rail than I am, there is still an emerging awareness of the issues regarding security there. However, we are very concerned about dangerous goods and the supply chain of dangerous goods. We have been working closely with Mr Russell's association and other groups to ensure that the movement of dangerous goods is seen as a major issue in relation to security. I am pleased that there is a study that is being funded by DOTARS and which is being run through the Australian Logistics Council to look at what could be done to have a common system for the transportation of dangerous goods to and from ships around Australia. That is very important, as at the present time the arrangements are very fragmented. There is no real sophistication in the arrangements and I believe that dangerous goods are a major vulnerability. That is looking at it from the Australian side, goods going to ships. But at this stage there is nothing that I can see we can do to counteract the effects of dangerous goods on ships coming into Australia that have not been declared as dangerous goods. Unfortunately, that is a very common occurrence.

Senator COLBECK—You say it is a very common occurrence. What would be the rate of occurrence?

Mr Hirst—I do not have any figures, but I did hear at one stage that in one port it was considered that about five per cent of dangerous goods were not declared. That was just a bit of hearsay—I am not aware of any firm survey that was undertaken—but it is an issue of considerable concern.

Senator COLBECK—Would they be dangerous goods that are classified under the hazardous goods code?

Mr Hirst—Yes, they could be. As an example, just recently off South Africa a ship caught fire that had undeclared dangerous goods in it that had come from China. They were in inadequate packing and, as I said, were undeclared. They caused a major fire on the ship. That is not a terrorist incident necessarily, but I think you can extrapolate from that that there is a risk with undeclared dangerous goods.

Senator COLBECK—Could you give me an example of how those things might be declared? Are they basically described in a nondescript manner?

Mr Hirst—They are generally described in a fairly nondescript manner. I think Mr Russell could give you more information on that, as he is a lot closer to that than I am.

Senator BUCKLAND—You made mention of ships that anchor off the coast—sometimes as far as 11 kilometres off the coast. If that does not become the responsibility of the port authority in that area, whose responsibility does it become?

Mr Hirst—It becomes the ship's responsibility. The ship's own security arrangements would apply to those vessels.

Senator BUCKLAND—Even if they are on a mooring that is set in place by the port itself?

Mr Hirst—No. The mooring is at sea. There is no set-in-place mooring at sea. The ship is given a position where it should moor, but there is no fixed mooring there.

Senator BUCKLAND—I see. What about in more enclosed waters? I have to relate this to South Australia, which I am a bit more familiar with. If you look at some of the moorings, not so much now in the Gulf St Vincent but in the Spencer Gulf and Port Lincoln and those places, there are mooring buoys.

Mr Hirst—Where there is a mooring buoy, that would generally be within the port limits. Therefore, the security responsibility is with the port.

Senator BUCKLAND—So if you are excluded from the port's protection, if you like, does the ship have to provide its own security measures or just hope that something does not happen?

Mr Hirst—Yes. It would have to keep a watch in exactly the same way as it would when it was travelling at sea. Ships are subject to pirate attacks, so they have to keep security for that. When it is at anchor at sea it would adopt normal security practices. The ship's security plan would dictate what those practices would be at level 1, level 2 et cetera.

Senator BUCKLAND—I see.

Senator O'BRIEN—You talked about passenger scanning for cruise vessels. Will those arrangements need to be applied to coastal trade vessels that carry passengers?

Mr Hirst—Under the code, a passenger vessel is one that carries more than 12 passengers. I am not aware whether there are any passenger vessels as such under the Australian flag.

Senator O'BRIEN—There are three that I can think of that carry considerably more than 12 passengers.

Mr Hirst—You are talking about the *Spirit of Tasmania*.

Senator O'BRIEN—Spirits I and II and the Sydney to Devonport ship that will commence on 15 January.

Mr Hirst—Yes. They will be subject to passenger screening. I am not quite sure about the extent of the cargo screening.

Senator O'BRIEN—Given that passengers drive their vehicles on board the vessel, what sort of screening would be required under this legislation for those vehicles?

Mr Hirst—I am not aware of that.

Senator O'BRIEN—That has not been discussed?

Mr Hirst—It has been discussed but not in a forum that I have been present at.

Senator O'BRIEN—Okay. Thank you for that.

Senator BUCKLAND—I want to move to another area. I refer to the meetings that have been held to develop the legislation. Have you been involved in those?

Mr Hirst—Yes.

Senator BUCKLAND—Who participates in those—DOTARS and the port operators?

Mr Hirst—There has been a series of different meetings of the different groups that have been set up. The meetings have mainly had industry associations plus selected—and I do not mean that as a pejorative term—people from ports or shipping companies or stevedores or some of the oil companies. There has been a fairly wide representation of the stakeholders in a port, being those who are directly affected by the code.

Senator BUCKLAND—Has the Maritime Union of Australia been involved in any discussions?

Mr Hirst—I have not been present at any meeting at which there has been Maritime Union representation.

Senator BUCKLAND—Given those that you represent, have you had separate meetings to discuss this matter with the unions?

Mr Hirst—Only as part of other issues.

Senator BUCKLAND—What are the other issues?

Mr Hirst—These have been in relation to port welfare committees, and I have had a discussion with the Maritime Union and security has come up. I did get an approach from the union some time ago to talk about some issues as far as coastal shipping is concerned, but they were informal discussions.

Senator BUCKLAND—Are they going to become formal discussions?

Mr Hirst—Not necessarily, no.

Senator BUCKLAND—Why? The way I see this is that unions are an integral part of the port's operations. I would think that they would probably like to have some input, if nothing else. I also think that there would be value in canvassing their views on port security.

Mr Hirst—I certainly have no objections to the union being present at any meetings that I am involved in, but nobody has asked me for my views on that.

Senator BUCKLAND—Have you asked it, though?

Mr Hirst—No, I have not asked the union at all. I have very limited contact with the union.

Senator BUCKLAND—Do any of your members?

Mr Hirst—The members would on a day-by-day basis.

Senator BUCKLAND—But not specifically to discuss this legislation?

Mr Hirst—I cannot speak with any confidence on that.

Senator BUCKLAND—I will let that rest.

Senator TCHEN—I noticed that in your submission you said that DOTARS adopted a consultative approach in the early development stage and that you were happy with that but that you were concerned that later on the same level of consultation had not been applied in the exposure draft of the bill. However, you also acknowledged that a number of the issues, not all the issues, that you had raised had been reflected in the actual bill.

Mr Hirst—That is not quite correct.

Senator TCHEN—You said that ‘some but not all the concerns expressed by us’ in relation to the exposure draft were reflected in the bill.

Mr Hirst—The major issue that was reflected in the bill related to the adoption of the ISPS Code terminology for port facilities. That was missing from the exposure draft. After some representations, DOTARS agreed that that should be included. I have put in a number of submissions, on both the exposure draft and the bill, and a lot of the issues in them have not been formally addressed at this stage. The only issues that have been addressed have been those that were part of the critical regulations on which we met to prepare the drafting instructions last week.

Senator TCHEN—You would expect a lot of those other issues which have not been addressed to be defined in the regulations, wouldn’t you?

Mr Hirst—Most certainly.

Senator TCHEN—Given the department’s method of operation so far, it would be reasonable to expect that, in drawing up the regulations, the consultation process would be followed, wouldn’t it?

Mr Hirst—Yes, I think last week was a very good start in working together on the drafting instructions. I would hope that that will follow through for the rest of the regulations over the next few months, but there is an issue that I must repeat again; that is, we must be given adequate time to see what the written word of the regulation is. The drafting instructions go so far, but we really do need to see the final wording.

Senator TCHEN—I am sure that will be part of the consultation process too.

Mr Hirst—I sincerely hope so.

Senator TCHEN—One particular issue which you raised—and I think other senators have spoken to you about this—is that of the harbourmaster and where the secretary has discretionary power to give directions. You will be pleased to hear that this matter was raised with the department at the hearing of another committee of this parliament. The departmental representative’s advice to that committee was that, amongst other things:

In the event of such a direction, it is likely that national counter-terrorism measures would be in place, and that state police will probably be involved. The use of the direction by the secretary alone in these circumstances will probably be quite remote.

The departmental representative also acknowledged that the harbourmaster is essential for consultations. Does this acknowledgement allay your concerns about the harbourmaster not being consulted?

Mr Hirst—In the drafting instructions for the regulations it is recognised that there needs to be consultation with the harbourmaster and/or the port security officer. We would desire that this goes beyond that, and there is reflection in the act that this should take place, for the reasons that this act is going to be around for a long time. It is going to be a very unusual circumstance when the secretary gives a direction, and this will require, in most cases, a very immediate response. We feel that there is a potential for a harbourmaster to be left out of immediate consultation if people are not familiar with the procedure and especially if there is a lack of maritime knowledge in DOTARS and, perhaps, within the counter-terrorist committees in the states.

Senator TCHEN—That is a case of forewarned is for forearmed, isn't it? Another issue which other senators have discussed with you is the costing side of it. I understand that the United States has put something like \$US600 million into direct grants to their ports. There are certainly quite significant differences between the port structure in the United States and that in Australia, aren't there?

Mr Hirst—That is right.

Senator TCHEN—We have quite a variety of port management models whereas in the United States, I understand, all the ports are government owned.

Mr Hirst—The United States ports are a mixture of government owned—they can be state government owned or municipal government owned—and they are funded accordingly. Equally, the ports can get federal funding from Washington. So it is a very mixed system.

Senator TCHEN—But the ownership is all public. That is the big difference, isn't it?

Mr Hirst—Yes, the ownership is public but within the ports there are private facilities, in the same way that there are in Australia.

Senator TCHEN—I also understand that the United States has adopted part B of the ISPS Code as mandatory, but in Australia we are only basing our security legislation on part A, which the IMO's considers to be mandatory.

Mr Hirst—The United States is the only country that has made part B mandatory. They did try through the IMO to put pressure on the rest of the world to make part B mandatory but that was very resoundingly rejected. Australia will be adopting much of what is in part B—the recommendatory parts—because we will be applying a high level of practice to the application of the code. I believe that there will be some lesser application in some other countries.

Senator TCHEN—Thank you.

CHAIR—There you go—you have done well. Thank you very much.

[11.07 a.m.]

GIDDINS, Mr William John, National Industrial Officer, Maritime Union of Australia

MACDONALD, Dr Duncan Kimpton, Consultant, Maritime Union of Australia

BYRNE, Mr Martin, Assistant Federal Secretary, Australian Institute of Marine and Power Engineers

CHAIR—Welcome. I invite you to make an opening statement and then we will ask you questions.

Mr Giddins—Could I confirm that it is satisfactory that my colleague Dr Duncan Macdonald, on my left, who is the consultant to the MUA, and Mr Martin Byrne from the Institute of Marine and Power Engineers, assist in the submission.

CHAIR—Yes, that will be all right. You are paying them, so you might as well have them.

Mr Giddins—I am employed by the Maritime Union of Australia as a national industrial officer. I can answer questions today on behalf of myself and the Australian Institute of Marine and Power Engineers.

Mr Byrne—I am the Assistant Federal Secretary of the Australian Institute of Marine and Power Engineers, and I am not on the payroll of the MUA.

CHAIR—Thank you very much. Do you have an opening statement that you would like to make?

Mr Giddins—Yes, I do. The organisation that I represent, along with the AIMPU—which is the acronym for Mr Byrne's organisation—represent approximately 12,500 employers who will be directly or indirectly affected by the proposed legislation to be put before the House and the Senate. As such, we have a vested interest in ensuring that fairness and equity are applied to the people we represent, as well as the importance of ensuring that the bill adequately deals with the general welfare of the Australian community.

I should say that our submission indicates that we are a little disappointed, to say the least, in the extent to which we have been advised and consulted in the development of the bill. There have been two meetings of short duration with our organisation where the department took us through the exposure draft at least, and we understand a second meeting more recently dealt with the intention of the guidelines for the development of the regulation. I think that can be compared with the approach taken across the Tasman by the New Zealand government, who I understand from my colleagues in New Zealand have taken a far more bilateral and bipartisan approach in ensuring that employees directly affected by the proposed legislation are adequately consulted and have a proper and true understanding of what the impact may be on them.

Also, we understand that the Maritime Security Working Group has been formed and a vast number of different organisations have been seconded to that group to assist where possible in the development of the legislation. Regrettably, our organisations are not part of that. I should say to you that I hope that, in consideration of what we have to say this morning, due consideration will be given to including us on the consultative committee with respect to the development of the regulations and guidelines. If that does not happen, I think it will be regrettable.

We have a range of concerns, but before I raise them I should say that our unions are not opposed to the development of the legislation per se. We only seek to ensure that the people we represent are adequately protected and considered in the development of it such that they do not in any way become the unintended victims of what will form the piece of legislation that will go before the parliament. We have some concerns—and they are in our submission—about the extent to which issues within the draft bill such as unlawful interference may overreach to impact upon the normal workings of our members and the way we as industrial organisations interact with them and the organisations that employ them. Those are the port authorities, the stevedores, the shipping companies and the bulk commodity movers. Every bit of bulk petroleum or containerised cargo is dealt with in some way through members that we represent to the extent of carriage of the vessels in and out of ports. Other than with respect to recreational fishing vessels, there is very little our members do that will not in some way be affected by the bill.

The committee should give due consideration to the fact that we believe that Australian shipping should be seen as somewhat different from foreign shipping in respect of the application that the bill will have. Our submission deals with it, but maritime incidents where there is the threat or potential threat to our security and wellbeing have not occurred on Australian registered or owned vessels. There is the potentiality for that in respect of foreign flagged vessels. We think it is important that the committee look at whether the bill should incorporate arrangements to ensure that foreign flagged shipping and foreign seafarers—whether they be masters or deckhands—are properly scrutinised when vessels visit our ports. We have proposed that there be an initial point of scrutiny. We are hoping that the department will be sufficiently resourced so that inspectors

can carry out proper and due surveillance in respect of both the commodity being carried—as alleged against the manifest—and the seafarer identification.

We have also made some comments for your consideration in respect of that very last issue, seafarer identification. It is our strongly held view that steps should be taken to ensure that there is no doubt that employees on vessels—whether they be Australian vessels or foreign vessels—can be adequately identified and scrutinised to ensure that they are who they say they are, have the qualifications that they allege they have and do not pose a security threat. In that regard, we think seafarer identification is a very important factor.

We should say up front that the present approach to the cabotage arrangements in Australia does not sit fairly and equally with the purposes and intention of the bill which is currently before you for consideration. It seems to us an anomaly that we allow foreign operators and foreign vessels to ply our coastal ports with relative ease and yet, at the same time, we must acknowledge that there is an inherent threat that the very existence of those vessels in and around our ports poses a particular difficulty or problematic outcome for us. To the extent that the current arrangements for the issue of single and continuing voyage permits continue, we think that that in itself, if nothing else, places a particular compromise on the bill that you are considering.

We also suggest the department and this committee consider a register of all seafarers, dock workers and port authority workers within Australia. We do not believe that it is beyond the capacity of the department to administer. If such a register was established it would enable the various departments, and particularly the secretary of the department of transport, to be able to identify quite clearly at all times who was working within our ports, who was working on our vessels, who was working on our tugs and to be able to ensure that there is at least some capacity to trace and follow who is coming in and out. It seems strange that we would take such significant steps to ensure security of our particular perimeters by monitoring people coming in and out of the gate at a wharf or common user berth, but not do so from the other side of the water face—that is, from the side of vessels as well. So while we cannot control, to a large extent, those members of the public that may come and visit the worksite, the reality is that a register of employees will ensure workers can be properly identified. This is an important factor.

Last, but not least, we would ask you to consider what is necessary to ensure that the welfare of seafarers is protected by way of access to and from ports and to and from vessels—that is, by way of access from welfare groups and labour representation groups, that being unions or organisations representing unions. Those are, in summary, the aspects that are contained within our submission. We are happy to answer any questions with regard to them, but we hope they will be given due consideration by this committee.

CHAIR—Thank you for that. By way of introduction you highlight a ship carrying 10,000 tonnes of ammonium nitrate. You would probably be aware—I certainly am as an old, worn-out cocky—that all our nitrogenous fertiliser, or the great bulk of it, comes from overseas. I presume you are talking about a 10,000-tonne load of nitrate fuel. I am very familiar with it and what it does if you stick a plug of gelignite in it with a bit of diesel, because we did that for years to blow our stumps out. It is only a small load of ammonium nitrate; I know blokes who have brought in 30,000 tonnes. What is the significance of this particular ship? I imagine that is going on every day of the week.

Mr Giddins—And if it is, Senator—

CHAIR—It is.

Mr Giddins—it is a concern.

CHAIR—But why have you used that as an example? Most of it comes out of Florida. We take one million tonnes or so; China takes three or four million tonnes out of the same factory. All these ships would be, by and large, foreign ships, wouldn't they? They are not coastal Australian crewed ships.

Mr Giddins—No. Predominantly fertiliser is brought in from overseas but it is distributed from ports—

CHAIR—Trans-shipped, yes.

Mr Giddins—to towns. Townsville is a common example. It will then be moved from Townsville, for example, to other ports along the east and west coasts. It does not directly come to the various ports and then get distributed inland.

CHAIR—I understand that, but it goes to Geelong as well.

Mr Giddins—Absolutely.

CHAIR—If the risk is on this ship, the risk is on all ships, isn't it?

Mr Giddins—The risk is there because of a number of factors. Firstly—

CHAIR—But the risk is not added to in this case because it has got a particular—

Mr Giddins—Senator, can I answer the question?

CHAIR—Yes, you can when I have finished asking my question. The risk is not there particularly because of the crew though, is it?

Mr Giddins—I think the risk is there because of a number of factors: firstly, the particular nature of the cargo; and, secondly, because the vessels that, at least now—of more recent times—are moving it within Australia are not Australian flagged or registered vessels and are not manned by Australian nationals. The implication of that is that, unless we are absolutely sure of the identity of the seafarers, whoever they may be—

CHAIR—Yes, I take the point there.

Mr Giddins—there is always a potential risk to be considered in circumstances where a potentially dangerous cargo is being moved by persons about whom there may be some uncertainty regarding their identification. That type of cargo in that environment presents a potential risk that we have to consider. We think the risk was somewhat less in years gone by—in recent years—because that cargo was carried by Australian seafarers under Australian masters, was under the control of AMSA and the department of transport and was clearly identifiable. If we had a history of Australian nationals perpetrating terrorist acts within and outside our country, our concern would be equally as high as it is with respect to the example that we have given in the submission.

CHAIR—If that is a risk, the ship that brings the bulk load in is just as—

Dr Macdonald—Could I add to that, Senator?

CHAIR—You can do whatever you like.

Dr Macdonald—The point relates to the number of ports that will be exposed to this kind of risk. As Mr Giddins has indicated, if we can cut down the number of ports that will be exposed to this kind of risk, I think there are savings and an increased level of national security to be had.

Senator O'BRIEN—But isn't it self-evident that, if there is a dangerous cargo, the issues around its security are germane to this legislation—otherwise, Mr Chairman, why do we have this bill before us?

CHAIR—But, at the same time—

Senator O'BRIEN—Let's not get carried away with a political predilection to taking this submission apart and instead get to the nuts and bolts of this bill.

CHAIR—Not at all.

Senator O'BRIEN—I think you are.

CHAIR—All I am saying is that a load of petrol, to my way of thinking, would be just as big a risk as a load of—

Senator O'BRIEN—But a petrol tanker goes to a different berth.

CHAIR—Anyhow, carry on.

Mr Giddins—The cargo coming into significant ports—admittedly they now travel to regional ports that are more proximate to country areas because of the nature of the cargo—is a highly volatile cargo and, in the hands of people who may wish to do this country harm, could pose a considerable problematic outcome.

CHAIR—Shouldn't there be equal security at all ports? Obviously if there is not, the terrorist would soon work out where the best entry point is.

Dr Macdonald—The bill specifies that ports have to undertake a security assessment.

CHAIR—Which I am sure the terrorists do also.

Dr Macdonald—The assessment will hopefully identify the degrees of risk and the measures that will need to be taken. As I said before, if the number of ports that are exposed to this risk—that is, foreign ships and foreign crews carrying this kind of cargo—is reduced, that would be reflected in the security measures they will need to take. I disagree that they will all have the same security—otherwise, why bother with the security assessment phase; why not simply say that every port will have X, Y and Z?

CHAIR—But wouldn't it follow that, if you were trying to do someone some terrible damage, you would pick the weakest point? Therefore, all ports should be seen to be equally secure.

Dr Macdonald—There would be a lot more value to terrorists exploding this kind of cargo close to a large city or in a port that is vital to our economic trade. There are huge differences in ports.

CHAIR—With great respect, if people got killed in the minor port—if they went to the less secure port—try to explain that they did not count.

Dr Macdonald—No. Surely numbers and the impact on trade must be taken into account. As Mr Hirst indicated, there are huge differences in our ports.

CHAIR—Do you really think there is a correlation between a crew that has a foreign crew and a crew that has an Australian crew—who are probably Australian citizens, but perhaps half of them are foreigners with Australian citizenship? Do you think there is any relationship between that? I take the point that we ought to know who they are, but surely where they come from does not count.

Dr Macdonald—Surely there is a huge difference with foreign seafarers coming from a number of countries that have clearly recognised links with terrorism. Where they come from is a very important factor. Ask the United States—they are going to be very tough on crews coming from certain countries of the world, aren't they?

Senator O'BRIEN—In terms of the relative danger of cargoes, what current security arrangements exist? Is there any need for this legislation to enhance security arrangements for those types of cargoes?

Mr Giddins—Obviously there are more sensitive cargoes that perhaps should be looked at. LNG and LPG gases and the carriage of that type of product and other petroleum products would probably deserve more attention from both the ship operator and the port facility that they enter or leave from. Generalised bulk cargoes would perhaps not deserve so much attention. The problem, of course, is containerisation and the steps that have been taken to examine those. We understand that the Australian Customs Service takes a significant role in trying to detect illicit products that have been brought into the country—more so than products being taken out of the country. That is more of a contraband nature by the purposes of either evasion of duty or illicit substances such as drugs. The difficulty, too, is that we understand that the Australian Customs Service only has reasonable security exposure to about five per cent of all containerised cargoes moved in and out of the country. We also understand that the Commonwealth has provided funding to try to enhance that position, but the vast majority of containerised cargoes go unaccounted for. That is for either full container loads or loose container loads. We understand that there is no proper evaluation of empty containers. It is a fact that containers deemed empty are, from time to time, found to be quite the opposite. Certainly, LPG and LNG is an area that would not require heightened evaluation from our perspective.

Senator O'BRIEN—Certainly, cargoes that are—or can be made to be—explosive are the highest risk. It is pretty hard to envisage a circumstance where a bulk wheat load would be rendered an explosive or of a great threat. The fuel of the vessel itself might be susceptible, but it would be less of a threat than others.

Mr Giddins—Some of those products are combustible, but they will not cause an immediate explosion. One is always careful about giving examples, but at Port Botany there was a significant gas installation on Friendship Road near the P&O port facility. It was built there years ago—no-one at the time would have ever conceived that it could have been a potential difficulty for Australian maritime or international security. Unfortunately, it is in a very strategic position.

Senator O'BRIEN—I do not want to debate on the record the number of facilities that pose threats to the civilian populations of a variety of cities around the country—we all know there are a number. With respect to your submission and your recommendation that unions should individually be listed as maritime industry participants, can you explain what advantage this would be to your organisation? Is it for better consultation or is it in relation to legal obligations that you seek that?

Mr Giddins—I think a number of benefits will flow from it. We believe that we can make a significant contribution. We think that we have a vested interest not just from a member perspective but from a wider public interest perspective. In the event that we are not incorporated into those consultative processes, our joint membership will be looking to us for guidance on how they are to deal with the changes that may be implemented at their various workplaces.

The nature of our various industries is such that they will seek and want that guidance, and the absence of our ability to give it will provide particular difficulties. My own experience from inquiries within my

particular organisation is that shipping and stevedoring employers have not spent a great deal of time dealing with this issue with their own employees. It may be because we currently have a draft bill before the House; it is not in its final stages and the regulations will take a lot of the meat off the bone. The reality is that we have a very short time frame between now and 1 July next year. If people seek to exclude us they can do so, but I do not think that will be to the advantage of the industry participants or the betterment of the bill. Certainly, in our view, it cannot be anything other than counterproductive. We can only put that issue before you for consideration.

Senator O'BRIEN—Was the organisation that you are representing here today a part of last week's consultation with the department on the drafting instructions?

Mr Giddins—I understand that the department visited the MUA office and spoke with our national secretary. I am not currently advised as to what took place at the meeting. I was on leave at the time, so that is a problem for me. My understanding is that, in general—and I am not seeking to be overtly political—we have been paid the minimum level of consultation required to give the appearance that we are involved in the process.

Dr Macdonald—I would like to clarify that point. The drafting instructions were sent to the national secretary the day after this meeting that Mr Giddins has referred to. So I do not think there was any consultation with him about the actual composition of those drafting instructions. But they were sent to him following that meeting.

Senator O'BRIEN—In two of the recommendations in your submission you mention the failure of the bill to reflect Australia's obligations with respect to the labour and welfare rights of seafarers. Mr Martin Ferguson raised that in the House of Representatives, and there are similar issues with the [Aviation Transport Security Bill](#). Are you able to provide us with specific references in those conventions that you believe are not being complied with?

Dr Macdonald—On page 4 of our submission we refer to clause 10 of the preamble to the code, which states:

The clause refers to the necessity to ensure that nothing interferes with the fundamental rights and freedoms of maritime and port workers especially those set out in the ILO Declaration of Fundamental Principles And Rights At Work as well as in other international instruments concerning maritime and port workers

Our submission also refers to section 16, part A of the code, which declares the necessity of 'procedures for facilitating shore leave for ship's personnel or personnel changes, as well access of visitors to the ship, including representatives of seafarers' welfare and labour organisations'. In the changes that occurred following the circulation of the draft bill when the bill went before the lower house, it does include rights of welfare organisations—that is that Australia's obligations, including those with regard to the welfare of seafarers, are met. That was included. But we are arguing that as well as the welfare rights there should also be the labour rights of seafarers. That is why we have asked for that. In order to meet the provisions I just read out, we are asking that a new section be included to exempt certain behaviour from the definition of meaningful unlawful interference with maritime transport.

Senator O'BRIEN—Can you clarify your concerns about the definition of unlawful interference with maritime transport.

Dr Macdonald—We are concerned that, as it stands, the definition could well include peaceful community protests, meetings of union members with their officials and lawful industrial action. We are asking for exemptions if an action:

(a) is advocacy, protest, dissent or industrial action; and

(b) is not intended:

- i. to cause serious harm that is physical harm to a person; or
- ii. to cause a person's death; or
- iii. to endanger the life of a person, other than the person taking the action; or
- iv. to create a serious risk to the health or safety of the public or a section of the public.

That would allow peaceful community demonstrations, protests, lawful industrial action, union meetings and so on to proceed without them being defined as unlawful interference.

Senator O'BRIEN—I understand that amendments of this sort were proposed in relation to the aviation transport security legislation, and it was agreed this was the way of dealing with issues defining a terrorist act in the ASIO bills. That is correct, isn't it?

Dr Macdonald—That is right, yes; this wording does parallel the section that was included in that legislation.

Senator O'BRIEN—Has your organisation provided this proposal to the department or the minister's office for consideration? If so, have you had a response?

Dr Macdonald—Not at this stage.

Senator O'BRIEN—You have not provided them at this stage?

Dr Macdonald—No, we have not.

Senator O'BRIEN—What is the current regime with regard to seafarer identity? I think we understand from your earlier comments why you view that as so important. What sort of identity system exists with Australian and international seafarers at the moment?

Mr Giddins—Currently, international seafarers are provided with either a passport that they show to enter a country or a special purpose visa, depending on the circumstances. Our concern is that it is quite possible that a number of persons can obtain false passports. Special visas are granted on the production of certain information to the department of immigration. We understand the IMO is currently considering the adoption of an international standard for seafarer identification. We believe this bill should adopt a similar process such that there is a clear, demonstrable and unequivocal confirmation that seafarers are indeed the people they say they are. We believe the current regime is insufficient—it should be maintained but, in addition, there should be special seafarer identification documentation consistent with that currently being considered before the IMO. There are examples of people obtaining false identification, particularly from places like Burma and the Philippines, where for a price seafarers are able to obtain identification showing the skills and competencies they are supposed to hold.

Senator O'BRIEN—So you buy a ticket rather than qualify for it.

Mr Giddins—That has been established without doubt.

Senator O'BRIEN—I understand what you are saying in that regard. Does that rely upon the IMO's determination or, for example, are other nations imposing similar or comparable requirements to know the identity of seafarers?

Mr Giddins—My understanding—and I will defer to my colleagues if they know otherwise—is that nearly all of the participating members of the IMO, with the exception of seven nations, have endorsed the proposal for a uniform standard of seafarer identification, because it has the same difficulties for Australia as it may have for any other foreign port that has seafarers coming in and out. We think it is a proper and appropriate standard and an enhancement of the current standard of identification. We think there is nothing to be lost by it and everything to be gained by it.

CHAIR—But if you want to get a false ID you can get one in Sydney.

Mr Giddins—Can you get a false ID?

CHAIR—Yes, you can. If you really wanted to have a false ID and work on a ship, you could get one in Sydney—you would not have to go to a foreign port.

Mr Giddins—I could not answer that but I do know that they are predominantly sourced externally—from overseas.

Dr Macdonald—The identification document that was proposed initially by the ILO and since then by the IMO will have a fingerprint component to it in an attempt to try to tighten up on this. We are not saying that this is foolproof, but it is a step forward and it is certainly something more than a passport. The United States, for example, is going to insist on an identification document, a passport and a visa being required as well.

Senator O'BRIEN—A normal US entry visa going through the normal processing process?

Dr Macdonald—That is right.

Senator COLBECK—Which countries have decided not to sign up to this? You mentioned that seven countries have said that they are not signing up to the proposed identification documentation. Which countries are they?

Mr Giddins—I cannot tell you.

Dr Macdonald—No, I am afraid I cannot tell you, except to say that Australia is one.

Mr Giddins—I am happy to provide that information to you.

Senator COLBECK—Could you take that on notice?

Mr Giddins—Yes.

Dr Macdonald—The Australian government argued at the relevant meeting of the ILO that passports were a better idea, and passports become obligatory for seafarers entering Australia from, I think, 3 November.

Senator COLBECK—Do you think there is a greater level of security on this additional identification document than there is on a passport?

Mr Giddins—We think so. It has been adopted by the vast majority of countries at the IMO and, as Dr Macdonald said, the US has adopted it. It is an enhancement, above and beyond passports and visas.

Senator COLBECK—What are the provisions to get one of these identification documents?

Mr Giddins—At the moment, the IMO has not concluded the total regulatory regime that will be implemented so we cannot answer that for you at this stage. What we are simply saying is that the bill should enable that type of standard of identification to be part of it so that, when the IMO and these other participating maritime states adopt the procedure, Australia can do likewise. Presently it is not inclined to do so.

Senator TCHEN—Why do you require more rigorous identification of seamen than of other people crossing Australia's borders?

Mr Giddins—Our understanding is that for people who come, either on temporary visitor visas or by other means, there is a standard of surveillance. We are not saying that those individuals cannot breach the terms of the arrangement that allows entry into this country. What we are saying is that those people do not come associated with volatile cargo or on vessels that can carry devices that could pose a particular threat. So the individuals themselves are segregated from the means of the threat as well when they come into the country.

In respect of seafarers, they have access to a range of 40 or 50 ports, and crew changes take place in Australian ports. We are not saying that Australians should be exempt from this; we are simply saying that all seafarers should be subjected to the most rigorous regulatory regime to identify who they are and the skills they have. We say that on the basis that it is common knowledge—and we can produce incontrovertible evidence—that seafarers, because of their very nature and the countries they come from and their need to ply their trade, are now able to regularly access false documentation despite the regulations that apply in their flag states. We think it would be an enhancement and to the betterment of the bill's outcomes if a greater emphasis were placed on ensuring that they can be clearly identified.

Senator O'BRIEN—In your submission you make a strong link between foreign shipping and port and maritime security. You say that if the practice of cheap foreign shipping continues—such as flag of convenience vessels like the *Henry Oldendorf*—it will compromise attempts to improve port security. Can you provide us with any more examples?

Mr Giddins—We would be able to. I cannot orally give you any examples right now, but there are examples of situations like that of the *Henry Oldendorf*. There are also examples of vessels that currently trade into Australia and along the Australian coast that are manned by non-nationals from registries that have questionable arrangements—particularly, the Tongan registry. We can give you examples but we know that, recently, Tongan vessels on the Tongan registry have been apprehended carrying arms. There are examples that we would be happy to provide to you.

Senator O'BRIEN—If you could.

Mr Giddins—You can be alarmist about it, but these are a reality.

Senator O'BRIEN—It would be of great assistance. If you have that information, and it goes to the points you are making in your submission, it would be useful for the committee to receive it. There is clearly some scepticism about the need to understand who are crewing vessels that trade along the Australian coast. From my point of view, I would certainly appreciate it if you would supply that information. But we will need it relatively quickly—in the next couple of days.

Mr Giddins—That will be done.

Dr Macdonald—I also refer to the recent report of the independent review of Australian shipping, which made the point very strongly about the dangers posed by a lot of foreign shipping and about the apparent contradiction between the government's concern about border protection and its encouragement of foreign shipping. That was set out in the report by Sharp and Morris.

CHAIR—By and large, all ships are foreign in a manner of speaking; most ships go to a foreign port, so they are foreign there and they are a risk. We could be having this hearing somewhere else and they could be saying, 'We don't want those dreadful foreigners in here—without knowing their ID—from Australia, because they're foreigners.'

Dr Macdonald—For a start, Australia has a much more rigorous regime, as far as its role as a flag state goes, than do a lot of ships flagged elsewhere.

CHAIR—I would point you to the separate report of the Wood royal commission if you want to see what false IDs do in Australia and how prolific they are and how easy to assume.

Senator O'BRIEN—It is interesting that you refer to that independent report in making those points. We have recently looked at aviation security legislation and dealt with the issue of aviation security identification passes. Was that form of identification considered?

Mr Giddins—Are you asking whether it currently exists?

Senator O'BRIEN—You have talked about a national register and the IMO's consideration. How would you see the aviation ASIC passes in the context of the regime that you recommend that we should pursue with this legislation?

Mr Giddins—I do not think I could adequately comment on that. I am not totally familiar with the aviation access passes. Our view is that the IMO standard for seafarer identification, when it is finally formulated, would be adequate. In respect of the registers—this is not something that is currently being considered by the bill; what we are asking is that the department and the committee give due consideration to what we are proposing—we think a comprehensive register of all dock workers and all seafarers who are Australian nationals is a preliminary step to ensuring that we can adequately identify who is working in and around the very environment that we are trying to protect. We are not talking about people further out at sea, where there is no direct potential threat to Australia; we are talking about the actual work environment where somebody can come, from either the sea side or the land side, and place people in that environment in jeopardy.

CHAIR—Should this be any different to the regime for airlines?

Mr Giddins—I beg your pardon.

CHAIR—Airlines have foreign crews coming and going all day. Are you pointing to yourselves as being different to that?

Mr Giddins—I can only indicate to you that, in respect of people entering or departing from airline facilities or travelling on airlines, there are currently rigorous checks, as we understand it, as to who they are. We do not think there should be anything less than that. If the aviation industry wants to embrace a national register, that is fine. We are saying that we think it should be adopted in the maritime sector.

CHAIR—My problem with all that is: it is a great idea but if you really want to do some damage it will not make a tinker's cuss of difference, because if you want a false ID and you want to be someone you are not it is not hard to arrange.

Mr Giddins—You may have more resourceful means than I, Senator. The reality is that we think there is some merit in ensuring people are placed on a register and can be vetted.

CHAIR—I think that is just a little step.

Senator TCHEN—Will this register include Australian workers as well as foreign workers?

Mr Giddins—Yes.

Dr Macdonald—It is a register of Australian workers.

Senator COLBECK—I would like to come back to the IMO. You have said that you do not have any indication yet—because it is still under development—of the documentation that would be required by a seafarer to gain one of these international certificates, if you like. Could you make some inquiries as to what process might have been put together to this point of time, with an indication of what might be required, what background checks might be undertaken? I think that goes to the basis of what documentation the Australian

government is looking at. If there are more substantial checks required for this international certification than there are for a passport, for example, in the countries that this documentation would be provided from, then in my view you can see a justification for having a higher level of security through this process. I would be interested if there are any preliminary ideas on what process would be gone through for someone to receive one of these IMO seafarer identifications.

Mr Giddins—We will provide that information to the extent that we can obtain it.

Senator COLBECK—Thank you.

Mr Giddins—And we will do so promptly.

CHAIR—Thank you. You've done good. See you later.

[11.55 p.m.]

BOARD, Ms Helen, Director, Maritime Security Policy, Department of Transport and Regional Services
KILNER, Mr John Anthony, Assistant Secretary, Maritime Transport Security, Department of Transport and Regional Services

TONGUE, Mr Andrew Keith, First Assistant Secretary, Transport Security, Department of Transport and Regional Services

CHAIR—Welcome. If you would like to make an opening statement, we will then ask questions.

Mr Tongue—By way of some brief opening remarks, I just wanted to highlight a couple of issues that were raised this morning and the general context that we are working in with this bill. Firstly, I make the point that the Department of Transport and Regional Services in this context is both an industry department with a powerful interest in ensuring that our maritime sector complies with new international requirements from our industry department perspective and, in the current environment, a national security agency with obligations under the national counter-terrorism arrangements to ensure that those sectors for which we are responsible meet domestic and international security requirements. So we have two drivers. Those two drivers could be termed a domestic driver, which is about our domestic security, and an international driver, which is about our obligations to the local community to ensure that when vessels leave Australia they are as secure as we can make them, consistent with good practice and, at the same time, to protect our interest in being able to trade.

There is a firm deadline of 1 July next year for implementation of these new security arrangements. We are conscious that the United States and, increasingly, Europe are making some fairly firm statements about their commitment to a zero-tolerance approach, an approach that says, ‘These are the new rules and we expect that countries will comply with them.’ So we are concerned to improve domestic security and, by doing so, continue to ensure that Australia can trade with the rest of the world. In that context, Australia is largely dependent on the international shipping fleet, on about 3,500 foreign vessels a year. We have the 12th largest shipping task in the world. In significant part, our approach to this task has to necessarily focus on port security. There are some Australian flagged vessels that we need to be concerned about but, looked at globally, our concern is principally a port concern. If we were in the UK or Japan, we would focus much more on the ship side of this regime.

In terms of the time frame and the consultation process, we are working to some very tight time frames. We acknowledge that we have been pushing people for a fast turnaround on lengthy documents, and I would have to compliment industry players on their willingness to work to those tight deadlines. Unfortunately for us we are driven by the international deadline—we have to get this up and going.

There are a couple of points on cost and capacity. The current framework for counter-terrorism preventative security under the national counter-terrorism arrangements that have been agreed between the Commonwealth and the states recognises that the costs to industry of preventative security are just that—they are costs to industry. That is the broad approach we have taken in aviation and it is the approach we are taking in the maritime sector. It is the expectation that governments—Commonwealth and state—have of actors across industry.

The other point I would make is that the costs associated with this bill are costs to Australian industry but the same industry in other countries will be bearing similar costs. In the US hundreds of millions of dollars have been made available for port grants, but those grants will go nowhere near covering the multibillion dollar cost in that country of complying with these new requirements.

Comments have been made about the department’s capacity. We were given money in the last budget and we have brought people on board. We have hit all the fairly aggressive time lines we set ourselves. We continue to evolve our capacity and are training our staff in risk assessment and in improving their understanding of the maritime sector, and we will continue to do that. In all the development of material we have involved a master mariner to advise us in the formulation of instructions to drafters and so on. We also have a commitment to continue to evolve that capacity. We recognise that, like the industry is discovering this new area of activity, we also have an obligation to ensure that our people are up to scratch. I might leave it at that by way of introduction.

Senator O’BRIEN—We have limited time and we might have to come back—

CHAIR—I regret to inform everyone that we have to finish at half past 12.

Senator O'BRIEN—That is because we do not have leave to sit after that time. The explanatory memorandum says that the cost of implementing the bill is \$350 million first up and then \$90 million a year. Are those the current estimated figures?

Mr Tongue—Yes, they are. In part the net cost to industry is very difficult for us to assess until we get the plans in and we can make a judgment about what is already in place. From travelling around and talking to and looking at ports, there is a wide range of installed security base which ranges from what I would call quite good to not so good. Those are our initial estimates. We will have to firm them up in the light of practice.

Senator O'BRIEN—You talked about other countries and their fiscal or financial contributions. Has the department collated a comparison or prepared a table which would show us the sorts of costs other nations are facing in implementing the lesser IMO standard?

Mr Tongue—We are well versed in what the US is doing. From talking to our colleagues in Canada and the UK, they are still developing their estimates but I am happy to try to contact them overnight to get you some advice.

Senator O'BRIEN—Thank you for that. Shipping Australia's submission states:

It is appreciated that IMO level 1 is effectively the default level for the counter-terrorism measures being put in place but whether resources would be available should there be a move to higher threat levels is certainly exercising the mind of industry but it is difficult to have a definitive view in the absence of advice on specific threats.

We heard today that there is no ASIO assessment available to the ports which would assist them in devising their security plans. Can the department comment on this?

Mr Tongue—Yes. We have been working with ASIO who are currently developing a maritime industry threat assessment along the lines of the threat assessments they prepare for the aviation sector. That is close to finalisation but its finalisation is in ASIO's hands. We plan to take that out to state governments, state police forces and to industry. That is our obligation under the national counter-terrorism arrangements. We plan to run a series of workshops that will take people through the settings established in the threat assessment against the national levels—low, medium, high and extreme—and also allow them to understand what is behind those threat assessments with regard principally to capability and less about intent. We have been driving ASIO pretty hard but naturally they have a fair bit on their plate at the moment.

Senator O'BRIEN—You talked about departmental resources. How big a task is it to accredit ISSCs by July 2004?

Mr Tongue—The ship side is relatively modest—70 or so ships—but the port side is more significant. If you look at, say, 70 ports, around 300 port facilities, and work back from that you will see that the big ports, naturally enough, will take longer. The Sydney, Melbourne, Brisbane and Fremantle ports will necessarily require more attention and the small ports will require less. It is a very significant task.

Senator O'BRIEN—I take it that the complexity of the plan will determine how long it takes to review it.

Mr Tongue—We are anticipating that as soon as people see how the legislative process goes we will get a flood of early plans coming in as drafts. We have seen some early drafts. The early drafts that we have seen are pretty good. They need a little bit of work but that is because the area is evolving. It will require a little tick-tacking between us and the ports to finally nail the detail before the approval. Our anticipation of our work program is that we want to try to advise people by late May or early June, subject to when we receive the plans, about their approvals so that they have a little time ahead of the implementation date.

Senator O'BRIEN—What are the resource implications for the department in this case?

Mr Tongue—There is a peak workload after Christmas, subject to processes up here, where we are going to need—

Senator O'BRIEN—Six months after Christmas before implementation—could you be a bit more specific?

Mr Tongue—The key workload impact for us is from February to May. Our plan is that we will move staff around internally from across the transport security function, swing people who are currently working on the legislation team into the assessment team, bring on board some senior maritime expertise and set ourselves up to process those plans so that we can advise people. We anticipate that of necessity the plans will foreshadow investment over a period of time. We are not expecting that on 1 July all the fences will be built, all the cameras and access control systems will be in place and so on. We are anticipating that people will present

plans and, for example, say, ‘Over the next three years we anticipate that we will need to do the following things to meet a reasonable standard of security.’

Senator O’BRIEN—What senior maritime industry people will you be looking for?

Mr Tongue—I would certainly be looking for a master mariner to come on board and possibly a harbour master, a former harbour master or a harbour master on secondment.

Senator O’BRIEN—Is there a specific budget for this task?

Mr Tongue—We were given \$15.6 million over two years. We have approximately \$7.6 million this financial year, which covers staffing costs, IT and a range of other costs.

Senator O’BRIEN—So there is \$8 million left?

Mr Tongue—For the next financial year, yes.

Senator O’BRIEN—I would have thought that this year would have been the big year.

Mr Tongue—We have allowed for resources out in our regions next year so that, once the process is up and going and we have foreign ships coming through, we are making risk-assessed judgments, we are working with Customs and so on, we will have the field force that is necessary to make this thing go. That is why the resources are slightly weighted to the new financial year.

Senator O’BRIEN—I understand that the industry has offered to assist with the provision of expertise. Will you be taking up that offer?

Mr Tongue—Possibly. If we go to the market and cannot get the skills that we need, we certainly will be. We are certainly drawing on industry expertise in the process of drafting the regulations.

Senator O’BRIEN—We have heard evidence this morning with regard to the IMO seafarer identification plan. It was suggested that foreign ships pose an even greater danger because of our failure to endorse that plan. Is it true that the government voted against this ILO attempt to improve the seafarer identification system?

Mr Tongue—The government abstained and made the point that it was placing its reliance on the passport as the key piece of seafarer identity. It is principally an issue for the department of immigration and it is probably best to talk to them about the detail. But the government’s position has been that the passport at the border is our most effective form of identity control.

Senator O’BRIEN—Do you know what system is going to be applied by the United States?

Mr Tongue—The United States is moving down the path of passport, visa and an additional document that will have a biometric in it. But, to be really honest with you—

Senator O’BRIEN—What is a biometric?

Mr Tongue—It could be a thumb print, facial scan or eye scan—there is a range of technologies around. Biometrics are regarded as the holy grail of identity. I would make the point that it is one thing to say that you are going to go down that path; it is altogether another to actually move down it and have in place all of the necessary technology at all of the border crossing points to actually make it worth while. Singapore, I think, is really the only country in the world that is currently making biometrics work.

Senator O’BRIEN—A thumb print would not be so hard, would it, if you had a stamp pad and a piece of paper, at least, to check it?

Mr Tongue—But, once you have the thumb print, if you are going to exercise barrier control it has to go back to a central computer, which checks the thumbprint against all of the relevant databases and then fires back, in a reasonable time, an answer on whether or not to let them in. It is in significant part a technology problem or just the capacity of the technology to transfer this data in a reliable way.

Senator O’BRIEN—So it is the cost factor—that is the reason we are rejecting this sort of thing? That is the IMO system.

Mr Tongue—No, I think it is the general belief that border control happens through the passport. If you ask seafarers to produce their passports then that is where, as a nation, we have invested in a huge capacity for migration alert systems and so on. At the moment, we really need to drive our border security off the passport.

Mr Kilner—Can I add that, whilst the United States voted for it at the ILO, they also made the statement that the seafarer identity document will not be accepted in lieu of a visa or travel documentation. But they do recognise the special professional needs of seafarers. Like us, there is an issue about turning it from a

convention into a reality. They have not yet chosen to ratify the convention that they signed at the ILO this time.

Senator O'BRIEN—They do not ratify too many ILO conventions, as I recall it, anyway. It is significant that they supported that one.

Mr Kilner—In fact, of the 175 member states, most ILO conventions would attract about nine ratifications.

Senator O'BRIEN—Yes. Ratification is a different thing from a plan that they are proposing to implement which differs from ours. It has been suggested that we should have a national register of stevedores and seafarers. I would have thought that the support of the employee organisations that we see today would have been almost unheard of a decade ago. Has the department considered the implementation of a national registry of stevedores and seafarers in the context of the security issues around this legislation?

Mr Tongue—It has been raised with us recently. The way the bill structures these arrangements and the way they work, for example, in aviation, is that we establish a regulatory regime around access control, which is about identity. In significant part, we try and leave it to the industry concerned to sort through the operational arrangements on the ground and how the identity control and access arrangements will work. The background checking regime in aviation, for example, really relies on both a police records check and now an ASIO check.

Because the port sector is slightly different, rather than going down the track of a blanket politically motivated violence check for everybody, we anticipate only going to ASIO for a limited number of positions where people have access to information and are in positions of authority or have access to particularly sensitive areas of ports. I think the Canadians are moving down that path and the Americas are talking about doing all transport workers. At this stage we think the balance of risk is such that, if we are covering off the key players, a slightly lower standard for the rest of the industry will suffice.

Senator O'BRIEN—So we have a lower level of risk—

Mr Tongue—Across the port, the risk varies.

Senator O'BRIEN—than the US or Canada?

Mr Tongue—The US and Canada have again made the statement they are going to do it, but I think the proof is in the pudding. If we say that we are going to do something, we have to anticipate having the capacity to do it. Suppose somebody is knocking blocks off out in the container parking area; if decent access control arrangements are in place and that person cannot get to sensitive areas of the port, there is a question about whether we need to get them fully background checked, which is an intrusive process. For the moment our judgment is—in talking to the industry, at least at a conceptual level—that we will try and limit the number of people who are coming through the system. So, rather than relying on a central register held by DOTARS, with all of the difficulties that go with public servants holding central registers of things, we would rely on the established systems that ASIO already has, and we would do that on a risk basis.

Senator O'BRIEN—Given AMSA's responsibilities, what view does it take of the proposal of having a register of stevedores and seafarers?

Mr Kilner—We have not discussed this matter with AMSA. It was raised by the MUA in the meeting we had with them a week or so ago. We have yet to see any formal submission from the MUA, apart from what we have heard today. We have had discussions with AMSA but not about the issue of seafarer ID, and I am not sure that AMSA would have a particular interest in it.

Senator O'BRIEN—AMSA would want to know who was crewing vessels and their skill levels and qualifications and the like, wouldn't it?

Mr Kilner—Yes, it would. But you are talking here about a national register of all seafarers—and not just seafarers; we have extended that to the wharf.

Senator O'BRIEN—That is true; but in asking about AMSA I am asking about an aspect of that.

Mr Kilner—As I have said, we have not raised this matter with AMSA at this time.

Senator O'BRIEN—Can you elaborate on how the port authority's concerns regarding port limits and the jurisdiction of state and federal maritime boundaries will be dealt with under the legislation and the regulations or in other ways?

Mr Tongue—One thing that has been a real challenge in getting the legislation to this point is simply the complexity of ports with the operation of a multitude of state and federal laws and public and private actors.

This is why there is a significant focus in the legislation on the planning process and the risk assessment prior to that 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 those zones and so on.

A considerable part of the process over the coming months will be the development of plans that work through the complexity of laws that operate both on the land side and on the water side at ports. It is really through the process of developing plans, our assessing those plans and then going back with questions that these issues will surface. The key thing is the need to be guided by the outcomes that we wish to achieve, which are stated at the start of the bill.

Senator O'BRIEN—So is there anything in the legislation that we should focus on which will either constrain the flexibility that you have just described or impose other obligations that are not envisaged in the approach that you have just mentioned to us?

Mr Tongue—One of the key areas is the designation of the boundary of the security regulated port. That is a key issue. In looking at trying to come up with a security regime, we did not want to throw a blanket over the whole port and automatically by legislative fiat draw the whole thing in. After undertaking the risk assessment and going through the planning process, 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.' Our expectation is that it is going to vary enormously. It will be convenient for some ports to draw a line around the water and say, 'That is the port.' Other ports will possibly want to excise some areas of water and say that they are not consistent and they are not involved in port operations. So that is a key area.

Senator O'BRIEN—So flexibility will exist under the legislation and the regulations for that to occur.

Mr Tongue—Yes. With regard to the regulations, we might table today where we are up to in the drafting instruction process. We held a number of workshops last week, and it might be of benefit to show you.

Senator O'BRIEN—It would be.

Mr Tongue—So we will table those today.

Senator O'BRIEN—Could they be tabled before we finish this session at 12.30?

Mr Tongue—Yes.

Senator O'BRIEN—We may have some questions when we resume at 4 p.m., assuming the Senate allows us to do so. There are some specific amendments proposed by the maritime unions in relation to compliance with relevant international codes. Presumably you have discussed them. If you have not discussed them, you heard about their proposals today. Can you provide us with any feedback on those amendments?

Mr Kilner—Is this in regard to the amendments to do with the ASIO clause that the MUA was talking about?

Senator O'BRIEN—This is to do with the compliance with relevant international codes—for example, where the meaning of unlawful interference with maritime transport be amended so that it excludes action which is advocacy, protest, dissent or industrial action which is not intended to cause serious harm that is physical harm to a person, to endanger a person's life et cetera.

Mr Tongue—That is the ASIO clause. The first point is that it has not been our intention, in formulating the bill or in any of the policy discussions that we have had, to in any way get involved in hampering industrial action. Indeed, if we did that, it would undermine the credibility of the bill instantly. We think that the issue is covered off because there is an obligation in the bill to report incidents of unlawful interference with maritime transport that are or suspected to be terrorist incidents. Terrorism is defined in the Crimes Act and it excludes political process and union activity, so we have framed the bill in such a way that there are some general protections because of the interaction with the Criminal Code. The bill cannot stop anybody protesting outside the gates of a port or anything like that, but it is designed to control access to ships—that is in part its intent. It is a bill that in part seeks to, if you like, fetter free access to all areas of a port. There is no offence in the bill for unlawful interference with maritime transport, because that is covered in general laws and the Crimes (Ships and Fixed Platforms) Act. Our feeling is that the bill covers it off, but we acknowledge the MUA's concern.

CHAIR—Thanks very much, ladies and gentlemen. We will resume the hearing at 4 p.m.

Proceedings suspended from 12.25 p.m. to 4 p.m.

Senator MARK BISHOP—I want to ask some questions from the point of view not of the main driver of the bill or maritime security but the level of involvement and the ongoing role, if any, of Customs in the work to date. That is the perspective that I would like you to respond from if that is possible. Has there been any consultation with the Department of Customs and Excise by your own department in the lead-up to the bill?

Mr Tongue—Yes, there has. Prior to Australia even going down the track of signing on to this new IMO security requirement, we formed the usual IDC, in which Customs participated at a senior level. They have continued to participate at that level. When we had a draft bill, we circulated it to Customs and worked through a number of issues with them. We agreed, for example, that Customs officers would be recognised as law enforcement officers for the purposes of the bill, which would give them certain powers to basically move where they need to in the port zone. We are continuing to work with Customs in the process of drafting instructions and making regulations. More broadly, because of our role with Customs, Immigration and AQIS at the border, we are all starting to work together more closely, if you like, around that concept of all of us contributing. Whilst we are not a border security agency, we certainly play a role with industry and those agencies.

Senator MARK BISHOP—Has an IDC been established to coordinate that function or is it more informal?

Mr Tongue—The heads of Customs, Immigration and AQIS meet regularly—quarterly. They have now begun inviting the secretary of my department, Ken Matthews, so we meet at that level. Those agencies meet on an as needed basis at my level. We also work around the Australian government Counter-Terrorism Policy Committee and its related processes. So we are fairly well interlinked now, I would say.

Senator MARK BISHOP—So the Customs services were involved in the beginning, they have participated in the IDC and they are raising issues of relevance or concern to them through that forum and through ongoing consultation.

Mr Tongue—Yes, that is correct.

Senator MARK BISHOP—Can you tell me specifically what are the powers of duly authorised officers in the bill? What is a duly authorised officer? Will these duly authorised officers include Customs officers?

Mr Kilner—The title that we use is ‘law enforcement officer’. Customs are covered under that particular terminology. The drafting instructions for the regulations make it clear that Customs officers, as law enforcement officers, are exempt for screening and clearing purposes.

Senator MARK BISHOP—So Customs officers will be designated, under the bill, as law enforcement officers?

Mr Kilner—Not under the bill.

Ms Board—Yes.

Mr Kilner—Correction—

Mr Tongue—Customs officers are designated under the bill in their law enforcement role because they are in the Crimes Act, so they can perform certain functions.

Senator MARK BISHOP—With regard to the functions that they carry out, pursuant to the powers that they have, does this bill propose to give them extra powers or are you just extending the scope of existing powers that they currently exercise?

Mr Tongue—The bill could be read to expand the scope in the port zone in which they could exercise some of their existing powers. Because the bill will create the gazetted port environment, and Customs officers will be law enforcement officers under the bill, that effectively means they can move within that port environment.

Senator MARK BISHOP—But exercising existing powers?

Mr Tongue—Yes.

Senator MARK BISHOP—Not new powers.

Mr Tongue—In talking to Customs, it is a fine point of law. The Customs Act is so broad that Customs—this is what they say to us—seem to be able to pretty much go where they need to go at the border to follow a

matter. I would say that our bill codifies that a little bit in that we are looking at a slightly wider area than, say, the Customs zone, which is a more specific area immediately adjacent to a ship.

Senator MARK BISHOP—So really Customs say to you that they already have broad powers.

Mr Tongue—Yes.

Senator MARK BISHOP—This bill extends the geographic reach in which they can exercise the current powers.

Mr Tongue—It could be read to do that, yes.

Senator MARK BISHOP—Okay. Got that.

Mr Kilner—Clause 151 of the bill states:

Each of the following who is on duty at a security regulated port is a law enforcement officer.

... ..

(c) a customs officer who is prescribed in the regulations.

Senator MARK BISHOP—Are there any delineations in the bill between the authority possessed by Customs, the new transport officers and current port authority staff?

Mr Tongue—Yes, there is the law enforcement group—Federal Police, state police and Customs. Then there is the duly authorised group exercising administrative powers under the bill. They want to look at ships to see that they have got their certificates, they want to look at plans, they want to see that people are complying with plans and so on. So there are those two groups. Then there are port employees who are exercising some of the proposed powers under the bill—for example, maritime security guards who might be able to detain somebody until the police arrive if they have gone into a secure area at the port. There are port security officers who are responsible for the preparation and conduct of the plan once it is developed and in place. So there are those three groups which the bill covers.

Senator MARK BISHOP—Will duly authorised officers be armed?

Mr Tongue—No, except in the instance where a duly authorised officer is already a law enforcement officer and in the conduct of their duties they are coincidentally armed. Certainly, if they are AMSA officers or our people, they would not be armed.

Senator MARK BISHOP—Customs officers are armed from time to time?

Mr Tongue—Some Customs officers are armed from time to time.

Senator MARK BISHOP—So there is no purpose in the bill to give existing Customs officers the legal right to carry arms?

Mr Tongue—No.

Senator MARK BISHOP—Apart from rights already—

Mr Tongue—Apart from rights they already have.

Senator MARK BISHOP—Who do these duly authorised officers report to? What is the chain of command?

Mr Tongue—Basically, duly authorised officers are exercising powers that the bill proposes that the secretary has. So the chain of command is from the duly authorised officers to the relevant area of the maritime security operation through John and me to the secretary. Once we have built this system, I anticipate that there will be a small port level group of duly authorised officers who will work with our regional officers in each of the major state capitals and thence to Canberra, to John, and finally to the secretary of the department as the person named in the act.

Senator MARK BISHOP—Will this group of duly authorised officers operating in what will be a new environment have any customs powers delegated to them?

Mr Tongue—No, not unless Customs chose to do that. We certainly have not asked for it and I do not imagine we would. I think they will be confined to the operation of this act.

Senator MARK BISHOP—With respect to the process you are outlining regarding setting up those teams within defined areas of the ports and the like, what is the process for establishing the detail of that? Will that be done by regulation?

Mr Tongue—Some of it will be outlined in the administrative processes attached to the regulation. Some of it will be a matter of us having to strike arrangements or agreements with each of the relevant parties. For example, we will have to negotiate with AMSA, being one relevant party, about the use of their people in this new environment and embody that, probably in an administrative-level agreement—between, say, CEO level—rather than try to codify it in a lot of detail in the regulations.

Senator MARK BISHOP—So once the new regime is established and the areas within ports are defined, the day-to-day work, the transfer of responsibility and delegation across different agencies, would be worked out by negotiation at administrative level. Would it then be intended to publish that anywhere or is that just an internal agency matter?

Mr Tongue—I think it is really an internal agency matter. When push comes to shove, it is about the utilisation of resources. We will need to have a clear idea for each port about what the pattern of responsibilities is. Indeed, part of our process in assessing the various plans will be to ensure that if a particular plan is throwing up a risk associated with, say, the oil and gas industry, we have the law enforcement, the compliance side, covered off, both in the operation of the plan and in our compliance role, and that we have duly authorised officers exercising the compliance role. Every port is so different that we will have to virtually negotiate the fine detail of those arrangements almost port by port.

Senator MARK BISHOP—And that would necessarily involve Customs at every level in each of the ports?

Mr Tongue—I would think so, because, of all the Commonwealth agencies, Customs are the agency with the largest presence at ports. We would hope to negotiate with them and see a lot of this as just an extension of an existing role, not a huge impost. But no doubt if Customs felt that we were taking them into territory where they were not funded to go, we would have to have a further negotiation.

Senator MARK BISHOP—What sort of time frame have you tentatively established to conclude that process?

Mr Tongue—We have already run a series of workshops across the country bringing in the port communities, specifically targeting Customs, AMSA, law enforcement officers and so on to participate in the process of undertaking risk assessments at ports. We are trying to buy them in at that level, and we are encouraging that they be part of port security committees. Then we are drawing Customs in at the Canberra end. I would be hopeful that we could conclude the broad level of detail between us by Christmas.

Senator MARK BISHOP—How will directions of a security nature given by Customs under their act be coordinated with the power of other authorities in the new port zones?

Mr Tongue—There I would look at, say, the way we work at airports, where the customs zone is a zone within the security regulated part of the airport. In that instance, if Customs decide that they need to reorganise the flow of people or goods through the zone, typically there would be a consultation at the airport level—and, I would imagine, the same will happen at a port level—if it is a major change. If it is that something Customs need to do in exercising their powers causes us to say, ‘Well, we might need to adjust a zone,’ a lot of that should happen at that port level. That is the administrative machinery.

Senator MARK BISHOP—Via those committees you were talking about.

Mr Tongue—Via those committees and via the regional offices that we have in place for aviation and are augmenting for maritime.

Senator MARK BISHOP—Is there any new institutional framework established by the bill to manage this new maritime security regime?

Mr Tongue—In the existing institutional framework under the national counter-terrorism arrangements, the Commonwealth Counter-Terrorism Policy Committee; the National Counter-Terrorism Committee, which is the operational committee; and all of the agencies that I have just mentioned—including us—are around the table there. That is where we nut out Commonwealth coordination of these counter-terrorism sorts of matters. I anticipate that we will evolve a specific piece of governance in the Commonwealth around the maritime sector. As we pursue this bill and the general policy community becomes more aware of maritime security matters as they affect Australia, I would anticipate the emergence of some specific part of those counter-terrorism arrangements that is purely maritime.

One of the things we have looked at is whether we have a state level arrangement that brings in state police, because a key part of law enforcement of ports is going to be state police. That is a major distinction between

the framework we are trying to put in place at ports and what happens at airports, because airports are a Commonwealth place where there is a fair degree of Commonwealth law enforcement presence, whereas ports are very much more reliant on the role of state police.

Senator MARK BISHOP—Are you saying that the current counter-terrorism framework that has been established over the last two years is going to be the base for this and you assume that that would have to evolve over time because of state level responsibilities and state policing agencies?

Mr Tongue—Yes.

Senator MARK BISHOP—Of the \$15.6 million allocated to your department for the management of the new scheme, what part, if any, will be provided to Customs to cover its obligations?

Mr Tongue—At this stage, because we think that the bulk of this will just be a minor extension of existing duties, none of it. But I will be honest with you and say that, once we have this up and going and have some experience under our belts, we may need to look at that. We anticipate that the role is a relatively minor one on top of the existing border control function, but, if it emerges that it is a more substantial role, we will need to come back to the government.

Senator MARK BISHOP—What exactly are Customs obligations under this bill? Are they enumerated?

Mr Tongue—I think ‘obligations’ might be the wrong word. The bill creates the opportunity for Customs to work with—

Senator MARK BISHOP—What responsibilities do they have?

Mr Tongue—Subject to negotiation with Customs, because they do the first port boarding and a range of functions for a range of agencies, one of the things we would ask that they do is check that the ship has the IMO relevant certificate. We would participate with them, utilising some of their systems, in the risk assessment process associated with ships. We would be looking back at the 10 previous port calls and discussing with them the risk assessment process pertaining to the ships. I could imagine circumstances where, for example, a piece of intelligence emerges about a particular ship that has berthed and the only effective Commonwealth presence at port is the Customs officer. We would ask them to go and speak to the master or to the harbour master. But, principally, it will be the day-to-day extension, if you like, of that border control function to see that ships are carrying the certificates.

Senator MARK BISHOP—So going onto the ship?

Mr Tongue—Yes.

Senator MARK BISHOP—Principally, it is the extension of their security function in the broader context on the ship?

Mr Tongue—Yes.

Senator MARK BISHOP—In that case, they would then become the prime initiating agency to make sure all of that work is done?

Mr Tongue—They will be one of the key agencies. The other agency, of course, is AMSA, which has inspectors. The issue that we are struggling with is that AMSA’s role occurs once the ship is alongside. We really need someone who is actually going out on the ship and boarding it before it has got into the port. That is principally the Customs role.

Senator MARK BISHOP—The Customs role is principally prior to berthing?

Mr Tongue—Yes.

Senator MARK BISHOP—In that job and in their prime function, how will their port security role and shipboard responsibilities be affected by this bill?

Mr Tongue—I think their existing shipboard responsibilities would be affected marginally. If you like, there would be another box to tick in the relevant paperwork to say whether the ship has the certificate.

Senator MARK BISHOP—Is that the only thing?

Mr Tongue—Really, it is.

Senator MARK BISHOP—Does the master have to have that on the ship or is it provided prior to berthing?

Mr Tongue—The ship's agent could make a representation to say that they have the certificate, but we would ask that an Australian representative sees that the ship has the certificate. That is really the principal role. If the ship does not have the certificate or there is some problem with the ship, it is highly likely that there will be other Customs related issues or other border security issues related to the ship, so Customs would be really exercising not just potential powers of DOTARS but potential powers under its own act or those of Immigration. I think the bad ships are likely to be bad ships across the board rather than, if you like, just purely related to that one issue.

Senator MARK BISHOP—So, really, in terms of shipboard responsibilities, the specific responsibility for the Customs people is to see the certificate?

Mr Tongue—Yes. We will certainly work with Customs around prearrival information and information collection so that we are not going back to the industry to collect the same information.

Senator MARK BISHOP—Four lots.

Mr Tongue—Yes, that is right.

Senator MARK BISHOP—Thank you.

Senator COLBECK—The MUA submission mentioned ownership of shipping fleets by terrorist organisations, mentioning specifically al-Qaeda and the Tamil Tigers. Is there a recognition and a knowledge of that and a process in place to deal with those particular vessels?

Mr Tongue—Some of what I will call 'flag of convenience' registries have already been shut down. That has principally occurred through detection through international money-laundering arrangements. We anticipate that part of the risk assessment process around ships arriving in Australia will be to look at what registry they are on and whether the registry is reputable. I anticipate that part of the operation of this new IMO arrangement will be to slowly squeeze out the worst forms of flags of convenience simply through this process of risk assessment. If developed economies are all risk assessing the same flags as contributing to a risk profile, after a while operating those ships will become costly, because their transiting through ports will slow down. Certainly talking to the US Coast Guard, one of their risk assessment tools focuses on flags of convenience and, if you like, makes judgments about the quality of the flag.

Senator COLBECK—With respect to categorisation of ports, is it proposed to have a process of categorisation of ports based on threat and risk assessment?

Mr Tongue—We initially embarked on a process of trying to categorise ports, because we felt that it would be a nice way of getting a gradation between the big ones with the higher risks and the small ones. In the end, we abandoned that because there is such a range of what goes on in ports. The system we have come up with instead tries to capture, say, the complexity of the port of Sydney: the port as a whole in the middle of a city that has a high international profile, but then, within that individual facility, there is the Shell facility at Gore Bay, for example—the oil and gas industry; something that we would focus on—versus the dry bulk facility at White Bay, with cement and wheat. Rather than try to categorise them, what we have done is to try to build a system that reflects the likely range of risks in any given port and then, with the outcome based flavour of the bill, try and give some scope for variation between ports even at the same security levels to reflect their different circumstances. So, for example, the things that you might do at Fisherman Island in Brisbane are possibly different from the things that you would do at Station Pier down in Melbourne to achieve a broadly similar security end. Had we gone the categorisation route, we would have ended up imposing broadly the same sets of things for each of the categories that may not have actually made a lot of security sense when they were deployed on the ground.

Senator COLBECK—How does that impact on the basic risk assessment of different locations? It could become very confusing where you have people who do not necessarily understand the system interacting with it where it is based on an activity rather than a broader and overarching risk assessment process.

Mr Tongue—What we are using is the risk assessment process that has been developed under the national counter-terrorism arrangement. It uses the Australia New Zealand risk standard 4360. We have asked the whole industry to use that standard so that there is a common language and a common broad process. What we anticipate is that, at IMO level 1, which is our national equivalent of the national counter-terrorism alert levels low and medium—we have put low and medium together and attributed to them IMO level 1—the interaction between ship and shore will be around that IMO level. Facilities, typically speaking, in Australia are likely to spend most of their time at IMO level 1. The bulk of ships they will interact with will be at IMO level 1, so the

interaction, if you like, on a day-to-day basis between ship and port will be around what we have called the default security level. We anticipate that that should not cause too much confusion.

Then what we have tried to do in the bill and what we will do in the regulations is create the administrative system that allows an interaction where, say, a ship is at IMO level 2. I cannot think of an example, but a ship of a particular flag carrying a highly volatile cargo coming from a highly volatile region might be at IMO level 2. There needs to be an interaction between the ship and the port to ensure that, when the ship comes in, appropriate security is in place, provided by either the ship and its agents or the port or a combination of both. So we think that the system we have built handles day-to-day interaction reasonably well.

Senator COLBECK—So I suppose the circumstance where the general public would come into contact with that system the most would be at a passenger ship or cruise ship level. In that circumstance, could a passenger expect to find a similar level of screening at all ports of access around the country?

Mr Tongue—Yes. I would anticipate that, simply because we are concerned to protect Australians, passengers would come into contact with broadly similar levels. The parallel I would use is aviation, where there are slightly different arrangements in international airports compared with domestic airports. There is a slightly higher standard at international airports. Looking domestically, if you are going on a two-week cruise, you might expect slightly enhanced arrangements to those when you are going across on, say, the *Spirit of Tasmania*. But, certainly, our focus will be on the screening of people and, if you like, protective security around people.

Senator COLBECK—You spoke of the *Spirit of Tasmania*. In the circumstance of the *Spirit of Tasmania*, how would you manage vehicles and perhaps cargo on something that has a very fast turnaround? Obviously, you are talking about a fairly large number of vehicles that will be travelling on that ship on a daily basis.

Mr Tongue—Yes. We have had a look at how the English handle a similar scale of operations in cross-channel ferries. What they have done there is set up an arrangement where there are escalating levels of intervention depending on the security alert level. To give you an example, when we were there they were doing a random physical search of about one in 10 vehicles—a very thorough one—and they were risk assessing other vehicles. They had a set of risk assessment criteria. Similarly, with cargo, they were doing a quick risk assessment process as they were presented with cargo and they were asking for information as far in advance as they could get it to do that process. Then they put in place relatively simple measures, some of which, I should say, the *Spirit of Tasmania* already has in place—that is, once vehicles are on, keeping people away from them; locking up certain zones of the ship so that people cannot get into them; and being more conscious about the various vulnerable zones of the ship and putting in place security arrangements. In dealing with those high turnaround ferries, it is hard to get that full 100 per cent screening, but it is possible. It is the sort of thing we would probably reserve if we went to a national counter-terrorism alert level of high or extreme.

Senator COLBECK—You mentioned the airport situation and screening on a basis a similar to that. How does that relate to the circumstance where some airports do not have screening? Would you see that circumstance arising in the ports?

Mr Tongue—One of the differences between the international aviation arrangements and the IMO arrangements—even though IMO has modelled itself on the ICAO arrangements—is that the IMO arrangements apply to every port handling SOLAS vessels. Our proposal is that that should also pick up vessels on interstate voyages, which basically means we would have no choice but to cover virtually every port that is going to handle even one SOLAS vessel. In aviation, the international requirements and just the structure of the industry mean that we can focus on the big international airports and a limited number of other airports, whereas in ports we pick up roughly twice the number of regulated entities. There is a distinction I would make, though. Let us say it is a cruise ship calling in at a small regional port. A lot of the big cruising companies now have security built into their ships. They have their own screening equipment. Some of them are even carrying plainclothes guards—their own version of sea marshals, if you like—and they have a range of other measures that basically go with the ship. So then the obligation on those smaller ports will be, we anticipate, a relatively modest one—basically to keep people back from the side of the ship, to look at broad access control and at some of the risks associated with large congregations of people or vehicles close to the ship, which we think are manageable without, if you like, locking off the waterfront at small regional ports that might get two SOLAS vessels a year. I would contrast that with, say, the Darling Harbour No. 8 berth, which has big cruise ships reasonably regularly in the cruising season—from, say, November to March, where we would have an expectation that there would be quite significant security.

Senator COLBECK—A jet aircraft is one of the classification criteria for screening at an airport, and I suppose a SOLAS vessel falls into that same sort of classification, where you are talking about a jet being one of the key indicators with respect to security screening.

Mr Tongue—That is right. In this instance, we are talking about a SOLAS vessel and looking at the number of people it is carrying, the voyage that it is undertaking et cetera.

Senator COLBECK—While we are talking about screening: in the drafting instructions for the regulations—bearing in mind that we heard earlier from the Maritime Union about the security threat posed by international crew—there is no requirement for the crew of a passenger ship or even visitors escorted onto a passenger ship to be screened. In the context of the other evidence, I find that to be a little bit out of kilter perhaps. There is a note at the bottom, which is not quite complete, which may offer the explanation for that, but in the context of previous evidence would you like to make a comment on that?

Mr Tongue—Sure. I might ask John to talk to that.

Mr Kilner—You are referring to the drafting instructions—

Senator COLBECK—It is on the second last page of the drafting instructions. It relates to requirements of screening and clearing and it says that persons who may pass through a screening point without being screened at security level 1 include the crew of a passenger ship and visitors escorted onto a passenger ship by a crew.

Mr Kilner—Firstly, we noticed that there had been an omission in the version that we tabled prior to lunch, and there is a new version that we can now—

Senator COLBECK—Yes, there is a paragraph at the bottom that I think seeks to clarify that.

Mr Kilner—At security level 1, the level of risk associated with crew is significantly less. The major risk is associated with passengers boarding that particular vessel. The other thing we need to note is that, for the crew, the ship is their home and therefore the imposition of screening and clearing for crew every time they leave or embark aboard the vessel is quite onerous. The ship can, by itself, put in place additional screening or clearing mechanisms, or it can enter into arrangements with the port facility operator in regard to screening and clearing. For example, in Sydney, crew are screened and cleared as a requirement of the port facility for the major passenger vessels. So different arrangements can be put in place. In our drafting instructions we recognise that the greatest risk is associated with passengers boarding the particular passenger ship, with their baggage, and that is why we have indicated that they are the people that need to be screened.

Mr Tongue—Bear in mind that, if a ship has entered Australian waters, the crew would have already been through a border control process. From November they will have not only presented their passport and had their passport run through the various alert system and so on but also been through the pre-employment requirements of the relevant shipping line. I think the reputable lines now are improving their performance, but I take your point about some of the bottom feeders.

Senator O'BRIEN—What discussions has the department had with state agencies such as the water police about their role with regard to this bill?

Mr Tongue—We provided the first draft of the bill through the National Counter-Terrorism Committee to both state premiers and to state police departments and sought comment. We have also briefed a number of state police forces about the implications of the bill and discussed it under the national counter-terrorism arrangements. We have provided a number of opportunities. A key consideration from state water police has been what the expectations might be for waterside protection at each of the levels—levels 1, 2 and 3. We have been discussing with both the water police and the ports how to mobilise the maximum amount of resource on the waterside, should it be necessary, and then reflecting that in the plan.

Senator O'BRIEN—Are there any concerns from that particular area?

Mr Tongue—The general issue of waterside police resourcing is certainly an issue that is going to be discussed more between the Commonwealth and the states. Our view is that community policing, including policing on the water, is a state responsibility. I think the states might fire back and say, 'If you think it is a state responsibility'—

Senator O'BRIEN—Why are you not paying for it?

Mr Tongue—Yes: 'Why are you not stumping up for it?' Again, I draw the analogy of airports. Community policing at airports is a state responsibility, but from time to time we have some fairly blunt interchanges about

that. My expectation is that if, for any reason, we need to put a port or part of a port at high alert, that will happen in the context of national counter-terrorism arrangements. State police will be involved along with state premiers and state transport departments in decision making regarding resource allocation. If a particular state happens to simply run out of resources, given the size of the port or the nature of the threat, then I anticipate that the Commonwealth will be working as hard as it can to ensure that, if we have had to move something to high alert, it has the resources it needs. If we do not have those resources and we cannot protect it, then one of the questions would be whether we simply say, 'We do want that ship coming in and berthing here,' because of the perceived threat that it introduces.

Senator O'BRIEN—Why would that not be our first response?

Mr Tongue—It would depend on the nature of the threat.

Senator O'BRIEN—If we do not have the resources to deal with the threat, it must be a pretty high threat.

Mr Tongue—If, for example, a threat emerged and we got intelligence that something might happen at a port on the east coast of Australia—that is a lot of ports up and down the coast—and it might be vague and non-specific information, we have to make some judgments about keeping the country moving versus the security objective. Ultimately, that is a decision that will need to be taken in the upper reaches of both the federal Public Service and the state public services.

Senator O'BRIEN—I am trying to understand that in the context of your earlier answer. You were saying that we might make a decision that a particular ship not come in, which implied that there were circumstances you envisaged whereby a particular ship was at risk.

Mr Tongue—Yes, that is true. If, for example, we received intelligence or we risk assessed that a particular ship posed a risk that we could not allow to occur in a port, then we would basically be giving it an instruction not to enter the port.

Senator O'BRIEN—Even if it had an ISSC?

Mr Tongue—Yes, even if it had an ISSC.

Senator O'BRIEN—In terms of some of the arguments we had this morning about compliance with international labour conventions, the Maritime Union suggested that an amendment be included in part 1, division 2, section 3—'Purpose of this act'—adding the words 'welfare and labour rights'. Are there any problems that the department envisages with such an amendment?

Mr Tongue—I refer to the existing wording in the outcomes stated at the front of the proposed act under division 2, 'Purpose of this act':

(a) Australia's obligations under Chapter ... of the SOLAS Convention and the ISPS Code, including those with regard to the welfare of seafarers ...

We think that the welfare of seafarers is a fairly broad concept and covers, in operation with the rest of the act, a lot of the concerns of the MUA. I note that, in the draft regulations for the port facilities security plan, there is a requirement for a plan to address procedures for 'facilitating shore leave for ship personnel or personnel changes as well as access of visitors to the ship, including representatives of seafarers, welfare and labour organisations'. We have tried to cover that in the regulations to ensure that.

Senator O'BRIEN—So that is in the drafting instruction at this stage?

Mr Tongue—Yes, that is in the drafting instruction.

Senator O'BRIEN—So that sort of protection is envisaged?

Mr Tongue—Yes.

Senator O'BRIEN—You do not think it is necessary, but it is not a problem?

Mr Tongue—I think it can be covered in the regulations. The regulations are disallowable instruments and if it drops out—

Senator O'BRIEN—But we could not amend them as we could the bill?

Mr Tongue—That is true.

Senator O'BRIEN—In terms of foreign vessels, the opposition, the unions, state governments and some companies have significant concerns about security issues with respect to foreign vessels and their access to coasts and ports. Can you give me an outline of how and why you think the bill protects Australia from terrorists exploiting the flag of convenience and single and continuing voyage permit provisions?

Mr Tongue—If, for example, it is a bulk carrier coming on to the Queensland coast to carry bauxite backwards and forwards, when it enters Australian waters border control is exercised so Customs, on behalf of Immigration, gets access to the crew and—in future—their passports and is able to run those against the various checks.

Senator O'BRIEN—That is at the first port?

Mr Tongue—Yes, that is at the first port. If there is a crew change involved with the ship and the crew are flying into Brisbane, border control is exerted there.

Senator O'BRIEN—So at the airport?

Mr Tongue—Yes. When the ship comes into Australia, we get to see the certificate and to make a judgment about the certificate. If something changes in the circumstance of the ship for whatever reason and we receive intelligence or Customs receives something, we think there is enough legislative protection here for us to take action to compel the ship to do something. So our feeling is that we are controlling risks there, recognising that, generally speaking, border control agencies globally are focusing more on the seafarer population, in that there is some work to do there.

Senator O'BRIEN—The MUA recommended amendments to the legislation. They want to insert a new section 92 into part 5, division 2, 'Obligations on regulated foreign ships', which would effectively say:

... a valid ISSC, or an approved ISSC equivalent, ... must be verified by a Maritime Security Inspector before that regulated ship is allowed to berth in a security regulated port.

This would thereby make the existing section 93 redundant, with the existing section 92 becoming the new section 93. They also want a new section 94, which would read:

The pre-arrival information required of a regulated foreign vessel by Section 93 must be validated by the relevant authorities before that regulated foreign vessel can be allowed to berth in a security regulated port.

What problem can you see with that amendment, given that there must be the opportunity, particularly where there is pilotage involved, to check that there is an ISSC or equivalent before the ship berths?

Mr Tongue—The only situation I can see early on is if there were an administrative problem and we could not be provided with the ISSC even though there was one—and if we make that legislative change then the ship would not be coming in, irrespective of whether or not it had an ISSC—or in circumstances where the ship could not produce the ISSC but on a risk-assessed basis we judged that we would be prepared to allow it to come into the port. I cannot imagine what those circumstances would be, but I can see that they might occur with a recently built vessel that was still to finally receive its ISSC, and if it was coming on to the Australian coast but the processes had not caught up. If we put that sort of provision in, my only concern would be that we might inadvertently be hampering trade, whereas what we have here gives us a little bit of discretion to make judgments at the margin, particularly in the early days. It will take a little while for the global shipping fleet to all get their certificates.

Senator O'BRIEN—So in the interim we would be admitting ships that did not have certificates for whatever reason?

Mr Tongue—If a ship did not have a certificate, particularly early on, it would force us to make some judgments about whether or not we let it in—bearing in mind that, if we do not let a ship in, it is costing somebody in the order of \$30,000 to \$50,000 a day and possibly disadvantaging exporters. So we would have to make some judgments.

Senator O'BRIEN—Make sure it does not have any sheep on it!

Mr Tongue—Even if they do not have any sheep! So, yes, I anticipate we will have to make some judgments early on.

Senator O'BRIEN—I read the proposition as tightening the arrangements, and you are conceding that, in effect.

Mr Tongue—Yes. It would certainly tighten them. My concern—putting my industry department hat on—is whether it tightens it too much, particularly given that zone around 1 July next year where all ships may or may not have those ISSCs. If we have a provision like that, we will have no latitude.

Senator O'BRIEN—How long do you think it would take for ship operators to become aware of this legislation, comply with it and obtain their certificates?

Mr Tongue—From memory, I think there are 46,000 SOLAS vessels of size that need to get their certificates. I would anticipate that the good operators—P&O and those sorts of players—will comply. Many second- and third-tier operators will comply, but not all. I would not want to hazard a guess.

Senator O'BRIEN—Should they be coming here if they have not complied?

Mr Tongue—Arguably, no, they should not. However, we do have those judgments to make about trade facilitation and the like. So, our preference is that they do not come here—and, certainly, that is our presentation to the industry—but I have no doubt that for a few months from 1 July we will be making some daily judgments.

Senator O'BRIEN—So you need more leeway for the first few months?

Mr Tongue—Yes.

Senator COLBECK—How do you see that playing out in the shipping market?

Mr Tongue—I think a premium will emerge, particularly for passage of cargo to the US and to Europe, for more modern vessels that have the full-blown security requirements. I am surprised that it has not been reflected more in insurance rates already. But I suspect that, if you can absolutely guarantee to somebody who might be following a route to noncompliant ports, using an older ship and so on, that you can get their cargo—no problems—into the US in particular, that will be worth a bit of a premium. We will have to see how the market goes.

Senator COLBECK—Do you see the process—and obviously the ISSC is an international requirement—having any impact on the speed of access that a vessel might have to a port? We are going to have to make a judgment about letting these ships in. Could you see that becoming a factor in cost judgments that people might make about using these vessels?

Mr Tongue—Yes, definitely. In fact one of the key regulatory tools we have is to delay a ship. All we have to do is delay a ship by a couple of hours and somebody has borne a significant cost penalty. I am hoping that we do not have to do that too much. But, if we have genuine security concerns which need to be resolved between us, the ship, the port and the ship's agents, that will chew up precious time that will cost the ship's owners or charterers a significant amount of money. So my expectation is that, taken globally, the new measures will tend to reinforce the dominance of the reputable big lines, particularly on any trade to the US or to Europe.

Senator COLBECK—Given the expectation that there may be a difference between the two classifications of vessels—those with an ISSC and those without—do we have specific procedures in place to deal with a non-*ISCC* vessel?

Mr Tongue—We are putting those in place at the moment and they will range from admonishing the parties involved through to saying, 'No, the ship can't come into an Australian port.'

Senator COLBECK—There are specific procedures that players would understand?

Mr Tongue—Yes.

Ms Board—In addition, we can ask a port to instruct a declaration of security from a ship to ensure that they are going to put in security measures that meet particular standards.

CHAIR—We will adjourn for a few minutes while the division is being called.

Proceedings suspended from 4.58 p.m. to 5.03 p.m.

CHAIR—I call the committee to order.

Senator O'BRIEN—The Shipping Australia submission raises concerns that shipping agents are not well covered in the bill; for example, the definition of ship operator in section 10 and the need for clarity as to shipping agent in section 19. Has the department considered amendments to clarify this issue?

Mr Tongue—Shipping Australia has raised that issue with us, and we think that the existing definitions cover it. The issue was raised in our workshops last week where we were discussing regulations, and again we felt that we had covered it to Shipping Australia's satisfaction. I think the issue turns on how far the regulatory regime captures, if you like, shipping agents. We think that the way we have described maritime industry participants allows us, as the regulator, sufficient scope to draw shipping agents in where they need to be in without necessarily having every shipping agent in the country producing a security plan, which would be unnecessary. We simply need them to provide us information. So we think we have covered that.

Senator O'BRIEN—Thank you. The Ports Association raised a concern about waterside security and the need for an agreement on these issues between the Commonwealth and the states which would go to issues about the effectiveness of waterside protection and the relationship to cost. For example, some ports have extensive shorelines, which present a very difficult security task. Has this issue been raised with the states?

Mr Tongue—We have been discussing it a lot with the states. It has emerged as an issue around the bill. In formulating the bill over a 12-month consultation period, we got to a point where, ultimately, to comply with these IMO requirements, somebody had to take responsibility for the waterside. The bill effectively frames that it is the port authority unless it says that it cannot be responsible and nominates somebody else. We have basically said that the port authority needs to be the coordinating point for waterside protection.

The provisions in the bill enable the maximum utilisation of waterside resources, be they police boats, waterways boats, work boats or even boats of private individuals who could have maritime security guards on board. We have tried to allow for the maximum utilisation of resources. But it is fair to say that some in the port community had read the bill and thought that we were saying that they needed to have their own private navy. In our process of getting the drafting instructions in place we have explained that that was not our expectation and we were really asking for an identification of all the resources at their disposal and how those resources might be utilised at the various security levels, 1, 2 and 3. We have the plans in and we have had a look. Our expectation is that it will show a bit of a gap in waterside resourcing. We will then need to take that up through the appropriate NCTC-style processes.

Senator O'BRIEN—What does that mean?

Mr Tongue—Basically, we will need to see that the ports have actively worked hard to identify all the resources at their disposal.

Senator O'BRIEN—What happens when there are gaps?

Mr Tongue—Some of the gaps might be able to be filled by landside means. For example, at IMO level 2, if it is a small regional port with no hope of access to water police, they might be able to cover off the risks by simply upping their surveillance of the immediate port area to give them time to detect a speeding boat or an incursion. Alternatively, it might be that the risk can be covered up by simply increasing the radar sweep of the port radar at various security levels and upping manning levels in the operation control centre. It is not necessary to have, though it would be lovely if we had the capacity as a nation, lots of water police boats out on the water. We think that there are some landside ways of covering the risks.

Senator O'BRIEN—The Ports Association have also raised a concern about the failure of the bill to acknowledge the statutory powers of the harbourmaster in relation to safety of vessels and crew and the efficient operations of ports. Their submission says:

The Harbour Master is an expert on port operations and shipping issues and whereas the Bill, in some clauses, sets out consultation processes, it does not specifically acknowledge the role and responsibility of Harbour Masters, nor the need to consult with them. In fact, the powers given to the Secretary of DOTARS could be seen to override the powers of the Harbour Master which, whilst possibly acceptable in certain circumstances, could in actual situations create less than efficient responses to particular situations. This blurring of accountability could distort port control responsibility, increase the risks of accidents and have financial, legal and insurance consequences.

That is a fairly serious statement. How would the department respond to that?

Mr Tongue—We think we will pick it up in the regulations.

Mr Kilner—The regulations that we are proposing regarding the issuing of both security and control directions have a requirement included in them that, when giving a direction, the secretary must consult with the maritime industry participants affected by the direction and with those persons necessary to give effect to the direction. We have specifically made mention that, with regard to the person responsible for the movement of ships in and out of the port, this include the harbourmaster and the port security officer. Given the nature of the various ports, there is a need to make sure that we consult with harbourmasters and port security officers. They may be one and the same person in some ports and not in other ports. We believe that that particular inclusion in the regulation covers off the concern of AAPMA.

Mr Tongue—I should add that in some states the harbourmaster might be resident in the capital city and the port might be 1,500 kilometres away, simply because of the way our ports are organised. We are wary of a legislative requirement that forces us in all circumstances to consult with a harbourmaster, simply on the basis that the harbourmaster might add nothing to the decision making process or that we might not be able to find them. What we are proposing to do in the regulations is create an obligation to talk to them where it is

practical and reasonable to do so, when we can get in contact with them—bearing in mind that there may be situations where we simply cannot find them or get in contact with them in time—and when we can set up the administrative process. We just need a little bit of flexibility at the margin, but we are covering off the AAMPA's concern in the regulation process.

Ms Board—Senator O'Brien, we omitted to give you the drafting instructions for security directions and control directions, which are in this pile. They include reference to the harbourmaster and the points that AAPMA raised, which were drafted last week. May I table those? I apologise for that.

Senator O'BRIEN—Yes, please.

CHAIR—Do you understand that these will be published if we receive them?

Mr Tongue—Yes. That is okay. We have had them out in industry, workshopped them and so on.

Senator O'BRIEN—I will not have time to read the instructions while we conduct the hearing, so a couple of my questions may be made redundant when I look at them. Do you envisage the secretary in certain circumstances delegating powers to issue directions to a harbourmaster?

Mr Tongue—No. I think that would be a very unusual circumstance. I think they are reasonably significant powers that involve a range of Commonwealth obligations.

Senator O'BRIEN—How will the secretary inform himself or herself about when to issue a security direction?

Mr Tongue—Do you mean the actual physical means?

Senator O'BRIEN—Yes.

Mr Tongue—I think it depends a bit on the circumstances. The first thing, given the need for speed, will be to get in contact with the harbourmaster. One of the administrative procedures that we will need to have in place is a 24-hour contact roster, as we have in aviation, so that we can get people any time of the day or night, and then, having made that initial contact, follow up in writing, because we will need a written record that a direction has been given.

Senator O'BRIEN—Of course. In terms of the discussion making process as to whether to issue such a direction, is there going to be some specialised security risk assessor or assessors employed by the department to assist the secretary in that regard?

Mr Tongue—We have already conducted skills development courses in risk assessment for all the staff working in the maritime security area. We will be doing further courses and bringing on board specific expertise. Again, I anticipate that it will depend a little bit on the circumstances. But I would imagine that in most instances, before we issue a security direction that involves a foreign flag vessel, we would take advice potentially from Foreign Affairs, Customs and Immigration—and probably doing that under the aegis of the Australian government counter-terrorism arrangements. I imagine it is highly unlikely that we, DOTARS, as a solitary Commonwealth actor, will be coming to a decision to do something to a regulated foreign ship—even if it is a direction given to a port concerning a regulated foreign ship—because of the implications of doing that to effectively another country's property.

Senator O'BRIEN—The submission of Shipping Australia seeks clarification on which organisations are recognised security organisations to conduct ship inspections pursuant to sections 88 and 89. Can you explain that for us?

Mr Tongue—Yes. Some countries and the IMO code allow for the appointment by designated authorities and governments of recognised security organisations, effectively to get all this work done. Some countries have gone down the route of appointing the various class societies that look after various groups of vessels internationally and some countries have appointed organisations that have specific maritime security expertise. So, typically, that might be a consultancy company that combines knowledge of ship operations and harbour operations with security knowledge. We are seeking the power to do that but, in the first instance, we will be conducting the RSO function ourselves, in line with our counterparts in Canada, the US and the UK. They—initially at least—want to understand the nature of the RSO function and want to see how the system beds down, but we acknowledge that, once we are over the hump, once we understand the system, it may be that we would want to appoint RSOs that might, in the Australian instance, evolve to be the class societies or an entity that has security interests and class society interests. In relation to Shipping Australia asking us to be definitive, we are holding the function to ourselves for the moment, and then we will see how it settles down internationally.

Senator O'BRIEN—Section 108 says that the views of the ship operator would also be considered in declaring ship security zones.

Mr Tongue—Absolutely.

Senator O'BRIEN—How would that work?

Mr Tongue—If we were to declare a zone on somebody's ship, we would certainly take their views into account. We might assess them and say, 'No. We want to declare the zone in any event,' but clearly we will have to work with industry.

Ms Board—The port operator would be the one that would seek to have a zone from the secretary, because that ship is going into that security regulated port. So the port would need to consult with the ship. The ship would say, 'We think we need a zone.' They would discuss whether the port was able to provide that zone for the ship and then the port would contact the secretary. In essence, their views are taken into account through the port.

CHAIR—As the division bells are ringing, proceedings are suspended.

Proceedings suspended from 5.17 p.m. to 5.28 p.m.

Senator O'BRIEN—The Shipping Australia submission highlighted a problem with sections 122 and 130, which make it an offence to carry weapons and prohibited items on an Australian regulated ship but not a foreign ship. What is the basis for this difference?

Mr Tongue—For foreign ships there are already extensive provisions in the Customs Act to do with prohibited items. That is a long list, including weapons. Our bill just closes off any gaps that might exist. We are seeking to control the carriage of weapons to a ship once it is berthed in Australia. When a ship is inbound, that is part of the Customs Act.

Ms Board—In addition, the flag state that issues the certificate for a foreign ship also has to ensure that measures are in place to stop prohibited items and weapons getting on board that ship. They have to satisfy the flag state that they have measures in place at the ship level.

Senator O'BRIEN—I guess it is a question of what the flag state does in that regard then?

Mr Kilner—Yes.

Ms Board—It is part of the IMO ISPS code, which is the international benchmark.

Mr Kilner—The issue for Australia is effectively preventing weapons and prohibited items getting on board those foreign regulated ships. We believe that is done through the creation of the maritime security zones, which abut the ship. Therefore, weapons and prohibited items are prevented getting on board those vessels through the security zones.

Senator O'BRIEN—The Shipping Australia submission is concerned about the data fields that would be required for pre-entry Customs advice and so on. You may need to provide information about that on notice.

Mr Kilner—We are in discussions with the Australian Customs Service about that now. With regard to additional fields, that will be included in the Customs intercept system. That would then enable us to be able to capture that information.

Senator O'BRIEN—Will there be an approach to promote uniformity between ports? Given this propensity for differences with regard to security procedures and processes, will there be an approach to try and standardise those?

Mr Tongue—We are trying to focus on, if you like, the standardisation of the processes—using the common standard for risk assessment and providing everybody with the same guidance material on both risk assessment and the development of plans—at the output end, when we see where ports have come out. I would hope that at a broad level amongst similar ports—and I use the example of Sydney, Melbourne, Brisbane and Fremantle—we can use our plan approval process to get broadly similar arrangements across those ports. Similarly for the resource ports of Newcastle, Gladstone and so on. But I would not want to put on the record that we would want the same, because they are all so different. If we get a range, we can gently move them to similar arrangements over time; we would not try to hit them early on, simply for cost implications.

Senator O'BRIEN—There are many ports that are openly accessible to the general public and play a key role in communities. Earlier today I used the example of Hobart and its interaction with the Salamanca Markets et cetera. How will these types of open access arrangements continue? Will they continue?

Mr Tongue—That is an issue that we have been very conscious of. To use the Hobart example, that will be part of the risk assessment process. So if, for example, a large American cruise ship is going to be berthed at Hobart, adjacent to the markets, then we will expect that arrangements are in place in the port plan to meet our IMO obligations. That might include, rather than permanent fencing, movable fencing that can be put up or pulled down, or security patrols when the ship is there, but the security patrols will not necessarily need to be there at other times. In the case of the busy working ports, I would anticipate, and we have had this flagged with us by some port operators, that there are some areas in which they would like a little bit more control over who is there, and there are some places where they would like to exercise powers under the bill to either ask people to move on or detain them and hit them with a fine because they consistently breach arrangements.

Senator O'BRIEN—They are not people fishing, I hope!

Mr Tongue—It is people basically climbing fences or going under fences to get to the fishing spots. The people at the ports are saying to us, 'We'd really like to use some of the powers in this bill to press home that we don't want people in zones that give them access to SOLAS vessels,' because that is a large part of the purpose of the act. So I think there will be a bit of an education process with port communities, but we are not trying to lock off access.

CHAIR—You have just mucked up his fishing spot.

Senator O'BRIEN—I just put on the record that I wish I had time, unlike Senator Heffernan who obviously does! How many ports are currently accessible to the public and will potentially require some significant change under the act?

Mr Tongue—I think the honest answer to that is that most ports, in one way or another, are accessible to the public and most ports will require enhanced access and control arrangements. The issue will be between those ports that will require them to be enhanced for risk reasons permanently and those that will just require ad hoc arrangements. The situation of the smaller regional ports has certainly been brought to our attention. They see a handful of SOLAS vessels and it just would not be practical to put in place all the fencing. It would effectively mean locking off an important community asset. What we are looking at there is trying to enable temporary arrangements.

Senator O'BRIEN—The MUA and the Australian Institute of Marine and Power Engineers have recommended that the bill be amended to declare their organisations maritime industry participants. Can you tell us what rights and obligations would be imposed or conferred on those organisations by such a declaration?

Mr Tongue—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 that is the way to go. I point out that, in our proposed regulations for the security plans, we have said that each port security plan must also detail the mechanisms by which the port operators will consult with port employees and contractors regarding security measures and practices to be implemented. So we are trying to ensure, both as we talk to people at a national level and actually in the construct of the plans, that there is a requirement to consult. We think that covers their concern that they might be left out of important discussions about security at a port level. But I do not think that they would necessarily want to be regulated entities. I do not think they would necessarily want us approving security plans and arrangements for them. Helen has just made the point to me that they are not business entities; they are not entities that SOLAS envisages would be covered by the arrangements.

Senator O'BRIEN—So in the department's view it would not be appropriate whether they wanted it or not?

Mr Tongue—It would not be appropriate.

Senator O'BRIEN—What rights would that declaration give them?

Mr Tongue—I am just trying to think through the arrangement. If they were maritime industry participants and they had our security plan, then that would mean that other maritime industry participants would come into conflict with the act if they interfered with the operation of their plan, so that would give them some rights there. But we, as the regulator, would not see them as a regulated entity because they are not a commercial organisation running a port or port facility.

Senator O'BRIEN—You are suggesting that, for example, if there were a change in security arrangements the regulations would require that they be consulted. Do I understand you correctly?

Mr Tongue—At a port level, in the development of port facility plans or port plans, we are suggesting in the regulations that there will be a requirement for consultation, including with port employees and contractors, to ensure that when we get a plan to approve it is built on a foundation that all the parties who are affected by the plan have been talked to in its development. We are suggesting making that a regulation so that we will not be able to approve it unless that has occurred.

Senator O'BRIEN—They make the point, as registered organisations representing 12,500 stevedoring and seagoing employees, that it seems strange that there is no specific provision in the legislation to involve them. Your terminology, just then, did not involve them at all.

Mr Tongue—I think it goes to the sort of regulatory regime we are trying to build. We are basically trying to regulate the private sector and a range of state government organisations to generate a preventative security regime.

Senator O'BRIEN—That affects those 12,500 employees.

Mr Tongue—That affects those people. So the obligation is principally between those regulated entities and their employees. If their employees feel they are left out in some way they can either seek to work that out at port level, they can take it up at a state government level—because many of these entities are state government interests—or they can come to us at a policy level. Again, it is akin to what we do in regulation: we regulate Qantas but we do not necessarily regulate the flight attendants. We are seeking to put the obligation with the employer, if you like, rather than have it directly with us.

Senator O'BRIEN—The unions have asked to be part of the consultative committee and they recommend that the current consultative committee be an ongoing body. What is the department's view on this?

Mr Tongue—We have had, and have, in place a range of consultation mechanisms. For employee interests, we have tended to work bilaterally. I think that, once the system settles down, we will need forums that let us deal with the actual regulated entities—the private sector actors, the ports and so on. But I imagine that we will continue to maintain bilateral relationships with a range of other players to ensure that, in the operation of the system, we are, if you like, picking up all the issues.

Senator O'BRIEN—The ports association has raised the issue about the role of ports as a conduit for information from the secretary of the department. They have suggested that a legislative immunity should apply from suits by third parties against claims such as demurrage as a result of not having been supplied information. Can you tell us what the implications of granting such a request would be? For example, would there be a financial burden on the Commonwealth?

Mr Tongue—One of the issues dealt with in the bill is the question of liability. The SOLAS amendment basically requires that contracting governments put in place arrangements whereby if we the Commonwealth act in such a way as to force somebody to incur a liability, they may seek to recover it in circumstances where we have not acted, if you like, in good faith. If we issue control directions on a ship, purely on the basis of capricious whim, and we have no evidence for the need to introduce those control directions, the ship owners, for example, may seek to recover costs from the Commonwealth. We have had to create a provision for that.

In the area of information, the AAPMA have been concerned that in a situation where, as anticipated in the bill, we give them information—for example, where we say that we have non-specific intelligence, the alert level has not been raised, but we think you should notify everybody in the port to look out for small white boats with red propellers—a liability would be created if they did not manage to get that information out to the whole port community, and then something happened.

In this instance, our view is that the port authority is responsible for the overall plan of the port and should have in place the contact arrangements to ensure that information can get out. If it has not been able to contact somebody, having made reasonable efforts, it can always advise us that it has not been able to do that. Effectively, information provision in security is very important, and we do not want to let the obligation slide.

Mr Kilner—Let me add that, in the event that it is the secretary giving a direction, the harbourmaster is acting as an agent of the Commonwealth. Therefore, the Commonwealth is liable.

Senator O'BRIEN—So they have that immunity?

Mr Kilner—In the event that there is negligence on the part of the secretary with regard to the issuing of the direction.

Senator O'BRIEN—Is there a precedent for granting an indemnity in this sort of situation?

Mr Tongue—I have been told it is the general law of agency.

CHAIR—We will have to suspend for this division.

Senator O'BRIEN—I may have to put the rest of my questions on notice.

Proceedings suspended from 5.46 p.m. to 5.57 p.m.

Senator O'BRIEN—The ports association have indicated that they have concerns about the interface between the port and defence vessels, given that defence vessels are not covered by this bill. They have indicated that they have taken the initiative to commence discussions with the Royal Australian Navy on these concerns but are somewhat limited in the capacity they have to deal with the issues. So is the department involved in those discussions?

Mr Tongue—Again, just as we have involved the customs service, we have involved the Navy at each step along the way. We remain in fairly regular contact with them about these issues. We have acknowledged that the presence of a naval vessel in a port is a risk that needs to be considered in the port plan, because it introduces a risk to SOLAS vessels. We continued to work with the Navy around the implications of that. Our feedback has been that there has been a significant improvement between Navy and port operators in how coordination mechanisms are working. We will certainly continue our dialogue with Navy about the risks that are introduced. I am expecting, as people work through their risk assessments and start to look at this, that there may be a few changes in port practice. The old method of berthing the cruise liner immediately in front of the naval ship might start to change and the Navy might be a bit more—

CHAIR—I don't think I'd be in that!

Mr Tongue—As we raise the profile of maritime terrorism, I think the Navy are a bit more conscious now of their obligations.

Ms Board—They also have liaison officers attached to ports where they have a large presence, and they are encouraged to be on port security committees at the local level.

Senator O'BRIEN—So you do not think the ports should have a problem with that?

Mr Tongue—I think there will continue to be from time to time a little bit of friction. You would not want to get between an admiral who wants to get some ships in and the port. Having said that, we are working at it. There have been some improvements. AAPMA can certainly take some credit for that, as can some senior people in the Navy. I think it is an issue that we are just going to have to keep working at and watching.

Senator O'BRIEN—The Queensland government submission expresses concern that the bill is too reliant on subordinate legislation. They also suggest the use of a system of marine orders instead of regulations. What is the difference?

Mr Tongue—Marine orders do not have the same force as regulations. They are something that exists around the safety regime. Our view is that, had we put more in the legislation, it would have slowed us down enormously and not given us the flexibility so that as the system evolves the regulations can change with it. We have based this a little bit on experience with aviation. We started in the aviation security business post-Lockerbie, and virtually every year subsequently there has been an advance in aviation security—we have taken some big ones recently. We anticipate it will be the same in the maritime sector. Right now the sector is focused on getting to 1 July next year. At the back of our mind is the fact that from 1 July next year this system will need to evolve. Had we put too much into the act, we would have created a very rigid system that could not evolve. As far as the regulations go, we think that is a system that gives a reasonable degree of protection because of the fact that they are disallowable and because, typically, people can come to you if they are concerned with our processes around regulation creation. We think it protects the industry's interests but at the same time gives reasonable force of law, whereas marine orders are a bit down the pecking order.

Senator O'BRIEN—Are they disallowable?

Mr Tongue—I do not think they are. No, they are not.

Senator O'BRIEN—The Queensland government submission raises concern that the bill does not fully meet the expectation of the ISPS code. One example is that the ISPS code infers the operation of a hierarchy of plans that provides layers of protection. The Queensland government says it is not convinced that the bill does this. They say there is little indication in the bill as to how the plans interact and how the necessary interrelationship and interdependency between the plans arise. Can you comment on that?

Mr Tongue—Yes, there are a couple of things there. On the one hand we have been criticised for exceeding the code and on the other hand we are criticised for not going far enough. We have sought a balance. We have tried to cover that off or intend to cover that off a bit in the regulations. One of the points I would make is that, in comparable countries, you can get the layered approach, in part because there is a direct relationship between the national government and the ports. So, in New Zealand, the US, Canada and the UK, there is that direct relationship and you can impose, if you like, this family of plans in motion. We are really a federal government working through state government with private actors. What we have had to do in the bill is allow a little bit of flexibility to contemplate everything from Port Hedland all the way to the port of Sydney. What we are doing is introducing more of a hierarchy in the regulations, recognising that not every port is going to have that hierarchy necessarily. In our processes with the states last week, where we were working through the detail of the drafting instructions, we felt that we had covered that issue off and there was a degree of comfort now about how the plans would interact.

Senator O'BRIEN—Given that the Queensland and Tasmanian governments have made submissions which are somewhat critical, is there a process of attempting to get them onside with this bill, because state government cooperation is essential, isn't it?

Mr Tongue—Sure. We have had assurances, and continued assurances, of support for the bill from the states. We have continued to work with them and made commitments in writing to them to involve them in the regulation making process. All of our arrangements in the maritime sector are worked through with the states under the aegis of the Australian Transport Council. There is a federal transport minister and there are state transport ministers. At all its recent meetings, the ATC has expressed continued support. Most recently, at an officer level we had a standing committee on transport meeting—that is, the heads of state departments—where there was again an affirmation of continued support for the progress of the bill. So we feel that, whilst some states have expressed concern, they continue to support the bill and we have certainly got evidence of that in writing.

Senator O'BRIEN—The Tasmanian government have sought a commitment from the Commonwealth to arrange for rapid and cooperative amendments to the new bill when and if problems with it are identified. Has such a commitment been given?

Mr Tongue—Mostly we have found that people's concerns can be dealt with in the regs. Our view is that nobody has yet come up with the king-hit fatal flaw, if you like. If they did then I have no doubt that we would go back to Minister Anderson and seek policy approval for a change. To date, we have not needed to because we have felt that we have been able to cover people's concerns in the regulation making process.

Senator O'BRIEN—Another issue they raise goes to the need to make allowance for the inability of the port operator to respond to a demand for action via a maritime security direction due to the jurisdictional authority not being present. I am not sure exactly what they mean. Does the department understand that submission? What does that relate to?

Mr Tongue—I think what they might be getting at is where, if there is inadequacy in the state legislation constructing the port authorities, we ask the port authority to do something it is not empowered to do under its state port authority law. Again, that is an issue for the planning process and the construction of the plan for the port. The port knows what powers it has got, and those powers are going to be a foundation of the plan. If there is a gap in something needing to be done—and it is a significant gap—we have got a couple of routes we can take: we can work with the state government to amend the port authority's empowering act, we can work with the state police to see if they have powers that will cover the gap or alternatively we can cover it in a regulation if it is appropriate to do that under Commonwealth law.

Senator O'BRIEN—So you would have a Commonwealth regulation empowering a state authority?

Mr Tongue—It would depend on the nature of the gap. Ultimately it may be that there is a need to change state law. For example, Victoria has recently changed a lot of its law governing the operation of the port of Melbourne.

Senator O'BRIEN—They do raise the issue of resources for water police maintaining maritime security zones, security patrolling and the like—which, if it is not done by the state government, suggests that the ports employ private security. Therefore there is potentially a conflict of roles. What consideration has been given to this issue in the formulation of this legislation and the regulations?

Mr Tongue—Ultimately, this legislation is changing the roles, in part, of port authorities and port participants; it is expanding them. Effectively, what the IMO code does is take agencies that have previously

been concerned with the operation of ports—and, as an extension of that, safety related aspects—and expand them into security. So, in part, we definitely are expanding their role, but that is an international requirement. Effectively, if they want to operate as a port, they have to take on this new role. With regard to those issues of cost and competence and so on, yes, certainly, the bill does imagine that ports could contract with private security companies to provide aspects of port security and may contract with those companies to expand the security that is being provided if the threat environment changes. That is exactly what the new IMO code encompasses. The vast majority of port authorities have been reasonably comfortable with that.

Senator O'BRIEN—I have a few questions but I might place them on notice.

CHAIR—Thank you very much for your attendance. I draw today's meeting to a conclusion. Further questions will be put on notice.

Senator O'BRIEN—I do not have a lot of further questions to place on notice, but there are a few. Sorry about that.

Mr Tongue—That will be fine.

Committee adjourned at 6.09 p.m.