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**AIMPE****Australian Institute of  
Marine and Power Engineers  
HEAD OFFICE**

File No.:

Maureen Weeks  
Committee Secretary  
Senate Rural and Regional Affairs  
and Transport Legislation Committee

Dear Ms Weeks,

**Re: Inquiry into the administration of the Maritime Transport Security Act 2005**

Thank you for your advice of 24<sup>th</sup> June regarding the above. The Australian Institute of Marine & Power Engineers appreciates the opportunity to make a submission to the Committee about the proposed changes to the Maritime Transport Security legislation.

The two issues that have been of greatest concern to AIMPE have been the matters of **privacy** and the proposed **cost recovery** model. These two items came to our attention when the exposure draft of the **Maritime Transport Security Amendment Bill 2005: MSIC** was made available to us as members of the MSIC Working Group. AIMPE members may suffer directly and immediately as a result of the proposed changes. AIMPE also has a concern about the lesser security checking to apply to **foreign seafarers**.

There are in essence two separate sub-clauses in the Bill which are proposed to be repeated in each of three Divisions in the Act. The Divisions cover Port Security Zones, Ship Security Zones and On-board Security Zones. The first proposed sub-clause relates to the cost recovery issue and the second proposed sub-clause deals with disclosure of information.

**COST RECOVERY**

The words contained in the Amendment Bill relating to cost recovery are as follows:

**1 At the end of section 105\****Add:**4) Regulations made under subsection (1) may provide for the recovery by a person of costs and expenses reasonably incurred by the person in relation to the performance of functions, or the*

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*exercise of powers, by the person under those regulations. An amount recoverable under those regulations must not be such as to amount to taxation.*

\*see Attachment 1 for the existing provisions of s.105

The draft Regulations which have been considered by the MSIC Working Group [and would require passage of the Amendment Bill] are as follows:

*6.09A Cost recovery*

*If an issuing body issues an MSIC to a person at the request of that person or another person, the issuing body may recover the costs of the issue from the person making the request.*

The effect of the proposed amendments and the draft regulations would be to permit an issuing body to charge an employee for the costs of obtaining an MSIC. These costs include the charges for the background checking [by ASIO, AFP and DIMIA] as well as the production and distribution costs of the actual cards. It is not clear exactly how much the total cost will be but the estimates range up to \$180.00 or more. The various checks will be in the vicinity of \$50 per person and the card production costs will depend on the type of card chosen.

AIMPE does not believe that this cost burden should fall on the workers being required to obtain the MSIC. There has been a clear Government decision that steps must be taken by ports, port facilities and ships to increase security. Furthermore the Government has explicitly decided that there will not be any Government contribution to the costs of these improvements. The holders of maritime security plans have carried these costs – but have the capacity to pass the costs on to the users of their services.

AIMPE members and other employees who will be required to obtain MSICs are not in the same position. Our members cannot increase the charges to shipping lines or shippers. The effect of the cost recovery clause appears to be to make seafarers and others pay the price of improving maritime security.

ASIO has briefed the MSIC Working Group about the security threat and it is clear that the greatest maritime security threats to Australia come from external extremist organizations. One purpose of the security checks required as part of the MSIC process is to ensure that there are no such potential terrorists among the maritime workforce. Fair enough but should the cost be carried by the people who are good Australian citizens who do not have any such terrorist tendencies.

AIMPE believes that Australian seafarers should be seen by Government to be allies in the campaign to increase Australia's maritime security. Australian seafarers are overwhelmingly employed in the coastal trades and are therefore regularly in and out of Australia's ports and transiting our sea-lanes. The scope for co-operation on maritime security is enormous but the individual should not have to pay the price.

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## PRIVACY CONCERNS

The second area of concern for the AIMPE is in the area of privacy. The terms of the proposed sub-clauses are as follows:

*5) Regulations made under subsection (1) may authorise the use or disclosure of information (including personal information within the meaning of the Privacy Act 1988) for the purposes of, or in relation to, assessing the security risk posed by a particular person.*

AIMPE has no concern about the potential impact of these clauses in the nine month introductory/transition phase of the MSIC. Between 1<sup>st</sup> October 2005 and 30<sup>th</sup> June 2006 AIMPE understands that the Office of Transport Security within DOTARS will be the body which will receive the feedback from the background checks. This will include ASIO and AFP information. This may be very sensitive information.

Where AIMPE does have a concern however is in the period after the initial 9 month phase-in period. From 1<sup>st</sup> July 2006, AIMPE understands that the OTS role will cease and this function will be transferred to the issuing bodies many cases may be the employer]. AIMPE believe it is inappropriate for these private sector bodies to be provided with the details required to make a security assessment. We have a serious doubt as to whether the integrity of the information systems inside some of the Maritime Industry Participants is adequate to handle this type of information flow. There would appear to be a high risk of failure of these systems to maintain secure control of these parcels of security-sensitive information.

Without placing names in the public record, AIMPE is aware of a MIP which has had its payroll data system compromised in recent months by a 'rogue' employee who then used the information obtained to commit offences based on identity fraud.

The risk of this happening would be dramatically lower if the functions to be carried out by OTS/DOTARS in the first 9 months continue to be carried out by OTS or another secure national vetting authority.

## FOREIGN SEAFARERS

AIMPE notes that the terms of reference for the Inquiry include the adequacy of security checks for foreign seafarers. DIMIA has provided the MSIC Working Group with a briefing of the proposed changes to the current arrangements for foreign seafarers. This includes advanced notice of seafarers names, statements as to background and the ability to undertake security assessments in conjunction with overseas security agencies. This would appear to improve the security awareness of our authorities in relation to foreign seafarers.

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This is not as comprehensive as the checking that will be carried out for MSIC applicants. AIMPE would observe that the ASIO security assessment is that the greatest threat comes from the extremist organisations such as the ones thought to be behind the Bali bombing and the Australian embassy bombing. AIMPE would like to be confident that the proposed changes described by DIMIA will be sufficient to ensure we are aware of any potential threat to Australia's security.

It remains of concern however that there are vessels routinely permitted to trade on the Australian coast with crews from other countries. These personnel will not be subject to the level of checking which is to be applied to Australian seafarers.

That is, the proposed system will include a higher level of checking on a group which is objectively lower risk [ie Australian seafarers] and a lower level of checking on a group which is apparently higher risk [ie foreign seafarers from high risk regions].



Martin Byrne

Assistant Federal Secretary

Australian Institute of Marine and Power Engineers

30<sup>th</sup> June 2005

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**ATTACHMENT 1****Extracts from the Maritime Transport Security Act 2003.*****105 Requirements for port security zones***

- (1) *The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to each type of port security zone.*
- (2) *The following matters may be dealt with by regulations made under subsection (1):*
  - (a) *access to port security zones (including conditions of access, the issue and use of security passes and other identification systems);*
  - (b) *the identification or marking of port security zones;*
  - (c) *the movement, management or operation of ships and other vessels and vehicles and other things in port security zones;*
  - (d) *the maintenance of the integrity of port security zones;*
  - (e) *the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in port security zones;*
  - (f) *the management (including the sale or disposal) of ships, other vessels, vehicles or goods abandoned in port security zones;*
  - (g) *when prescribed requirements are to be met.*
- (3) *Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:*
  - (a) *for an offence committed by a port operator, ship operator or port facility operator—200 penalty units; or*
  - (b) *for an offence committed by a maritime industry participant, other than a participant covered by paragraph (a)—100 penalty units; or*
  - (c) *for an offence committed by any other person—50 penalty units.*

*Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the Crimes Act 1914 allows a court to impose fines of up to 5 times the penalties stated above.*