

Chapter 3

Administration

Introduction

3.1 The *Maritime Transport Security Amendment Act 2005* (MTSA Act) and the associated regulations establish the MSIC regime. Yet, the success of the regime as a counter terrorist measure lies in the diligence with which the regime is followed. The enforcement of the regime with the necessary compliance checks is a critical component in that success. The committee's terms of reference recognise these aspects of the regime by requiring the examination of the adequacy of the law enforcement and oversight and compliance mechanisms and the existing checks for foreign seafarers. The committee examines issues relating to these terms of reference in this chapter.

Law Enforcement and Compliance Mechanisms

3.2 During the inquiry a number of issues emerged relating to card holder compliance and law enforcement. These issues addressed the adequacy of resources to enforce the regime and compliance with the regulations to display the card, issuing cards at short notice, compliance by foreign workers, and a need for a centralised live data base.

Inspecting facilities to enforce the MSIC regime

3.3 An adequate inspection program is critical to the MSIC regime. During the committee's hearing a number of organisations cast doubt on the Department of Transport and Regional Services' (DOTARS) capacity and expertise to check MSIC compliance in the relevant facilities.

3.4 The AAPMA questioned whether the number of Maritime Security Inspectors currently employed by DOTARS is sufficient for the task.¹

To come back to the number of security inspectors and people that DOTARS is employing, not a weekend goes by where we don't all see advertisements in the Australian placed by DOTARS and the Office of Transport Security for maritime specialists to come and assist them. This is a real problem that the department has faced. They simply do not have the personnel with the expertise in a maritime environment—who can basically tell their port from their starboard, who know the blunt end from the pointy end of a ship. We had a lot of people in the earlier stages from the aviation environment who really did not understand ports or how they operated....²

1 Submission No. 10, AAPMA, p. 5

2 Ms Blackwell (AAPMA), *Hansard*, 12 July 2005, p. 33

3.5 The MUA, RTBU and AMWU joint submission echoed the concerns of the lack of maritime expertise in government departments:

With the slow decline in the Australian shipping industry also comes the demise of Australia's maritime skills base... It has been reported that government departments trying to get an understanding of the complexities of the industry experienced enormous difficulties in sourcing the appropriate people because of the shortage.³

3.6 DOTARS outlined their regulatory responsibilities of the MSIC regime as follows:

- Assessment of MSIC Plans;
- Audit of MSIC Plans;
- Checking compliance;
- Regular liaison with other Commonwealth departments and State and Northern Territory authorities; and
- Policy advice and guidance to industry...

The Department has responsibility for monitoring and ensuring the compliance of maritime industry participants in regard to the act and regulations. It is appropriate for Government to explicitly regulate in this area. ⁴

3.7 The department is confident that it will be in a position to undertake these duties. Officers gave evidence to the committee indicating that the display of the MSIC would be enforced by the inspection of facilities. OTS inspection officers would visit facilities and observe whether the cards were displayed by workers in maritime security zones:

The office currently has around 250 staff, and we have recently advertised to recruit some more. At the moment, we have 70 or 80 people in our state offices who do the compliance function. Once this system is up and going, there is a range of methods that we will employ, from individual inspectors who will go out to ports and make surprise visits through to something that we have recently done at major airports, which is flood the place with inspectors.⁵

3.8 The committee notes the concern industry participants have in the department's readiness to undertake the tasks imposed by the new legislation. It accepts the department's reassurances, particularly in relation to checking compliance of card holders displaying their cards.

3 Submission No. 8, MUA, RTBU, AMWU, p. 14

4 Submission No. 13, DOTARS, p. 5

5 Mr Tongue (DOTARS), *Hansard*, 12 July 2005, p. 65

3.9 The importance of the card and its clear visibility is evident in the regulatory framework which imposes significant penalties on a card holder for failure to properly display the MSIC.

Display of the MSIC

3.10 The 8 July draft regulations outline the requirements for displaying the MSIC correctly. Draft regulation 6.07E states that the MSIC is defined as being 'properly displayed' if it is attached to a person's outer clothing, above waist height, at the front or side of the body; and with the whole front of the MSIC clearly visible.⁶ In subdivision 6.1A.2, regulation 6.07J, the penalties for not properly displaying a valid MSIC are as follows:

- (c) for a first offence – 5 penalty units; or
- (d) for a second offence within 2 years of an offence – 10 penalty units; or
- (e) for a third or subsequent offence within 2 years of an offence – 20 penalty units⁷

Inequitable penalties for incorrectly displaying the MSIC?

3.11 Some organisations argued that the penalties imposed for not displaying the MSIC correctly were too harsh in comparison to penalties for other breaches of maritime security.

3.12 The Maritime Union of Australia (MUA) raised these concerns. Mr Summers told of a vessel that had been inspected and found to have deplorable working conditions. When inspectors of the MUA attempted to board the vessel to continue investigations, the captain had put the ship onto a security level 2 and raised the gangway, prohibiting the inspectors from boarding the vessel.

This was a clear breach of maritime security. It had nothing to do with maritime security at all and it really had everything to do with him protecting prying eyes from seeing what deplorable conditions he was making his crews work under. We made a lot of noise about this, but still the captain... got away completely unpunished and so did the company.⁸

3.13 The MUA argues that it is inequitable to allow a breach of that magnitude go unpunished, yet expect employees to be penalised for incorrectly displaying their cards:

So that goes unpunished and yet there are conditions and provisions inside these regulations—in the first draft—that would take away a person's card

6 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 7

7 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 11

8 Mr Summers (MUA), *Hansard*, 12 July 2005, p. 19

if they did not show it properly three times in a row. Now there is a penalty of up to 20 penalty points, and I think they are \$110 each. So that is quite a substantial fine for simply not showing your card correctly. In a work site you may not always be aware that it has tucked under, flicked over or fallen off.⁹

3.14 The committee notes the MUA's concerns and recognises the security issues raised in the example provided to the committee. However, the committee does not consider that difficulties with other aspects of maritime security are a justification for downgrading the need to enforce compliance to clearly display the MSIC. The penalty provisions of the regulations provide a mechanism to enforce that compliance.

3.15 The committee is concerned however, to ensure that compliance with the regulations does not constitute an occupational health and safety issue.

OH&S standards for display of the MSIC

3.16 A representative of the MUA commented there has already been recognition within industry of the potential safety hazard in display of the MSIC:

It is a very dangerous implementation, because if you are working on top of a stack of containers that are 10 or 15 high and it flicks off and falls down the bottom, you are not going to unstack the whole ship to get to your security card, so there is that. I know that the employers are talking about introducing some other mechanisms in their workers overalls to slide [the MSIC] in so it is not hanging loose. You certainly would not work on a ship or an offshore platform with a noose around your neck, because it is absolutely dangerous and could cause catastrophic events. So it has to be above your waist, below your shoulder and showing out all the time. For the first time, contravention—not having it exactly the right way or if it is flicked around—brings a monetary penalty for those who are supposed to be involved.¹⁰

3.17 The department recognised the potential choking hazard that an MSIC hung around the neck could be:

Senator O'BRIEN—Draft regulation 6.07M provides for the secretary of the Department of Transport and Regional Services to exempt certain persons or classes of persons from holding, carrying or displaying an MSIC. This is not a reg that concerns the defence forces or emergency services personnel that are dealt with in 607J2(b) and 6.07N. What persons or classes of persons will be eligible to receive this exemption?

Ms Liubestic—The exemption is if there is an occupational health and safety issue with the wearing of the MSIC in a particular zone. So if you

9 Mr Summers (MUA), *Hansard*, 12 July 2005, p. 19

10 Mr Summers (MUA), *Hansard*, 12 July 2005, p. 20

have an MSIC dangling on the end of a lanyard which could get caught on machinery, that is what that clause is referring to.¹¹

3.18 Draft regulation 6.07M provides an exemption to the display of the card. However, it does not exempt employees from obtaining the card and undergoing the necessary background checks.¹²

3.19 In addition, due to the nature of maritime work, there is potential for the card to become lost or inadvertently shipped to another port. Regulation 6.08R provides for a MSIC holder who becomes aware their card has been lost, stolen or destroyed to make a statutory declaration within 7 days. In the case where it is stolen, the MSIC holder is to give the IB a copy of the police report within 7 days of the theft.¹³

3.20 The committee appreciates the need to balance the operational requirements and safety concerns of those required to display the MSIC with the security requirements. It is of the view that these issues have been provided for in the draft regulations so that compliance can be properly monitored.

Issuing MSICs at short notice

3.21 Another issue raised during the hearing that was of concern to the committee was the potential for applicants to experience delays in employment while waiting for an MSIC application to be processed:

3.22 At the hearing the MUA outlined the difficulties:

The nature of the industry is such that you can get a call in the middle of the night asking you to be on a plane at six o'clock in the morning. We have to provide them with a card ready to go, rather than say, 'You have to be picked up in three months time so you had better start the process of getting a background check.'¹⁴

3.23 However, the unions acknowledged that DOTARS took these issues into consideration by allowing unions to become Issuing Bodies (IBs).

The union indicated very early in the piece that we wanted to be an issuing body. Essentially, for the seamen and the seafarers of the Maritime Union of Australia and I understand some of the casual workers in other areas, if we are an issuing body that would provide our members with the opportunity to be ready to be employed immediately. If they had to wait for

11 *Hansard*, 12 July 2005, pp. 65-6

12 *Hansard*, 12 July 2005, p. 66

13 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, pp. 32-3

14 Mr Summers (MUA), *Hansard*, 12 July 2005, p. 12

criminal background checks and if they had to wait to get an employer before they could start that process, then it could impede the industry.¹⁵

3.24 Draft regulation 6.07O(1)(c) provides 'a body representing employees or participants' may apply for authorisation as an IB.¹⁶

3.25 The committee welcomes this cooperation and acknowledges the unions' work on behalf of their members. It hopes that accommodating such concerns will improve compliance with the requirements placed on workers.

3.26 An associated matter raised during the inquiry was the requirements that might be placed on foreign workers who are employed in the maritime industry.

Skills base and foreign workers

3.27 In some cases imported skilled labour is required in the maritime industry. The AMWU raised the issue of 'guest labour' to Australia, and if these foreign workers would undergo security checks:

Guest labour... is currently being utilised in this country—coming from South Africa, Asia... Korea and even Hungary. Because we have not yet come across this added security arrangement, the only check that is available to contractors and labour hire people is basically an induction of the facility. So if labour hire people went offshore with a contractor they would be subject to the induction of that facility—that is all. And they would probably be under the supervision of the host company, the major contractor. There would be no real security check. I do not know how you would check on the security of 50 boilermakers, welders and riggers coming from, say, Malaysia or Indonesia to work on the North West Shelf or to work at a facility in Perth.¹⁷

3.28 The committee queried if practical measures had been put into place to ensure these foreign workers are provided with MSICs if required.¹⁸ The department responded that foreign workers are still required to hold an MSIC. If a foreign worker could not obtain an MSIC they would have to be escorted or continuously monitored in their duties. DOTARS has begun discussions with DIMIA in regard to educating foreign workers in advance about MSIC requirements before they arrive in Australia with employment contracts.¹⁹

15 Mr Summers (MUA), *Hansard*, 12 July 2005, p. 6

16 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 14

17 Mr Johnston (AMWU), *Hansard*, 12 July 2005, p. 26

18 *Hansard*, 12 July 2005, p. 78

19 *Hansard*, 12 July 2005, pp. 78-9

3.29 The committee notes the practical measures taken by DOTARS to ensure that 'guest workers' are aware of the requirements. It also notes the provisions of draft regulation 6.07H relating to the authentication of certain foreign documents. However, the critical issues are how are the security checks going to be applied and by whom. The offences listed as maritime security relevant offences relate to the Australian context. While the committee has no argument with this, it does have concerns as to how this translates to the law in other countries and the significance this has for those coming to work in Australian maritime facilities. The department indicates in relation to foreign seafarers that background checks are 'limited by the laws of those countries'²⁰. The committee asks DOTARS to consider these statements in the context of 'guest labour' and review these issues prior to finalising the regulations.

Live background checks of the MSIC

3.30 Issues relating to security checks did not just relate to foreign workers. The practical aspects of the security checks were also questioned during the inquiry.

3.31 Given the MSIC is valid for 5 years, queries about the reliability of the security checks during that term were voiced. The AAPMA noted that:

During our working group deliberations we have had the benefit of having ASIO and AFP representatives present. ASIO have checks that are live and ongoing so that once you sign the consent form ASIO can continue to check your background continually on a live database. Unfortunately, it seems that the AFP database is not similarly live. The checks that the AFP carries out, it seems, both within its own database and then in cooperation with all the various state police databases, are static as of the date that the applicant signs that form. So, if an MSIC holder later on has a conviction recorded against them, we are not going to know about that until their MSIC is renewed five years later. I would suggest that that too is an unacceptable risk that we do not wish to take. I appreciate that coordinating all of the police databases around the states and the Commonwealth is a huge task. I have heard a rumour that work is commencing on a program but I am not sure of the details of that... I commend that as an initiative in the security environment in which we are now working.²¹

3.32 The ASA commented that a centralised approach to the MSIC regime would allow for the development of a central database of valid MSICs:

This would enable basic checking of validity by employers for relief crews on ships and sub-contracting truck drivers for port facilities.²²

3.33 DOTARS speculated on the development of a centralised data base that was routinely updated, but was not able to give any confirmation:

20 Mr Tongue (DOTARS), *Hansard*, 12 July 2005, p. 71

21 Ms Blackwell (AAPMA), *Hansard*, 12 July 2005, pp. 27-8

22 Submission No. 3, Australian Shipowners Association, p. 3

...given that background checking as a security device is growing across the economy, ...is whether we might not be able to build a more efficient system in the Attorney-General's portfolio. The government has made no final decisions yet; it is still looking at the issue. But the idea is that there would be a central agency that coordinates between AFP, ASIO and the immigration department with respect to background checking. In advance of government decisions about how that organisation might be built, it is a bit hard for me to say that there would definitely be a live list of people, because the government may choose to build the agency up in a different way.²³

3.34 The committee notes that the draft regulations provide a means by which background checks can be undertaken during the term of the MSIC. Regulation 6.08C(6) states:

An issuing body may issue an MSIC subject to a condition, but must notify the holder in writing what the condition is.

Example

A condition that background checking of the holder is carried out more frequently than required by these Regulations.²⁴

3.35 The committee notes that these provisions may be useful at the outset in providing an applicant with a card but does not address the issue – that is flagging when a card holder has been convicted of an "amber light" maritime security relevant offence and needs to be further monitored.

3.36 The AAPMA argued in their submission that the process to allow for live background checking should be a matter of priority:

Improvements in security are event-driven. The need for continuous police checks is an obvious one and should not require a security event for the process to be fast-tracked.²⁵

3.37 The committee notes the concerns and asks the government to take the committee's evidence into account and to give priority to such work.

Monitoring Non-MSIC Holders

3.38 The draft regulations acknowledge that there will be some persons ineligible for a MSIC but who will on occasions access a maritime security zone (MSZ). Draft regulation 6.07 establishes an offence if such persons or 'visitors' are not escorted or continuously monitored when in a MSZ.

23 Mr Tongue (DOTARS), *Hansard*, 12 July 2005, p. 61

24 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 23

25 Submission No. 10, AAPMA, p. 3

3.39 The committee inquired of the department how non-MSIC holders would be monitored when in secure maritime areas:

Senator O'BRIEN—Concern has been expressed to this committee about proposed arrangements that will permit non-maritime security identification cardholders access to maritime security areas. Am I correct in understanding that visitors will be permitted to access secure areas without a physical escort provided they are continuously monitored?

Ms Liubescic—Yes, that is right.

Senator O'BRIEN—By closed-circuit television, I presume?

Ms Liubescic—By either closed-circuit television on a continuous basis—so not segments of time—or under the escort of a person who is an MSIC holder.²⁶

3.40 During the hearing the unions queried whether those monitoring non-MSIC holders via CCTV would be required to hold MSICs. The committee followed this query through to the department:

Senator O'BRIEN—Will the person charged with the responsibility for continuous monitoring be required to hold an MSIC?

Ms Liubescic—It is an issue that we are currently looking at. This has been raised by our working group, and we are looking at that issue at the moment.²⁷

3.41 The department has since clarified this evidence in their submission. Regulation 6.07J(2) specifies the requirements of an escort in a MSZ is to hold a valid MSIC:

Therefore, the requirement in the regulations is for a visitor to be continuously monitored or escorted by an MSIC holder, regardless of whether that 'escort' is inside or outside of the maritime security zone, and whether they are physically escorting them or monitoring them via closed circuit television.²⁸

3.42 The committee was not able to establish an estimate as to how many people will require monitored access to MSZ. The department informed the committee that that they do not have an estimate.²⁹ However, as discussed in paragraph 2.77, the committee is of the view that more rigorous requirements need to be incorporated in the regulations to ensure the secure environment.

3.43 The committee notes that escorted visitor status does not apply to personnel required to access MSZ in the case of emergencies.

26 *Hansard*, 12 July 2005, p. 65

27 *Hansard*, 12 July 2005, p. 65

28 Submission No. 13, DOTARS, 'Answer to Question 16', p. 40

29 *Hansard*, 12 July 2005, p. 92

Enforcing the MSIC in circumstances involving an emergency

3.44 Regulation 6.07N allows ambulance, rescue or fire service officers to access maritime security zones in the case of an emergency.

3.45 The AAPMA argue that greater provision is needed for emergencies such as oil spills and marine incursions:

When there is an oil or chemical spill, the usual custom is to establish teams of people from a range of organisations to respond to the spill and its side effects, as well as to engage in response-learning experience. It becomes a multi-jurisdictional activity with environment agencies, local councils and community groups involved... We note that care must be exercised as to how access to maritime security zones will be managed by the port for this broader range of emergency responders. We are asking that consideration be given to using the Secretary's exemption power as outlined in these Regulations, on the clear understanding that a post-event notification to the Secretary would take place.³⁰

3.46 DOTARS responded by outlining that the exemption provisions in the regulations are for occupational, health and safety reasons (see para 3.17). The exemption principles are not provided for emergency personnel. Access for emergency personnel is provided for in Regulations 6.07J(2)(b) and 6.07(N). A departmental officer elaborated:

The MTSA Act is about allowing those people dealing with those emergencies to come into the zones and to deal with the emergencies where they do not have to have the requirement of displaying the MSIC.³¹

3.47 However, the AAPMA noted in their submission that DOTARS had advised them, that to allow MSZ access to a wider range of emergency personnel, 'the rewording of the relevant sections requires legal advice with likely policy implications and we understand that work is progressing on this front.'³²

3.48 The department further clarified the position in their submission by indicating that arrangements have been made for emergency personnel in the case of environmental emergencies:

In emergencies such as these, maritime industry participants or offshore industry participants can apply and receive an exemption from people wearing MSICs in a certain maritime security zone, or an area of a maritime security zone. An exemption can be applied for by contacting the Office of Transport Security's 24 hour operations centre, which can facilitate urgent requests for exemptions from the MSIC scheme in cases of emergency.³³

30 Submission No. 10, AAPMA, p. 4

31 Ms Luibestic (DOTARS), *Hansard*, 12 July 2005, p. 66

32 Submission No. 10, AAPMA, p. 4

33 Submission No. 13, DOTARS, 'Answer to Question 6', p. 29

3.49 The committee notes the need for speedy access to a MSZ in the case of an emergency and welcomes the exemptions that have been established for emergency personnel. However, the committee believes that such access should be balanced with the long terms requirements to ensure a secure environment. Therefore, compliance and monitoring responsibilities should not be compromised.

Boarding a vessel as part of a recreational activity

3.50 Given the requirements on access by emergency personnel, the committee was interested in draft regulation 6.07K which provides for a person who has been given a MSIC disqualifying notice to enter a MSZ if the person:

is a visitor to a zone for the purpose of boarding or leaving a vessel as part of a recreational activity.³⁴

3.51 The committee explored the matter with the AAPMA, citing the port of Hobart as an example where small sailing vessels pull along side working wharves in a port:

Senator O'BRIEN—The point I am making is that the terminology says 'boarding or leaving a vessel'. So, if there is any sort of vessel moored alongside, there is an exemption under the regulation for a person who would otherwise be excluded, provided they say that they intend to visit the zone to board or leave that vessel for recreational purposes.

Ms Blackwell—...It was there to cover people who board a cruise vessel. When you board a cruise vessel, you go through the cleared zones, a bit like you do when you are in an airport. But I take your point. I think there could be tighter wording... I am not putting words into DOTARS' mouth, but perhaps they were thinking that around cruise vessels you have this maritime exclusionary zone and you are not supposed to broach that. There are vessels that are supposed to be on the water, monitoring all of that. But it could be tighter, Senator, I agree. It could be reworded.³⁵

3.52 The committee agrees that the wording needs to be tighter and asks the department to review the wording of draft regulation 6.07K prior to finalising the regulations.

Foreign Seafarers

3.53 The final component of the committee's terms of reference required the committee to examine the adequacy of the existing checks for foreign seafarers.

34 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 12

35 *Hansard*, 12 July 2005, p. 35

3.54 The department informed the committee that over 200,000 foreign seafarers enter Australian ports each year.³⁶ There was concern that Australian seafarers are required to undergo security checks before they can work on Australian maritime facilities including ports, while foreign seafarers were receiving no background checks at all.

3.55 The unions' joint submission outlined these concerns:

Where the MSIC will see a high level of background checking on all Australian seafarers from our top law and intelligence bodies the same is impossible for foreign nationals.³⁷

3.56 International Labor Organisation (ILO) Convention 185 found favour with those who were concerned that the current MTSA Act does not allow for background checking of foreign crews.³⁸ ILO Convention No. 185 provides an international identification system available to governments, ship owners and seafarers. The identity document for seafarers uses a 'biometric template' to adapt two fingerprints of a seafarer into a standardised 2-D barcode on the Seafarers' Identity Document (SID).³⁹

3.57 The department confirmed that while MSICs will be required for foreign seafarers on Australian flagged ships, seafarers on foreign flagged vessels will not be required to hold an MSIC.

3.58 However, foreign seafarers entering Australia are subject to checks. The Australian Customs Service outlined the current security checks of foreign vessels:

Customs risk assesses every commercial vessel in advance of its arrival in Australia. The assessment takes into account government information and intelligence in relation to terrorism.

Crew details including name, date of birth and passport information are obtained in advance of arrival. The details of every crew member are entered into a Customs system that is checked against the Passenger Analysis, Clearance and Evaluation (PACE) system. This includes the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) Alert List and alerts placed by other agencies, including national security agencies.⁴⁰

3.59 DOTARS further indicated:

36 *Hansard*, 12 July 2005, p. 71

37 Submission No. 8, MUA, RTBU, AMWU, p. 14

38 Submission No. 8, MUA, RTBU, AMWU, p. 14

39 'New ratification opens the way for ILO Convention on seafarers' ID card', *International Labor Organization*, 17 August 2004, p. 1

40 Submission No. 11, *Australian Customs Service*, p. 2

Foreign seafarers is a complex area, and we have been doing some work with the immigration department to look at the possibility of bringing in an enhanced regime for foreign seafarers that would include some form of visa requirement... Involving a background checking regime that would apply if you were applying for a tourist visa or other visa to enter Australia, which would enhance the current background checking regime. Our ability to background check to the same standard as we are doing in Australia in other countries is limited by the laws of those countries. We are certainly aware of the need to enhance that area, and we are working with immigration to do it.⁴¹

3.60 The department acknowledged the difficulties in enforcing any sort of regulations on a foreign flagged ship, and especially a vessel with flags of convenience.

Flags of convenience and the Coastal Permit System

3.61 Vessels with flags of convenience and vessels holding coastal permits frequent the Australian coast. A ship that flies a flag of convenience flies the flag of a country other than the country of ownership. It is suggested that these merchant vessels are registered this way for the purpose of reducing operating costs or avoiding government regulations.⁴² DOTARS does not recognise the term 'flag of convenience' as an officially recognised category of vessels.⁴³

3.62 The coastal permit system allows for the issue of Single Voyage Permits (SVPs) and Continuing Voyage Permits (CVPs). SVPs are issued for a single voyage between designated ports for the carriage of specified passengers or goods. CVPs are issued for a period of up to three months and allow a vessel to carry specified cargo between specified ports for that period. The permits are kept to a low cost; cargo SVPs are \$200.00 and CVPs are \$400.00.

3.63 The joint union submission made the following comments on the current system:

While unions support the coastal voyage permit system we do not support the abuses under them. ... The most obvious prospect for potential terrorists to breach our maritime security is by using flags of convenience shipping on government permits to replace entire trades on our coast at the expense of Australian shipping.⁴⁴

3.64 The committee questioned the department about the matter of foreign vessels using flags of convenience:

41 Mr Tongue (DOTARS), *Hansard*, 12 July 2005, p. 71

42 Global Forum Policy, 'A Brief Guide to Flags of Convenience,' International Transport Workers' Federation, p. 1, www.globalpolicy.org/nations/flags/guide.htm

43 Submission No. 13, DOTARS, 'Answer to Question 12', p. 36

44 Submission No. 8, MUA, RTBU, AMWU, p. 14

Senator O'BRIEN—But, even though they are operating under the flag of another nation, when they are in our ports they are under our law, aren't they?

Mr Tongue—They have to comply with Australian law, but they are protected a bit because of their flag status. There are things we can do on Australian ships that we cannot do on foreign flagged ships.

Senator O'BRIEN—Are you telling us that we cannot require a foreign flagged vessel not to abuse a provision of our law while it is in our port?

Mr Tongue—I am saying that it is very difficult for us to prove that a foreign flagged vessel is abusing security requirements without going through a process that involves contacting the flag state first...

It is easy to contact some of the flag states; we have 24-hour contact details. But some of the flag states, frankly, are pretty hard to get to.⁴⁵

3.65 In their submission, the department further clarified the security arrangements for foreign flagged ships:

The MSIC Scheme can not apply to foreign seafarers on foreign flagged ships, this is the responsibility of contracting governments as set out in the International Ship and Port Facility Security Code. Foreign seafarers on foreign ships will need to be escorted or continuously monitored while they are in an Australian regulated maritime security zone.⁴⁶

3.66 The committee notes that while the MSIC regime does not enhance the security checks of foreign seafarers, these seafarers are none the less required to abide by the principles of the regime. Access to MSZ will be on the same basis as 'visitors' access.

3.67 The committee is of the view that the government should refer the matter of the introduction of physical screening of persons who enter maritime security zones, including holders and non-holders of MSICs, to the working group for consideration.

3.68 The committee also notes the results of an internal audit report of the coastal shipping permit system conducted in June and August 2004. This review was initiated by DOTARS when permit processing responsibilities were handed over to the OTS:

Overall, the audit report noted that the existing arrangements generally ensured compliance, but that records management practices in place at the time the audit was conducted reduced the ability of the Department to demonstrate this compliance. The recommendations have been addressed through changes in procedures for processing permits and licenses, changes in record management practices and as part of a broader rewrite of the Coasting Trade Regulations. These amendments are close to finalisation.⁴⁷

45 *Hansard*, 12 July 2005, pp. 68-9

46 Submission No. 13, DOTARS, p. 6

47 Submission No. 13, DOTARS, 'Answer to Question 11', p. 35

Other Matters

Container Inspections and high consequence dangerous goods

3.69 During the inquiry, the Australian Workers' Union (AWU) highlighted another aspect of maritime security that it considered a risk, the threat posed by shipping containers:

There are no physical checks at all performed on the "empties" and they are only presumed to be empty. This provides a clear portal for terrorist activities and the examples stated internationally is the opportunity for a dirty bomb to be planted in one of these empties, tracked through a major city and detonated at precise location.⁴⁸

3.70 Further, the unions' joint submission made a call for the government to restrict the carriage of high consequence dangerous goods onboard flag of convenience foreign ships.⁴⁹

3.71 The department responded that container inspections are primarily the responsibility of Customs:

We have certainly been working with the Australian Customs Service, which is the responsible agency, to look at a range of supply chain and container security initiatives.⁵⁰

3.72 The committee notes that these issues fall outside its terms of reference. Yet they are matters that warrant government consideration.

48 Submission No. 12, The Australian Workers' Union, p. 16

49 Submission No. 8, MUA, RTBU, AMWU, p. 16

50 Mr Tongue (DOTARS), *Hansard*, 12 July 2005, p. 72

