

# Report

## Conduct of the inquiry

1.1 The inquiry is into the Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005. The bill was introduced into the Senate on 23 June 2005, and the inquiry was referred by the Senate on 10 August on the recommendation of the Selection of Bills Committee. The Selection of Bills Committee noted as issues for consideration:

1. Whether maritime security guards should need higher training qualifications as a result of the increased powers they receive in the bill.
2. The regulations should clearly specify the reasons why a person with a MSIC could be denied access to a maritime security zone.
3. If a maritime security guard is working on an offshore facility in Commonwealth waters, there may be a question concerning which state or territory licence the guard must hold.
4. The details of the removal, storage and disposal of vehicles and vessels.
5. Clarification should be sought about that classes of persons to be exempted from providing reasons for being in a maritime security zone.

1.2 The committee advertised the inquiry in *The Australian* and invited submissions from State/Territory governments and peak bodies. The committee received ten submissions (see Appendix 1) and held one public hearing (see Appendix 2). The committee thanks submitters and witnesses for their contribution. Submissions and transcripts of the committee's hearings are available on the Parliament's internet site at [www.aph.gov.au](http://www.aph.gov.au)

1.3 The committee or its predecessor in the previous parliament has previously reported on:

- the Maritime Transport Security Bill 2003: this established the current maritime security framework; and
- the regulatory framework proposed under the *Maritime Transport Security Amendment Act 2005*. This act extended the *Maritime Transport Security Act 2003* (the principal Act) to apply to offshore oil and gas facilities, and allows for establishing a system of Maritime Security Identification Cards (MSICs). It also renamed the principal Act to *Maritime Transport and Offshore Facilities Security Act 2003*.<sup>1</sup>

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1 Senate Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Maritime Transport Security Bill 2003*, November 2003; *Regulatory Framework under the Maritime Transport Security Amendment Act 2005*, August 2005

## The bill

1.4 The bill further develops the new maritime transport security measures established in the *Maritime Transport Security Act 2003*. It is intended to enhance the capacity of maritime industry participants to deter and deal with unauthorised incursions into maritime security zones.

1.5 At present maritime security guards may restrain an unauthorised person in a maritime security zone and detain the person until a law enforcement officer arrives. However, they do not currently have the power to request identification, ask the person why he or she is in the zone, or request that the person move on. Neither do they have the power to remove unauthorised vehicles or vessels. In these circumstances, they would have to call the police to arrange removal.

1.6 The government argues that this is not always a quick and convenient solution to removing a potential threat from a maritime security zone. The Department of Transport and Regional Services (DOTARS) advised that the bill arises from a review of maritime security policy by the Secretaries' Committee on National Security.<sup>2</sup>

1.7 The bill gives maritime security guards additional powers:

- a maritime security guard may request that a person found within a maritime security zone provide identification and a reason for being in the zone;
- a maritime security guard may request a person found in a maritime security zone without authorisation to move out of the zone, and if that request is not complied with, remove the person from the zone; and
- a maritime security guard may remove, or have removed, vehicles and vessels found in maritime security zones without authorisation.

1.8 Safeguards on the exercise of these powers will be:

- when confronting a person the guard will have to identify himself or herself, advise the person of his or her authority, and tell the person that non-compliance is an offence;
- when removing a person from a maritime security zone a guard may not use greater force or subject the person to greater indignity than is necessary; and
- in removing a vehicle or vessel, a guard must not cause unreasonable damage, and must notify the owner.

(a) The bill also includes a number of miscellaneous amendments to the act to clarify intent. These were not controversial in this inquiry and will not be further considered.

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2 The Hon. K. Patterson, Second Reading Speech, Senate *Hansard*, 23 June 2005, p.7. Mr J. Kilner, *Committee Hansard* 29 August 2005, p. 1

## Comment of Scrutiny of Bills Committee

1.9 The Senate Standing Committee for the Scrutiny of Bills has a brief to consider all bills as to whether they trespass unduly on personal rights and liberties, and related matters. The Scrutiny of Bills Committee commented:

The Committee notes that these provisions attempt to strike a balance between competing interests. Nonetheless, there is a risk that the provisions may be regarded as trespassing on the personal rights and liberties of people who become subject to the exercise of the extended powers. In accordance with its practice, the Committee makes no final determination of this matter, but leaves for the Senate as a whole the question of whether the provisions unduly trespass upon personal rights and liberties.<sup>3</sup>

## Issues raised in submissions

### *General comments on the bill*

1.10 The committee invited submissions from a broad spectrum of stakeholders. Submissions mostly approved the concept of the bill. The fact that most organisations which the committee approached did not submit also suggests that most have no quarrel with the bill.<sup>4</sup>

1.11 DOTARS advised that the need for the bill was raised 'not only by the interdepartmental committee that met in regard to the maritime policy review but also by a number of industry participants who recognised that a gap existed.'<sup>5</sup>

1.12 However the Transport Workers Union argued that it is not clear the new powers are needed, and 'the legislation may indeed be counterproductive, leading to an unintended reduction in the numbers of Maritime Industry Guards':

If MIPs [maritime industry participants] are, as suggested at the Maritime Security Industry Forum, looking to avoid using these guards with expanded powers, the suggestion that the expanded powers are needed is called into question.<sup>6</sup>

1.13 DOTARS stressed that giving maritime security guards move-on powers 'will not relieve the states and territories of their responsibility for providing policing services within ports.'<sup>7</sup>

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3 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest* No. 8 of 2005, 10 August 2005, p. 26

4 The Committee approached State and Territory governments, ten industry organisations or major companies, and seven unions.

5 Mr J. Kilner (DOTARS), *Committee Hansard*, 29 August 2005, p. 2

6 Submission 4, Transport Workers Union, p. 5

7 Submission 6, DOTARS, p. 3

1.14 The Maritime Union of Australia pointed out that details of implementation will be in regulations, and argued that 'it may be appropriate for the Committee to see the draft regulations before completing its inquiry'.<sup>8</sup>

1.15 The committee notes that regulations are now under development and no draft is yet available.<sup>9</sup> The committee does not think it is satisfactory to ask parliament to approve a bill like this, which possibly has significant implications for personal rights and liberties, without having a draft of the regulations which show the details of the proposed implementation.

1.16 The Transport Workers Union and the Maritime Union of Australia were unhappy with the level of industry consultation on this bill. DOTARS advised that 34 organisations were invited to comment on an exposure draft, and 22 did so. DOTARS described its consultation process and provided a list of consultation participants, including 11 port corporations or major companies, 3 industry organisations, 3 industrial organisations, 2 security guard providers, 8 Commonwealth agencies, and State/Territory police forces. DOTARS intends to form an industry working group to progress regulations under the bill. DOTARS advised that at an industry consultation meeting on 19 August 2005, 'a wide range of members of that forum indicated their interest in participating in the working group'.<sup>10</sup>

1.17 The committee is satisfied with the level of industry consultation on the bill and trusts that this will continue.

### ***Training of maritime security guards***

1.18 A 'maritime security guard' is a person who, among other things:

- has a current Certificate II in Security Operations;
- holds a current state or territory licence to work as a security guard; and
- is on duty at a security regulated port or on a security regulated ship or offshore facility.<sup>11</sup>

1.19 Thus maritime security guards are defined by their characteristics. They are employed by maritime industry participants as required to fulfil obligations under maritime security plans. Maritime security guards, unlike law enforcement officers, are not individually appointed or approved by a public authority. This gives particular point to the need for adequate training of guards.

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8 Submission 5, Maritime Union of Australia, p. 1

9 Mr J. Parkinson (DOTARS), *Committee Hansard*, 29 August 2005, p. 12

10 Submission 4, Transport Workers Union, p.4; Submission 5, Maritime Union of Australia, p. 2; Submission 6, DOTARS, p. 3, 5 and Appendix 1; *Committee Hansard*, 29 August 2005, p. 1 and 12

11 *Maritime Transport and Offshore Facilities Security Act 2003*, s162; *Maritime Transport and Offshore Facilities Security Regulations 2003*, Reg.8.50

1.20 Submissions were concerned that maritime security guards should have training commensurate with their increased powers. For example, the Maritime Union of Australia said:

Clearly maritime security guards are operating at a different level of responsibility to say a guard on a gate a factory or outside a shop. On this basis there must be a requirement for a higher standard of training.<sup>12</sup>

1.21 The Association of Australian Ports and Marine Authorities (AAPMA) described current common arrangements:

Port authorities and facilities generally employ contractors as security guards... Not all of those contractors will be specifically “maritime security guards” but those who are contracted by port authorities to perform the specific role of MSGs undergo additional training. For instance, the Port of Melbourne Corporation works closely with its security guard provider, Chubb, in jointly designing the specific “Mast” (“maritime security training”) curriculum. MSGs in Victoria are presently undertaking a skills upgrade. Sydney Ports Corporation has also worked with its security providers to ensure that the current requirements for training of MSGs are complied with....

However, it is possible that this level of competency may not be reflected in some other ports... The quality of that training has been queried by some of our members. It is certainly nowhere near the level of that provided to law enforcement officers, yet MSGs are expected to carry out the duties set out in the Bill.<sup>13</sup>

1.22 Submitters pointed out that there might be special training needed to move a vehicle or a boat. AAPMA argued that if additional training was needed, government should meet the cost. AAPMA also commented that there is a shortage of suitable trained security staff, and a 'further training requirement might diminish the availability of an already scarce resource.'<sup>14</sup> The NSW Government advised that guards are likely to need training in areas such as use of force, statement preparation and giving evidence.<sup>15</sup>

1.23 The Maritime Union of Australia (MUA) argued that a higher training level should be consistent across jurisdictions to allow for portability of qualifications. The MUA argued that a maritime security guard should be a dedicated position, to avoid the situation where guards sourced from labour hire companies are 'responsible for a council swimming pool one day and guarding our critical maritime infrastructure on

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12 Submission 5, Maritime Union of Australia, p. 2. See also: Submission 1, Shipping Australia Ltd, p. 1; Submission 4, Transport Workers Union of Australia, p. 3; Submission 7, National Bulk Commodities Group, p. 2

13 Submission 3, AAPMA, p. 2-3

14 Submission 4, Transport Workers Union, p. 3; Submission 3, AAPMA, p. 3-4

15 Submission 9, NSW Government, p. 1

another.<sup>16</sup> AAPMA said that contract staff undergo additional training for the specific role of maritime security guards, as noted at paragraph 1.22.

1.24 DOTARS agreed that guards will require additional training, and said that training and qualifications of guards will be considered by a government/industry working group recently established to progress regulations under the bill. The government is aware of the desirability of having nationally standardised training requirements.<sup>17</sup>

### ***Powers of maritime security guards***

1.25 Submitters raised a number of issues to do with the powers of maritime security guards.

1.26 AAPMA was concerned about the risk to a single guard trying to detain an unwilling suspect:

Unlike Police in a range of activities, security staff work in a one-up capacity. The ability for security staff to actually effect a detention in a stand alone capacity whilst observing appropriate use of force principles is questionable.<sup>18</sup>

1.27 The committee notes that while the bill gives guards additional powers, it does not oblige them to use those powers. That would depend on the circumstances of the case. Nothing in the act or the bill casts a duty on a guard to put him/herself in a dangerous position. It would be the duty of the maritime industry participant employing guards to ensure a safe work arrangement.

1.28 This would of course have implications for training costs and staff numbers. AAPMA noted that 'higher risk facilities may require different levels of security guard capability for which higher levels of training would be required.' DOTARS said that there tends to be '...one guard on patrol and normally another guard sitting within radio communication range ... In the event that something is spotted, they usually radio back and seek further assistance and so on... Those sorts of arrangements already exist.'<sup>19</sup>

1.29 Some submissions argued that guards should have a search power, since it could be risky for them to try to detain a suspect without being able to confirm whether the person is armed. However, AAPMA noted that some of its members did not agree, arguing that 'a guard may place him/herself at greater risk than necessary by attempting to search a detained person.' AAPMA suggested that there should be a

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16 Submission 5, Maritime Union of Australia, p. 2

17 Submission 6, DOTARS, p. 5; Mr J. Kilner, *Committee Hansard*, 29 August 2005, p. 4 and 11

18 Submission 3, AAPMA, p. 3

19 Submission 3, AAPMA, p. 3; Mr J. Kilner (DOTARS), *Committee Hansard*, 29 August 2005 p. 6

search power, but exercising it should be at the guard's discretion depending on whether it can be done safely.<sup>20</sup>

1.30 On balance the committee does not agree with giving guards a search power. Considerations are:

- there is no obligation on guards to put themselves in a risky position in any case;
- a search power would raise much higher concerns about the training of guards and the rights and liberties of individuals;
- even if the power was discretionary, as suggested by AAPMA, it might be seen as putting more responsibility on guards, and detracting from employers' responsibility to ensure a safe work arrangement; and
- providing more police-like powers might seem to be taking over the responsibilities of state/territory police, which is not the intention.

1.31 AAPMA was concerned about the safety aspects of an unqualified guard trying to move a vessel.<sup>21</sup> The provision is that a guard 'may remove, or cause to be removed...' an unauthorised vehicle or vessel. (s163D(1), 163E(1)). DOTARS advised that an unqualified guard would have to arrange for the vehicle or vessel to be moved by someone who is qualified. The point of the provision is that the guard has authority to do so. Arrangements for storage or disposal of abandoned vehicles or vessel will be a matter for the regulations.<sup>22</sup> The NSW Government argued that the bill should provide for 'designated removal areas' to isolate and make safe suspicious vehicles or vessels.<sup>23</sup>

1.32 P&O Ports saw a problem in that the amendment restricts guards to removing an intruder only after they have entered a maritime security zone: 'In effect, a breach of the zone has occurred before action can be taken.' P&O Ports suggested that guards should have the power to demand identification of people in the vicinity of the perimeter of a security zone, and to remove unattended vehicles parked within 50m of a perimeter.<sup>24</sup>

1.33 The committee does not agree. The concept of a buffer zone *outside* a maritime security zone boundary is too vague. It raises the risk of overzealous guards abusing the rights of passersby who have every right to be where they are. If a buffer zone is needed around the actual sensitive facility, it should be *inside* the secure area.

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20 Submission 2, Australian Shipowners Association, p. 2; Submission 3, AAPMA, p. 2-3

21 Submission 3, AAPMA, p. 4

22 Mr J. Kilner (DOTARS), *Committee Hansard*, 29 August 2005, p. 11

23 Submission 9, NSW Government, p. 2

24 Submission 8, P&O Ports Australia and New Zealand, p. 1

1.34 The question arose whether guards would have the power to move on people engaged in industrial action, for example, a stop-work meeting.<sup>25</sup>

1.35 The operative provision is that guards may move on people who are in a maritime security zone 'without proper authorisation' (s163B). This has no reference to their purpose for being in the zone. DOTARS commented: 'As long as that group of people were authorised to be within the security zone, I would not see a maritime security guard removing them. Whether the employer withdraws the authorisation to stay in that zone is a separate question.'<sup>26</sup>

1.36 The committee thinks this is reasonable. The committee notes that the act protects 'lawful advocacy, protest, dissent or industrial action that does not compromise maritime security'.<sup>27</sup>

1.37 The NSW Government suggested that the 'request' to provide information (s163A(1)) should be a standard form of demand covering the matters in s163A(2). NSW suggested that points for clarification include where a person could be removed to, whether they would be allowed to leave or would be handed over to law enforcement officers, and the circumstances in which police would be notified to attend.<sup>28</sup>

### ***Exemptions from requirement to give reasons for being in a zone***

1.38 The bill does not allow any exemptions from the requirement, when in a maritime security zone, to give identification to a guard who requests it. However it exempts certain classes of people from having to state their reason for being in the zone: a maritime security inspector; a duly authorised officer; a law enforcement officer; a member of the Australian Defence Force; a person who is authorised by a law of the Commonwealth, state or territory to enter a maritime security zone; or a person prescribed in the regulations, would be (s163A).

1.39 DOTARS advised that what other classes of people might be prescribed in the regulations will be a matter for the working group on regulations to consider. To date there have been no suggestions.<sup>29</sup>

1.40 The committee has previously noted arguments that the proposal to exempt emergency services personnel attending emergencies from holding a Maritime Security Identification Card (MSIC) needs to be framed broadly enough to allow for handling environmental emergencies such as oil spills. The committee draws attention

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25 Submission 5, Maritime Union of Australia, p. 2

26 Mr. J. Kilner (DOTARS), *Committee Hansard*, 29 August 2005, p. 10

27 *Maritime Transport and Offshore Facilities Security Act 2003*, s3(5). Similarly at s11, meaning of 'unlawful interference with maritime transport'.

28 Submission 9, NSW Government, p. 1

29 Submission 6, DOTARS, p. 5; Mr J. Parkinson, *Committee Hansard*, 29 August 2005, p. 12



again to the need for the MSIC regulations to address this concern. It appears that this is under consideration.<sup>30</sup>

1.41 A related matter for regulations under this bill is whether the classes of people exempt from giving reasons should be the same as the classes of people exempt from holding MSICs. In principle the two requirements are separate. There might well be situations when security is better served if a guard can demand reasons from a person although the person is not required to hold an MSIC. On the other hand there might be situations where this interaction impedes the emergency response.

### ***Why a person with an MSIC could be denied access to a security zone***

1.42 The committee was asked to consider why a person with an MSIC could be denied access to a security zone.

1.43 DOTARS explained that the planned MSIC is an identity card, not an access control card. For unmonitored access to a maritime security zone, an MSIC will be necessary, but not sufficient. Access would also require authorisation from the relevant port operator, port facility operator or port service provider.<sup>31</sup>

### ***Qualifications of guards at offshore facilities***

1.44 A maritime security guard must have a current state or territory licence to work as a security guard. In the case of offshore facilities, there may be a question which state or territory licence regime would apply.

1.45 DOTARS explained that all offshore facilities are within the jurisdiction of one or other state/territory, and that would determine the relevant licence. Licensing arrangements for guards at offshore facilities will be addressed in the regulations.<sup>32</sup>

### ***Control of foreign crews***

1.46 Submitters were concerned that foreign crews on legitimate business should not be prevented from transiting secure areas:

In most cases foreign seafarers are required to surrender their passports to the master of the ship for the duration of their contract, which could be in excess of 12 months. Often passports are the only form of photographic identification many seafarers have.

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30 Senate Rural and Regional Affairs and Transport Legislation Committee, *Regulatory Framework under the Maritime Transport Security Amendment Act 2005*, August 2005, par. 3.47

31 Submission 6, DOTARS, p. 7; Maritime Transport Security Regulations 2003, Reg. 6.45

32 Submission 6, DOTARS, p. 7; Mr J. Kilner (DOTARS), *Committee Hansard*, 29 August 2005, p. 10

A ridiculous situation could arise whereby a foreign non English speaking seafarer is removed from a security zone on an Australian wharf and not permitted to reboard his/her ship.<sup>33</sup>

1.47 Any person requiring unmonitored access to a maritime security zone will need an MSIC. The effect is that foreign seafarers without MSICs will need to be monitored. This is a result of the proposed MSIC scheme and is not changed by the present bill.<sup>34</sup> DOTARS explained that 'the arrangements for egressing the maritime security zone—that is, moving from the ship to the gate—are contained within the security plan.'

They are not rules made up by the security guard. In all instances that I am aware of, there are arrangements in place to move seafarers, whether foreign or Australian, from the ship to the gate.<sup>35</sup>

1.48 The committee notes also that the proposed power to remove a person from a maritime security zone comes into play only if the guard reasonably suspects that the person is there 'without proper authorisation' (s163B(1)). It is not a duty or power to remove a person *merely* because they do not produce identification. Of course failure to produce identification might contribute to the guard's state of belief on whether the person is authorised.

### ***Issues for the regulations***

1.49 DOTARS accepted that there are significant matters of detail to be covered in regulations. As noted previously, DOTARS is forming an industry consultation group to advise. To allow time for this, the bill will come into force only on proclamation, or after six months.<sup>36</sup>

### ***Other matters***

1.50 Submissions and evidence considered some other matters which are not strictly part of this bill but which follow up the committee's recent inquiry into draft regulations under the *Maritime Transport Security Amendment Act 2005*.<sup>37</sup>

1.51 Concerning background checks of MSIC applicants, the Australian Shipowners Association repeated previous arguments that employers do not want to

33 Submission 5, Maritime Union of Australia, p. 2

34 [Draft] Maritime Transport and Offshore Security Amendment Regulations 2005 [concerning MSICs], Reg. 6.07J: a person commits an offence if he or she is in a maritime security zone without displaying a valid MSIC.

35 Mr J. Kilner (DOTARS), *Committee Hansard*, 29 August 2005, p. 9

36 Mr J. Parkinson (DOTARS), *Committee Hansard*, 29 August 2005, p. 12-13

37 Senate Rural and Regional Affairs and Transport Legislation Committee, *Regulatory Framework under the Maritime Transport Security Amendment Act 2005*, August 2005

receive criminal background information about their employees, and DOTARS should remain the repository of these reports.<sup>38</sup> DOTARS commented:

At this point the intention is that from 1 January 2007, when the transition arrangement for existing employees is over, the responsibilities for new employees from that date forward will be transferred back to the issuing bodies. Industry has made representations about that. The government is looking at the particular issue, but no decision has been made by government concerning any other mechanism at this time.<sup>39</sup>

1.52 The committee repeats its previous comment that the arguments put by industry on this point are serious considerations, and DOTARS should start planning for the post-rollout period now.<sup>40</sup>

1.53 There was discussion in evidence of the problems of controlling foreign flagged ships operating in Australian waters under single voyage permits or continuous voyage permits. These ships cannot be controlled by the *Maritime Transport and Offshore Facilities Security Act 2003*, and their crews will not be required to hold MSICs.<sup>41</sup>

1.54 DOTARS commented that:

...our responsibilities are really around the risk profiling of those foreign vessels and dealing with a foreign vessel when it indicates its intention to come to an Australian port... there is not an additional check looking at particular seafarers when considering the approval of a single voyage permit or a coastal permit, because that has in effect already been done when the ship came to Australia.<sup>42</sup>

1.55 The committee repeats its previous comment that the government should refer the matter of introduction of physical screening of persons entering maritime security zones, including holders and non-holders of MSICs, to the working group on MSIC regulations.<sup>43</sup>

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38 Submission 2, Australian Shipowners Association, p. 2. Similarly Submission 8, P&O Ports Australia and New Zealand, p. 2

39 Mr J. Kilner (DOTARS), *Committee Hansard*, 29 August 2005, p. 15

40 Senate Rural and Regional Affairs and Transport Legislation Committee, *Regulatory Framework under the Maritime Transport Security Amendment Act 2005*, August 2005, par. 2.52

41 Mr J. Kilner (DOTARS), *Committee Hansard*, 29 August 2005, p. 17. This refers specifically to foreign *ships*. Any person, whether Australian or foreign, who requires unmonitored access to a port security zone will need an MSIC. See paragraph 1.48 above.

42 Mr J. Kilner (DOTARS), *Committee Hansard*, 29 August 2005, p. 16-17

43 Senate Rural and Regional Affairs and Transport Legislation Committee, *Regulatory Framework under the Maritime Transport Security Amendment Act 2005*, August 2005, p. 38

**Committee comment**

1.56 The committee accepts the need for the bill. The committee expects that the relevant regulations will be based on full consultation with interested parties.

1.57 While the committee has some concerns about the process (see paragraph 1.16), it supports the passage of the bill. Other comments are at paragraphs 1.18, 1.31, 1.34, 1.37, 1.41-2, 1.53 and 1.56.

**Recommendation**

**1.58 The committee recommends that the bill be passed.**

**Senator the Hon. Bill Heffernan**

**Chair**