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SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE

Reference: Maritime Transport Security Amendment Act 2005

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SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE

Tuesday, 12 July 2005

Members: Senator Heffernan (*Chair*), Senators Ferris, McEwen, McGauran, Milne and Sterle

Participating members: Senators Abetz, Allison, Bartlett, Mark Bishop, Boswell, Brown, George Campbell, Carr, Chapman, Coonan, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Hogg, Hutchins, Lightfoot, Ludwig, Lundy, Sandy Macdonald, Mackay, Mason, McLucas, Nettle, O'Brien, Payne, Robert Ray, Santoro, Stephens, Watson and Webber

Senators in attendance: Senators Allison, Ferris, Heffernan, McGauran, O'Brien, Sterle and Webber

Terms of reference for the inquiry:

To inquire into and report on:

The regulatory framework to be implemented and enforced by the Department of Transport and Regional Services under the *Maritime Transport Security Amendment Act 2005*, having regard to:

- a. Whether the regulatory framework to be implemented adequately protects privacy interests;
- b. The appropriateness of the cost recovery model in respect to such an important area of national security;
- c. The adequacy of law enforcement mechanisms available to enforce the regulatory scheme;
- d. The adequacy of oversight and compliance inspection mechanisms;
- e. The adequacy of existing security checks for foreign seafarers;
- f. The fair operation of security checks with respect to existing employees; and
- g. The adequacy of consultation mechanisms in respect to the regulatory framework.

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Committee met at 9.00 am**ELLIS, Mr William, Inspector of Transport Security, Department of Transport and Regional Services****MRDAK, Mr Michael, Deputy Secretary, Department of Transport and Regional Services**

CHAIR (Senator Heffernan)—I declare open this public hearing of the Senate Rural and Regional Affairs and Transport Legislation Committee. The committee is hearing evidence on the committee's inquiry into the Maritime Transport Security Amendment Act 2005. I welcome you all here today. This is a public hearing, and a *Hansard* transcript of the proceedings is being made. The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the order of the Senate on 23 August 1990 concerning the broadcasting of committee proceedings.

Before the committee starts taking evidence, I place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given in this place. I remind witnesses that parliamentary privilege does not extend to statements repeated outside the committee's proceedings. Any act by any person which may disadvantage a witness on account of evidence given by him or her before the Senate or a Senate committee is a breach of privilege. While the committee prefers to hear all evidence in public, the committee may agree to take evidence confidentially. If the committee takes confidential evidence, it may still publish or present all or part of that evidence to the Senate at a later date.

The Senate also has the power to order production and/or publication of confidential evidence. The committee would consult the person whose evidence the committee is considering publishing before taking such action. I also draw your attention to the continuing resolution relating to claims of commercial confidentiality. Under this resolution, a claim to withhold information on the basis that it is commercial-in-confidence can only be made by a minister and must include a statement setting out the basis for the claim, including a statement of any commercial harm that may result from disclosure of the information. I now welcome the Inspector of Transport Security. Please give your name, rank and serial number and, if you want to make an opening statement, do so.

Mr Ellis—Good morning. I am employed by the department to support the Inspector of Transport Security. I am a former departmental employee who retired and came back on a casual basis to undertake that role.

CHAIR—You look too young to be retired.

Mr Ellis—Thank you, Senator.

CHAIR—Do you want to make an opening statement?

Mr Ellis—No, thanks.

Senator O'BRIEN—Thanks for appearing today, Mr Ellis. You say you are employed to support the Inspector of Transport Security. This committee has twice invited Mr Palmer to appear before it. He has twice declined that invitation, and just last week we were told that he will not be back on the job as Inspector of Transport Security until late August. Do you know the date on which Mr Palmer will return to acting in the position of Inspector of Transport Security?

Mr Ellis—He will return on 1 September.

Senator O'BRIEN—That is a firm date?

Mr Ellis—That is as we understand it. The arrangement in the meantime is that my job is to keep the office functioning and get on with our work.

Senator O'BRIEN—So there has been no action taken by Mr Truss to facilitate Mr Palmer's early return to duties, in the light of the London bombings?

Mr Ellis—No, not that I am aware of.

Senator O'BRIEN—You have not been appointed to act in Mr Palmer's position, I take it, from your earlier statement?

Mr Ellis—My language was a little bit loose there, I think. My understanding is that I am appointed to a sort of panel position, where the inspector is the head of the office and other people would be appointed to a panel—of experts, or whatever—should the need arise to handle particular investigations. The approach to me was in May, when the department asked: 'Would you be interested in participating in that role and being available to act as the inspector should the need arise?' That is my understanding: if there is a requirement and

the minister issues a term of reference to start a particular analysis or review, I would take action on that. That is effectively acting in the position.

Senator O'BRIEN—So you have been advised by the minister, or the minister's office, that if the need arises you will be asked to act in the position of Inspector of Transport Security.

Mr Ellis—I have been advised by the department. I have not had any contact with the new minister or the office.

Senator O'BRIEN—You have been advised that if the need arises you will be required to act as the Inspector of Transport Security.

Mr Ellis—Yes.

Senator O'BRIEN—What do you understand the role of the Inspector of Transport Security to be, should you be required to act in that position?

Mr Ellis—My understanding is that the minister would issue a request or an instruction to undertake a specific inquiry into a major transport security incident—an identifiable one—or a pattern or series of incidences that might point to a systemic failure or possible weakness in maritime and aviation security arrangements, and that those efforts would only be triggered by a specific reference from the minister.

Senator O'BRIEN—So the department has given you to understand that, in the absence of a direction from the minister, your position is dormant.

Mr Ellis—'Dormant' is perhaps not the word I would use.

Senator O'BRIEN—That is my word; I can see that. But give me a word. How would you describe it?

Mr Ellis—We are working on a basis of setting up the office, and that is largely done in a physical sense—in other words, there is a place there with two employees to support the function. We have been, and I will continue to be, engaged in giving some input into the development of the legislation that is now under way to establish the role in a statutory way. We will be giving some thought to how the role might be operationalised, because we will probably need some agreements or MOUs with the state authorities and perhaps some understandings with the other Commonwealth agencies. It is that preparatory work that would be a basis for building on a point where, should the minister issue a particular inquiry reference, we could start to work from.

Senator O'BRIEN—Do I take it from that that you have been liaising with state officials?

Mr Ellis—Yes. I was involved with a meeting on 17 June talking specifically about parts of the development of that legislation I referred to, not the legislation before this committee but a specific piece of legislation where the government is seeking to set up this role under its own act.

Senator O'BRIEN—What staff have you got working with you? I understand Mr Palmer's staff are assisting him on immigration matters.

Mr Ellis—The staff of the office that are employed by the department are one senior officer and one more junior officer in an admin role.

Senator O'BRIEN—And are they working with you?

Mr Ellis—Yes.

Senator O'BRIEN—Does Mr Palmer have some staff who were employed to assist him as the Inspector of Transport Security working with him now on immigration matters?

Mr Ellis—I do not know what staff Mr Palmer had on the other matter. These two people are in the department and working for this office.

Senator O'BRIEN—I think you said you were approached in May to take up this position.

Mr Ellis—Yes.

Senator O'BRIEN—Do you know when?

Mr Ellis—Unfortunately, I do not have those papers with me. There were a couple of phone calls, probably around the middle of May, and I effectively started and signed up on 2 June, which was the first day.

Senator O'BRIEN—Straight after estimates week.

Mr Ellis—I think estimates were around that time.

Senator O'BRIEN—What is the term of your appointment?

Mr Ellis—I think I have signed for six months, with a review at the end of that time. But I would need to check that. I am employed as a non-ongoing, casual employee.

Senator O'BRIEN—So you are an employee, not a consultant or a contractor?

Mr Ellis—No. I am employed by the department, with the cover that goes with that as a Commonwealth employee.

Senator O'BRIEN—Do I take it from your earlier comment that you have not been involved in the drafting of the maritime transport and offshore security regulations or tasked with any matters related to that?

Mr Ellis—No. That is properly the role of the department. I would not normally expect the Inspector of Transport Security to be involved in such preparation of legislation. So the answer to that is no, I have not.

Senator O'BRIEN—You would not expect that the Inspector of Transport Security would be involved in advising on matters relevant to the regulatory regime?

Mr Ellis—No; I would expect that, over time, once the office becomes operational, the minister and indeed the department would seek some input. But the preparation, the policy approval and the whole process of developing legislation rests with the department and not the office.

Senator O'BRIEN—When the \$1.6 million was appropriated for the Office of the Inspector of Transport Security, the government said the holder of the office would investigate:

... systemic transport security weaknesses to ensure security vulnerabilities are identified and addressed.

Do I take it from your earlier answers that that is not a general brief but is in fact being interpreted as being subject to direction by the minister?

Mr Ellis—That would be my understanding. The role is to stand back from the regulator and, on request, analyse and review what has gone through and what might be learned, as in lessons and improvements, and to give advice to the minister. The office does not have, in my understanding, a proactive role. It needs to develop a capability that can be called upon, when requested, by the minister's references. It is not a large, investigative organisation.

Senator O'BRIEN—It is not a roving brief; it is a brief as authorised by the minister.

Mr Ellis—Yes, that is fair enough.

Senator O'BRIEN—And there has been no direction from Minister Truss to investigate the systemic transport security weaknesses in the rail sector?

Mr Mrdak—No, there has been no reference from Minister Truss to the inspector at this time.

Senator O'BRIEN—Is rail an area in which the Inspector of Transport Security would play a role?

Mr Ellis—That is one of the areas that is being teased out as we go through developing the legislation for the inspector's role. Clearly the states and territories have the primary role in land transport, road and rail. My understanding is that a reference could be made with the agreement of the state government or the state minister. The way it has been put to me, or the way I have heard it, is that some state governments at officials level are interested in having the capacity to call upon that independent investigatory no-blame function, should it be required.

Senator O'BRIEN—What troubles me is that it seems as though, when the states are involved, you have to go through a process of bureaucratic consultation before you can get to the nuts and bolts of such an examination. I understand you have only been in the position since June and that could be a task that needs some wading through before you get to the meat of the matter. Wouldn't you think that those issues would have been bedded down by now, given the office has been filled since November last year—that the states might want to involve the Commonwealth in some of their key transport responsibility areas?

Mr Ellis—I think that is being addressed as we go through the development of the Commonwealth legislation. It is an issue.

Senator O'BRIEN—So you are doing that now?

Mr Ellis—We are starting to go through that process, yes.

Senator O'BRIEN—You are starting now?

Mr Ellis—Yes.

Senator O'BRIEN—It has not been done before?

Mr Ellis—No, but there have been discussions earlier in the year with some state governments.

Senator O'BRIEN—Who held them?

Mr Ellis—It was in January, and it was Mr Palmer.

Senator O'BRIEN—Mr Palmer held some in January.

Mr Ellis—Do not hold me to that date, but between November and February there was a series of discussions with Queensland, New South Wales and Victoria.

Senator O'BRIEN—It sounds like there is a fair bit of work to do.

Mr Ellis—There is a significant amount of basic preparation and the real role is contingent upon clarifying access to people and information. That will flow through once the Commonwealth legislation is in place and we develop some operational protocols with those state agencies.

Mr Mrdak—Perhaps I can add to that. The outcome of the discussions that Mr Ellis referred to between Mr Palmer and some of the jurisdictions was a conscious decision to move to legislation which clarifies the role of the inspector, because one of the issues emerging through those discussions at officials level and at ministerial level at that time was what would be the powers of the inspector. How would the role operate under a no-blame type of operation; how would it sit with state powers and the like were the inspector to look at issues like land transport? That is what has prompted the move towards setting up a specific piece of legislation, which has now been drafted in consultation with the states—to set that out more clearly to deal with some of the state concerns about how this might operate.

At the June Australian Transport Council ministers meeting I think the general consensus was that there would be cooperation to work together on the legislation and that that would clarify the mechanisms by which the Commonwealth and the states would initiate, through the Commonwealth minister, an inquiry by, say, the inspector, where it was felt warranted, in consultation with the agreement of the states in relation to land transport matters.

Senator O'BRIEN—It seems as though the skeleton around which the whole role will be fleshed out is still being formed. Now you are talking about an act which needs to be promulgated. This is the first I have seen that that is a necessity. I have not heard that from the department or the minister before. We are into the second half of 2005. This position was announced in, I think, December 2003 and we are still going through the process of creating the mechanisms, the structures, of the legislative framework for the job to be done. The position was supposed to be filled in July last year and it was actually filled in November and, with respect to Mr Ellis's recent role, we have had almost no activity in the role, even since it has been filled, for other reasons.

Mr Mrdak—I think that it is fair to say that there has certainly been clarity around the role and its purpose and the way in which it would operate in the areas where the Commonwealth has clear statutory responsibility in relation to aviation and maritime through the legislation and the work of the department in those areas. Where it is a little bit less clear is how it will work with the other jurisdictions in relation to other transport modes and, as I was saying a little bit earlier, that has prompted us to look at legislation. Since the time the office has been established there has been clarity around the role and the way it would work as an inspector and independent reviewer of regulatory activities in the department and of systems for aviation and maritime.

Senator O'BRIEN—So for this position to work properly you are going to need regulation in place?

Mr Mrdak—If we are going to overcome some of the concerns by the jurisdictions and to properly clarify the way in which the inspector would operate and put it on a proper statutory basis, yes, we believe legislation is required. That has emerged as we have worked through the process and Mr Palmer and the like have come on board over the period.

Senator O'BRIEN—And we have not got to the stage of drafting instructions, I take it?

Mr Mrdak—We are currently consulting with the states and drafting instructions have been prepared and draft legislation is being prepared and we are seeking an urgent legislative slot to enable that legislation to be brought forward.

Senator O'BRIEN—When would you expect that? I take it that you have not got a slot yet for it?

Mr Mrdak—We would be hoping for the spring session but that is yet to be determined.

Senator O'BRIEN—That is what you always say, isn't it?

Mr Mrdak—It is. We always hope.

Senator O'BRIEN—You have not got a slot yet, in other words.

Mr Mrdak—We have got a degree of legislative drafting priority but whether that will guarantee it being introduced in the spring is yet to be determined, but we would be aiming for then.

Senator O'BRIEN—You still have not answered my question: you have not got a slot yet, have you?

Mr Mrdak—We have some priority above other legislation but we have not got a guaranteed slot. That is correct.

ACTING CHAIR (Senator Ferris)—Senator Sterle, I welcome you to committee. Do you have any questions for this witness?

Senator STERLE—No, I do not at this stage, thank you.

ACTING CHAIR—I do have a couple of questions in relation to the management of the information which is going to be procured and held initially by the department and then, as I read the submission, eventually moved across to be held by the employers themselves. Do you have any comment on that process?

Mr Mrdak—I think that they are areas dealing with the regulations and are probably best addressed by the department this afternoon. It is not an area in which the inspector has been involved.

ACTING CHAIR—No, it would be useful to get a view from him, if he has one, on the security aspect of that since that is in fact what he has been employed to look at.

Mr Ellis—No, I have not developed a view on that. When the legislation is there, if there needs to be an opinion developed, I will do that.

ACTING CHAIR—Thank you very much, Mr Ellis and Mr Mrdak. We look forward to you coming back this afternoon.

[9.24 am]

JOHNSTON, Mr Patrick Thomas, National Organiser, Australian Manufacturing Workers Union

SUMMERS, Mr Dean, National Officer, Maritime Union of Australia

WHYTE, Ms Danni Kathleen, Policy Development Officer, Transport Workers Union

ACTING CHAIR (Senator Ferris)—Welcome. Would any of you like to make an opening statement or summarise the submissions that you have sent in?

Mr Summers—The Maritime Union of Australia see ourselves as part of a partnership in maritime security arrangements. We have embraced maritime security in the lead-up to the Maritime Transport Security Act, and we have put a lot of faith in the processes which are going to take place throughout these committee proceedings. However, we were very concerned to learn that, regardless of any of these processes, it is the intention of DOTARS to make these regulations come into effect on 22 July, some weeks before the decisions or contemplations of this committee come to the fore. That is something that concerns us greatly and on which we will be seeking clarification from DOTARS.

We have put a substantial submission in, in full consultation with all the other trade unions, because we see our members as being at the front line of anything that would come into the maritime security arrangements. In fact, if there were to be a maritime terrorist attack or incident, it would be our members, as it is just about always in these events. who would be injured, hurt or put at risk.

One of the most fundamental matters in our submission that we would like the committee to consider is that the regulations as they have appeared—and we received them late on Friday afternoon; hence our lateness in getting our submissions in—are worded and structured for a roll-out period up until 1 July. Many questions are left unanswered, including who takes the fundamental role of seeing the information that is collected and uncovered in the background checking processes by both the Federal Police and ASIO. We really would like to have a bit more information about what happens post 1 July, because the situation as described in these regulations is completely unacceptable to all workers in Australia.

The working group which came out of the initial summits was very effective. We found that we could get across some of the very big gaps, such as the cultural divide between workers, the department, the government and employers. It really did pay off for us to get together around the table to knock some of the really big issues over. We got around those in a matter of months and were able to consider the implications that the regulations and the legislation would have on our membership.

As I said, we see ourselves as part of a partnership. As we go forward and embrace these regulations and the legislation, we effectively become part of the strategic infrastructure that will see our ports and maritime facilities protected against the terrorist threat. I have to emphasise that the working group took many months of discussions and deliberations to isolate what was a criminal issue and what was a terrorist issue, and this has to be borne in mind the entire way through contemplating these regulations. We have very well coordinated police forces at the state and territorial levels, enhanced by Federal Police and backed up by ASIO. We think that if there are criminal activities that need to be considered, then they are already in place and can take care of that. To ask a maritime security framework to consider criminal activities dilutes and detracts from the real issue, which is to protect our workers and our critical infrastructure.

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 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.

One of the core concerns for us all the way through was the criminal records check. We wanted to make sure that that was not a pro forma or a copy of the ASIC test, the aviation test, because it is not about uncovering people's criminal backgrounds but about uncovering any potential terrorist threat. Again, I come back to that core point. We are very disappointed and somewhat surprised to see that, while in the first draft of the regulations those exclusionary crimes that were being sought in people's backgrounds referred to section 15HB, with no consultation of the working group the second draft, or the draft that we received, now refers to part II of the Crimes Act. Part IIA of the Crimes Act refers to industrial disputes, picket lines and lockouts. We do not think that these have anything to do with maritime transport security, and we were assured at every

meeting that the unions concerned were being borne in mind and that any industrial activities, past, present or future, would not be for consideration under the maritime security cards.

ACTING CHAIR—Thank you, Mr Summers. Ms Whyte, do you have any comment to make?

Ms Whyte—Yes. I would like to adopt those comments as our submission in addition to the submission that we have already filed and to make a few remarks. Firstly, I would like to assure this committee that the Transport Workers Union is committed to securing Australia's ports. However, we would like to emphasise that the policy behind this instrument and the bill should not be forgotten—that is, to minimise the terrorist threat on Australia's wharves. That needs to remain the central focus. The other important point that we would like to make—and you have probably already heard it, and it is made throughout the submissions of all of the unions and some other industry participants—is that there needs to be borne in mind throughout the deliberations of this committee the distinction between general criminal activity and criminal activity that potentially contributes to or precedes terrorist acts.

We would also like to ask the committee not to be tempted to be swept up in the hysteria that has recently engulfed not just port security but also airline security, given the recent media reports regarding Schapelle Corby and others. Amongst that reportage were ill-informed calls for broad ranging and sweeping background checks. On that point, we would like to assure the committee that the working group that has been established and has been working hard has carefully considered the list of crimes against which applicants for this card will have their backgrounds matched. That was the result of careful deliberations, and we would suggest that the debate that has recently transpired has been ill-informed, as I said, and perhaps aimed at grabbing a headline rather than addressing the real issues. We have worked hard to ensure that, against that background checking, people who pose a genuine risk to security will be excluded from working in secure areas whilst those who do not pose a genuine security threat are not. I would like to endorse Mr Summers's comments about the role that DOTARS must play in this post roll-out. They must retain that central vetting agency for all sorts of reasons, not least of which is the privacy of people applying for these cards.

Finally, I would like to make a comment about the consultation process. I would like to categorise the consultation process in three ways, calling the first category pre last Friday, the second category post last Friday and the third category offshore oil and gas. Pre last Friday, for the most part we were very pleased with the way the government had approached the consultation process. After muscling our way in on the working group to start with, we then worked very well with other maritime industry participants and DOTARS officials. We met on a regular basis, and we believed during that period that we were being listened to and that our views were being taken back. Sadly, that was not the case for the offshore oil and gas industry participants. I know that some of the organisations involved in that part of the industry were contacted only as recently as six weeks ago, well and truly after the legislative horse had bolted.

I will now turn to post last Friday. As Mr Summers has said, we were presented with an email late on Friday afternoon which potentially completely changes one of the most fundamental issues that the working group has considered—that is, the background checking. There are 30 more crimes against which people's backgrounds will be checked. One of those is interfering with political activity. That alone throws up all sorts of concerns for my organisation. There is an argument to be made, I think, over whether or not part 2A is included in part 2—I do not think that is clear at all. And of course, if we get to that stage, that then picks up industrial disturbances, lockouts and strikes, something that, I can assure you, has never been the subject of deliberations in the working group. The whole time we impressed, and thought that the message had got through—when I say 'we' I include our other industry colleagues—that any crimes should have a demonstrable link to terrorist activity.

With regard to the email last Friday, firstly, we would like to reserve our position and our right to submit further submissions once we have had the opportunity to properly consider this latest draft. We have not had that opportunity yet. As Mr Summers has already commented, that email also seemed to circumvent this process—to say with some authority and finality that these regulations will be made and will not be changed after a certain deadline irrespective of what this committee has to say. That was something else that we found curious. That is all the additional comment I have to make.

Mr Johnston—Primarily we became involved in this inquiry as a result of the expansion of the offshore oil and gas industry sector. We have large numbers of members working in that sector both in the maintenance and refurbishment operations and construction operations of offshore and onshore oil and gas facilities. Our concerns are many and have been covered in the evidence given today and in the submissions of both the Maritime Union and the TWU. We are very concerned about the criminal background checks—their adverse

effects on our members and the impact on their families if their livelihood is jeopardised as a result of them having some minor offence on their record and of that being highlighted and swept up by this security inquiry and obviously by the legislation.

We have another concern in the industry with the involvement, as a result of lack of skills, particularly in the offshore oil and gas industry, of labour coming from overseas—guest labour coming into the country from both the Asian region and Europe. We have had experience with workers from other countries coming to Australia on short-term and long-stay visas working within the shipbuilding and ship repair sectors, for argument's sake, and absconding. We have had other issues of disagreement with employers who have brought these people out on the basis of their skills—their inability to speak English and their lack of understanding of industry practices. We think that they are very important issues to be considered in relation to any security measures which may be implemented that are in excess of what already exists within the industry.

I want to wind up because I am aware our time is short; we do not have a great deal of time. Mr Summers is going to make the major submission on behalf of all the unions. But, in finalising my brief submission, it is the AMWU's position to support legitimate security measures that are proper and justified on the basis of fairness and we will bitterly oppose as best we can the introduction of any process that unfairly affects the members we represent who work within the industries that we service. I will end it there.

CHAIR—Are the introductory remarks completed?

Senator FERRIS—Yes, they are.

CHAIR—Could you define for me what a minor offence is?

Mr Johnston—A minor offence might be driving through a red light or—

CHAIR—That is not a criminal offence.

Mr Johnston—an argument in a hotel that might have led to a dispute.

CHAIR—We are talking about criminal offences, aren't we?

Mr Johnston—Well, who defines that? At what level does an offence become criminal?

CHAIR—But you must have some idea in your own mind. Is it all right if you are a heroin user?

Senator FERRIS—No, because that is a criminal offence. Driving through a red light is not.

Mr Summers—I think the differentiation is not between 'minor' and 'major'; it is between what is directly and can be demonstrated to be connected to terrorism and what is an act of a criminal nature. In my opening remarks I spoke about the very good work of the state police, connected to the Federal Police and ASIO, and it is their role, we believe, to address any criminal activity, whether it be on the wharves or the ships—

CHAIR—But wouldn't it be fair to argue that if I were a drug runner working on the wharf—and there probably are some there—I could be subject to blackmail by people who knew I was a drug runner and who happened to be in the business of terrorism?

Mr Summers—I think that could be said for any number of circumstances—anything.

Senator O'BRIEN—But, if a person is not convicted, they are not excluded. Chair, you are not getting to the point that the witnesses are talking about.

Ms Whyte—Are you a drug runner currently or were you a drug runner and you were convicted?

CHAIR—Does it matter?

Senator FERRIS—What a stupid thing to say.

CHAIR—Senator Ferris says it is stupid way to open, so I will throw to her.

Senator FERRIS—I was interested in exploring a comment made by Mr Johnston and one made by Ms Whyte which might throw some light on this. Mr Johnston, one of the comments you made was that you were interested in legitimate security that can be justified, and I wondered if you could explain that a little more. Ms Whyte talked about the demonstrable link to terrorism in terms of convicted criminals. I think there is probably a link between those comments that you made in your introductory remarks, and Mr Summers made some as well. If you could flesh that out a little for us so that we can understand what you, Ms Whyte, see as being the demonstrable link to terrorism in terms of convicted criminals. And then Mr Johnston.

Ms Whyte—Can I preface my comments by saying I am not an expert in that particular field—

Senator FERRIS—Yes, sure.

Ms Whyte—but there is apparently a study floating around DOTARS which has that precise aim: to look at the sorts of crimes that we can predict with some certainty and—

Senator FERRIS—Accuracy?

Ms Whyte—some accuracy that might potentially lead to terrorist activity. I have not actually seen the report, but there are people out there who are experts in that field and they can do that work.

Senator FERRIS—Does your union have a view on what those might be, or are you going to have a look at that report, if and when you ultimately get it, and then respond to that?

Ms Whyte—I guess we would do that. But can I say—Senator Heffernan picked up on this before—that having a debate about what is a minor offence and what is a major offence is futile, and it is a point that we have made in our submission. The reason it is futile is this: even for people who are convicted of what society would describe as significant or major crimes—murder, assault or armed robbery, which are things the public would generally find abhorrent and think that people should be incarcerated for and serve their time—do not necessarily become terrorists. In fact, 99.999 per cent of them do not. They are convicted for their crimes. They are not very nice people and we do not like them very much, which is why they get locked away. They get locked away supposedly to pay their debt to society—

Senator FERRIS—And to rehabilitate.

Ms Whyte—As a society, we also believe that those people, when they are released, have been rehabilitated. It is getting off your original point a bit, but that was—

Senator FERRIS—I understand what you are saying and it is very useful to have you flesh that out. That is where I thought you were probably commenting, but I wanted to clarify it.

Mr Johnston—As a union official, I work in and around the ship building-ship repair industry, I have worked in the offshore and oil and gas sectors and I am an ex-seaman. So I have been right in this area we are talking about which is targeted for the increase in security. I have been able to go into defence facilities through a proper screening process through the Federal Police. I have been checked a thousand times by the Federal Police. I am satisfied that the check they do on me is adequate for access to these facilities—for example, the Submarine Corporation. On the other hand, I have been to defence facilities where I have had to go through a stringent check to get entry to the place and contractors just drive through with their trucks and nobody checks their cargo or anything else. That goes on all the time and union officials just laugh and say, ‘There goes Harry the terrorist into the place while we’re getting almost fingerprinted.’

CHAIR—Do they swipe a card or something on the way in?

Mr Johnston—In some facilities they go to the gate. Because they have been in there a couple of times they are recognised by the security guards and they just drive through. Or they might go to the pass office, get a pass and go through unescorted. Union officials have to be escorted.

Senator FERRIS—What do you mean by ‘legitimate security means that can be justified’?

Mr Johnston—Any screening at all has to be based on fairness and the protection of a person’s basic rights—workers rights and human rights, in this instance. They have to be considered when you check people. I do not think any employer should have access to personal details of a person’s past—for example, if he had been involved in some misdemeanour when he was young. I have personal experience with people, particularly on the waterfront, that have been through the correctional system, come out of that system, rehabilitated themselves and gone on to make a good life for themselves and their families. That can be affected if there is a scrutiny. That sort of information by some employers could be used unfairly and discriminatorily. We are very concerned about that. We want to cooperate because, in my experience offshore, going back 20 years ago, we have always said amongst ourselves, for the workers, ‘Wouldn’t this be a target for pirates’. We have always been aware that those offshore facilities, and indeed other onshore facilities, could always be subject to sabotage for whatever reason, well before September 11. We have been aware of the need to secure facilities, but it has to be done in a way where everybody’s rights are protected, nobody is discriminated against and it is done on a cooperative basis. I do not think any union or any person would oppose that. It is the hidden agenda, I think, that can cause us concern, and the abuse of the legislation.

Mr Summers—The working group that was so effective in this whole process considered this right from the beginning. The basic premise was that, while all terrorists are criminals, not all criminals are terrorists. So we had to differentiate, check it, recheck it and refocus on it if we were to supply the industry with the high level of security that it needed and we had to not be distracted by those other things.

CHAIR—Did you consider the intimidation and blackmail side of it? Say I am a former whatever I am and I have served my time, paid the penalty, been to jail and got out and I want to start a new life. The Special Branch in New South Wales, the cops, are a classic example of this. They could stand over me, if I am a former crim who is rehabilitated, and say, ‘We’re going to let everyone down the road know just exactly what you were.’ Did you consider that sort of stuff?

Mr Summers—We certainly did, and it is for those very reasons that we did not want anybody other than the Office of Transport Security to have that information and the result of the background checks. I know that cuts across a bit from what you were saying—

CHAIR—Yes, because it might go the other way. They might actually succeed in blackmailing a person into doing something they did not really want to do.

Mr Summers—That is right.

CHAIR—Did you consider that too?

Mr Summers—We considered it and we said, ‘Here is the list of crimes.’ We worked off this very sheet, and we said that if a person is a drug runner then they should be arrested and put in jail. That is fine. We support that. We had that discussion before.

CHAIR—Can they go back to the wharf after they get out?

Senator FERRIS—They may not even have been convicted as criminals when they were working there.

Mr Summers—That is right. We are talking about convictions.

Senator FERRIS—That is the point.

Mr Summers—If they have served their time then they should be able to go back and work again. Otherwise, how are they going to earn a living if they cannot do it in a legal way? So we said that crimes like treason, espionage and terrorism—harming Australians—are most certainly disqualifying and those people should not be on the waterfront at all.

Senator FERRIS—Or in the airports.

Mr Summers—They are very seriously connected to terrorism.

CHAIR—Can we have that document?

Mr Summers—You sure can. This is the list that we worked off almost the entire time through. What we saw in the first draft, as I mentioned before, was that there was reference made to part 15HB of the Crimes Act 1914. The second draft—the draft that we received late Friday afternoon—changed the reference and referred then to part II of the Crimes Act, which also includes picket lines, industrial disputation and lockouts. That is certainly not a question of terrorism. I do not think there would be too many people in Australia who would think that it is, so we think it has overstepped the mark. It was changed without any consultation with the working group.

Senator O’BRIEN—Firstly, I want you to give us an indication of the membership that each organisation has which would be affected by this legislative and regulatory regime.

Mr Summers—The Maritime Union has a few more than 10,000 members: seafarers, wharfies, saturation divers and port workers.

Ms Whyte—It is a bit hard for us to put a figure on all of this.

Senator O’BRIEN—You have a lot of drivers who go in and out of gates and the like.

Ms Whyte—Yes. They are not confined company employees of maritime industry participants. But the sorts of numbers that have been bandied about are somewhere in the vicinity of 25,000. Everyone keeps telling us that the freight tasks are set to double over the next 10 or so years, so you could easily double that number.

Senator O’BRIEN—Or get bigger trucks.

Ms Whyte—It is a big issue for us.

Mr Johnston—In the offshore oil and gas industry sector alone—again, it is very hard to define the numbers because there is a continuing construction phase going on—the number would be in the thousands, maybe between 5,000 and 10,000 tradespeople working, depending on how far you expand the security net. That would determine how many members.

Senator O'BRIEN—In your submissions in writing and your evidence today you refer to the working group which was established by the Department of Transport and Regional Services to develop the proposed maritime security identification card. Do you know when the group was established?

Mr Summers—The group was established in September last year out of a summit meeting that involved about 70 members of what were called maritime industry participants. That was broken down to a small working group.

Senator O'BRIEN—How did you muscle your way in?

Mr Summers—We had to muscle our way in a lot earlier than that. We had to muscle our way in when we were discussing the maritime transport security bill in its first instance. We think we proved our worth there.

Senator O'BRIEN—Who is actually on the working group?

Mr Summers—The working group consists of industry, unions and the department.

Senator O'BRIEN—So various employer representative bodies?

Mr Summers—Yes.

Ms Whyte—Patricks, P&O, the ship owners, the seafarers, all the port authorities—

Mr Summers—ASIO, the Federal Police.

Ms Whyte—and Customs.

Senator O'BRIEN—I think you were saying that the process was working well until you got the email last Friday.

Mr Summers—We thought it worked exceptionally well. If we consider the number of variables involved in checking workers' backgrounds and the enormous challenges that that throws up, I think it worked extraordinarily well, bar the last draft.

Senator O'BRIEN—So did the working group members form a consensus view on most issues?

Mr Summers—Absolutely.

Ms Whyte—Yes, absolutely, on just about everything. There is one issue that I can think of where agreement was not reached and we were starting off with a very long list of issues to work out. This is in stark contrast to the process that was adopted when a similar card was issued in the airlines. There was no consultation at all; it was just brought in. It is no coincidence that that process has been fraught with difficulties and problems. In fact, you will often hear a public servant whispering that they are looking at this as an opportunity to try to go back and fix the mistakes they made when they did not consult the airline industry and introduced the ASIC card.

Senator O'BRIEN—Did the department consult with the unions on these matters outside the working group process?

Mr Summers—They did consult with the Maritime Union. We had a couple of discussions in our offices in Sussex Street in Sydney that were to enhance some of the specific problems that we brought up. One of those was about seafarers that are out of work, waiting to be picked up. 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 car 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.' We have to try to get around those things and they are specific to the MUA, and I suspect that happens in other areas, but only on the maritime security card—certainly not on the offshore. That is pretty obvious because unions like the AWU, who represent an enormous proportion of the work force, are not in this process either.

Senator O'BRIEN—Did the department give an explanation for not involving certain unions at all, and some not at the earlier stages, such as the AMWU, amongst others?

Mr Summers—I think it was a bit of a moving feast to begin with. If it was just to do with ports then it would deal with the Australian Institute of Marine and Power Engineers and the maritime union. When it broadened to include the offshore issues then, of course, it included our friends from the AMWU and the TWU.

Ms Whyte—I am not saying this in an overly critical way, but I suspect that it did not occur to the people responsible for getting people together that it might be a different set of unions. I was contacted, and obviously we do not drive the trucks across the water! We were asked whether we wanted to be consulted about the

offshore issues when we have no interest in them, yet the AMWU, the AWU and the CFMEU, who obviously do have an interest, were not contacted.

Senator O'BRIEN—Can you explain further what happened with the consultation in relation to the extension of the new maritime security regime to the offshore oil and gas industry?

Mr Summers—I cannot explain too much because we had no consultation at all in that part of the process. So while there was a very good and effective process on the security cards, there was nothing for the offshore. In fact, I went to the roll-out and the introduction with companies like Exxon, Mobil and Shell in Australia, and everyone was looking at each other. They had no reference and no way to put this into perspective. It was very difficult. The answers were not even forthcoming from the department. When some of our leading companies in this country ask which part of my drilling unit, for example, will come under a maritime security zone, or a secure zone, the answers are far from clear. I understand that there is still some confusion.

CHAIR—Can containers go out to offshore rigs?

Mr Summers—Yes, they can, on the back of what we call rig tenders.

CHAIR—So wouldn't you have an interest? Your truck drivers put the container on the truck—

Senator O'BRIEN—No.

CHAIR—No?

Ms Whyte—Our members only get—

Senator O'BRIEN—He is trying to start a demarcation dispute, for goodness sake!

CHAIR—No. What I mean is that a container might start out in the backblocks somewhere and a truckie might drive the bloody thing to the wharf. Isn't that of interest for you? Who is to know what is in it, how it got there and what happened on the way?

Ms Whyte—Because we are talking about the requirement to hold a security card. You only need to hold a security card if you are entering a secure zone. The secure zone would be the offshore facility.

CHAIR—Surely it needs to be just as secure before you get to the offshore—

Ms Whyte—Yes. There might be one or two but, unless our members are crossing that line, we do not have an interest. Quite apart from that, we—

CHAIR—Well, there you go. It is a different culture. We farmers have an interest all the way through.

Mr Summers—You make a very important point. In our submission we said that there are gaping holes that are not addressed in this stuff, and some of those are transshipped empty containers.

CHAIR—If you quarantine every bit of country, you are obviously going to have weaknesses. If your union is interested from the day it leaves—from wherever it leaves; the factory at Bullamakanka—all the way through, you can be assured that you are doing your part. But, if you are interested in it only to a certain point—

Senator O'BRIEN—The reality is that most of the containers that go onto the wharf come from overseas, where there is no possibility of involvement.

Mr Summers—That is right.

CHAIR—I do not know the answer to that one.

Senator O'BRIEN—Perhaps we will get back on track by asking whether you have had any involvement at all with the Inspector of Transport Security, Mr Palmer. Is Mr Ellis acting in any way in that role with regard to the new maritime safety regime?

Mr Summers—No. I think the highest ranking person in the department was Peter Yuile at one meeting when everything was discussed and settled. Then we had a bit of disruption with the Schapelle Corby case, and everything fell in a big heap after that. But, generally, with regard to the working group, it was John Kilner from the department, as far as I can recall.

Senator O'BRIEN—So there was no contact with the Inspector of Transport Security over this matter. I thought an important element of the inspector's role was to monitor systemic weaknesses in transport security. This position has been funded in the budget for the last financial year. Could you tell me whether you have had any contact with the Inspector of Transport Security in relation to any other transport security matter?

Mr Summers—No, and that is why we take opportunities like this hearing very seriously—perhaps more seriously than the department do—to put up issues that are gaping holes in the security of our ships, our ports and our critical infrastructure, and I have listed those in my submission. They go to things like foreign seafarers, an issue which remains uninvestigated, and the lack of Australian shipping. I think the department found that when they sought to get people who understood the industry into the department, there was no skills base from which to draw. So they came up with that themselves. We have outlined that for a very long time.

Other issues include the coastal permit system and how that erodes the Australian shipping industry and has a knock-on effect for transport security; our domestic fleet; the skills base, which I have spoken about; and container inspections. The senator mentioned empty containers and full containers. Only about three to five per cent of full containers are inspected—the rest go through uninspected—and zero per cent of empty containers. That means that hundreds of thousands of sealed containers are coming into our country, being driven through our cities and being put in container parks until space can be found on a ship to take the containers back to their origins. They stay completely empty and unchecked 100 per cent of the time, so it is a real danger. Lastly, there is the issue of high-consequence goods like ammonium nitrate being transported around the coast, which I am sure everyone understands.

Senator O'BRIEN—I take it from your earlier answers that the last draft of the regulations was preceded by a number of other drafts.

Mr Summers—Yes. I think there were two.

Senator O'BRIEN—Two other versions?

Mr Summers—Yes.

Senator O'BRIEN—Clearly the final version does not reflect the consensus position of the working group.

Mr Summers—The working group was absolutely solid on the issue of what happens post July. The impact of what is described in the act is unacceptable to everybody in the working group—it affects the entire maritime industry—yet that seems to have gone unaddressed and has been left open. Nobody knows what is going to happen. Effectively these regulations are for the next nine months—and do your best after that. The other issue includes the changes from the first draft to the third draft about the reference to the Crimes Act and which crimes they include. So we are happy to have a look at all those crimes, but we do not think that industrial disputation should be included.

Senator O'BRIEN—Have members of the working party been told whether the department will have regard to the report of this committee before the gazetting of the new regulations?

Ms Whyte—I think it is pretty clear that they will not. The instruction that no change will be made post 21 or 22 July sends a pretty clear message about what that department and its officers think of the deliberations of this committee. It pre-empts all the submissions, all the evidence and your own deliberations, so I think scant regard will be paid to this process, if Friday's email is any indication.

Mr Summers—That email is very confusing to us, and we need some clarification from the department. The email said that there will not be any more amendments made to this version of the regulations because it has to go to the Executive Council on 21 July. However, they invite our comments by 22 July, the day after the regulations are made. It gives no consideration to any determinations or anything that this committee can uncover, because you report back on 9 August. The department consider this to be done and dusted. They say, 'By all means, have a talk about it and report to us after it is made, but there won't be any amendments.'

Senator O'BRIEN—It is clear from all union submissions received by this inquiry that privacy is a key concern of employees affected by the new security regime. Am I correct in understanding that that concern relates to what has been called the post roll-out phase when issuing bodies, including employers, will receive sensitive background information that will form part of the security assessment?

Mr Summers—John Kilner was very specific at our last working group meeting. He said that he only had a budget of \$300,000 and did not have enough money in his budget to accommodate those very specific safeguards that the entire maritime industry wanted to build into this. They were picked up for the nine-month roll-out period, from 1 October to 1 July 2006. After July 2006, the Office of Transport Security relinquishes its role of having that information on the results of background checks of up to 200,000 Australian workers and gives that back to the employers, who absolutely do not want it. They can speak for themselves. They will then have the responsibility of knowing the criminal background. The Federal Police have said that they cannot just pick out which bits; they will have an entire test of your entire criminal background and give it to

your employer. The employers know that that will mean that any decisions that they make on the employment of their workers could be construed as being based on their criminal backgrounds, even if it is innocently made for other reasons. We support the employers on that.

Senator O'BRIEN—It was made clear to you that, so far as the department was concerned, this was a budgetary issue.

Mr Summers—Absolutely. In fact, I think there was some discussion about getting the Attorney-General's Department to take responsibility for that. I do not know how these processes work. I do not understand these processes. All we know is that the Office of Transport Security is set up to handle this in the first instance and would get just about everybody in that nine-month period. It would not be a big impost, given that these cards last for five years, to ask it to remain in that very critical part of the process.

Senator O'BRIEN—Have all the steps in the application assessment and notification process been clearly explained to the working group?

Mr Summers—I think it is fair to say that, at the last working group, there was a roll-out chart and there was a lot of discussion and confusion about it. We got a rough general idea of where it works, but there is still some confusion.

Ms Whyte—The process post roll-out whereby someone is excluded but not disqualified is still not clear—at least, it is not clear to me; I do not know if it is clear to others. There is a real issue about who makes the discretionary decision. We all know what happens pre roll-out—that is, the government make a decision based on the individual circumstances of each case applying whatever tests or taking into account whatever considerations they come up with. Post roll-out, it appears that the employer or the issuing body, who can be the employer or have a relationship with the employer, makes that decision. It is not clear against what factors the discretion will be tested or made. None of that has been articulated in any of the meetings and it is not prescribed anywhere either.

Senator O'BRIEN—So you think it will be arbitrary in some sense that there will not be a consistent application across different administering bodies—is that what you are suggesting?

Ms Whyte—That could well be the case. In fact, that is one of the issues we have raised. When you have a situation where there is more than one issuing body, you can have someone issuing-body shopping.

CHAIR—Like judge shopping.

Ms Whyte—Yes, marching across the country looking for some issuing body who is perceived to have a soft touch. This is especially so for people who need the card very quickly. That is when system starts to get a bit corrupted.

Senator O'BRIEN—So you think there is a potential for actual corruption of the system?

Ms Whyte—Well, certainly for unfairness.

Mr Summers—Inconsistency, we would probably say.

Ms Whyte—We just do not know.

Mr Summers—In the case of a green light, you get a card; in the case of a red light, you do not get a card, and that is those disqualifying ones; but, in the case of an amber light, we need to know what discretion is applied and how it is applied—is it transparent and is it consistent?

Senator O'BRIEN—All right. You talked about the issue of the changed proposed regulatory regime with regard to past criminal records. I want to ask about the category of offences proscribed in draft regulation 6.07C, as 'Maritime-security-relevant offences', conviction of which constitutes an 'adverse criminal record' as provided in draft regulation 6.08A. Are you familiar with the draft regulation 6.07C, including the table prescribing maritime security relevant offences?

Mr Summers—Yes, we are. That table—the table in the regulations—was picked up from the table that I handed up earlier. It is in a different format, and it makes different references, as I have mentioned before. Essentially, we think that the first two are those that are disqualifying. So, if you have any of those convictions, you would not get a card. We support and embrace that, because we do not think that people who are clearly terrorists should be allowed on. The other six are what was described as 'exclusionary', which would raise an amber light and we would ask some questions. That is where the discretion is applied. But we do not know how.

Senator O'BRIEN—You have already articulated that the draft which in 6.07C now reads 'an offence mentioned in part II of the Crimes Act 1914' used to read 'a serious Commonwealth offence within the meaning given in section 15HB of the Crimes Act 1914'. I take it from your earlier answers that there was no consultation or discussion about this change with the working group.

Mr Summers—Our last working group meeting held in Melbourne considered the first draft of regulations, and the industry raised a number of issues but there was no discussion on that. I have to say though, earlier—way back in September, October, November of last year—there was discussion about part II of the Crimes Act, but it was clearly identified to everybody, and I am sure it is on record, that at no time would this include any political activity or industrial activity. But now, as we go back into it and it is re-introduced, when we look at part IIA it goes into those very, very specific industrial disturbances, lockouts and strikes.

Senator O'BRIEN—I wanted to draw your attention to section 28 of the Crimes Act, which falls within part II and prescribes what it describes as interference with political liberty. Have you discussed that provision with the department, with reference to any restrictions it might impose on your members' ability to undertake industrial action?

Ms Whyte—Absolutely not. There have not been any discussions at all. As I said, we were notified of that on Friday afternoon. I did not even read that email until yesterday. That is something that we have grave concerns about and that no doubt will be the subject of further and almost immediate communication with them.

Senator O'BRIEN—So this is really a complete surprise, with no consultation whatsoever?

Ms Whyte—It is a hand grenade, I think.

Mr Summers—As is 'destroying or damaging Commonwealth property', because if that means a fence or something of that minimal kind then it could have implications again in industrial activities. Although we are not condoning it, it is something that is not connected to terrorism.

CHAIR—You are not into wrecking fences, are you?

Mr Summers—We certainly are not. We build fences, Senator.

Senator O'BRIEN—Sitting on them!

Mr Summers—So I would just remind you, Senator O'Brien, that we were working off the draft that referred to 15HB, not the draft that referred to part II.

Senator O'BRIEN—Thanks for that. I want to ask about cost recovery. Draft regulation 6.09A says, 'An issuing body may recover the reasonable costs of the issue of an MSIC from the person who asks the body to issue the MSIC.' Will the cost burden fall on employers or employees?

Mr Summers—We believe it should and would fall on employers and we have made this blatantly, painfully obvious in every working group. We think that the working group accepted that that would be a cost of doing business. The mantra that DOTARS has adopted is that there is a cost of doing business in a terrorist secured atmosphere and we think this falls within that cost. We are concerned about that clause of cost recovery. It could cost up to \$200 per applicant and while this has been imposed, and we embrace it, we do not think we should be paying for it.

Ms Whyte—There is also an issue with the cost if DOTARS do not retain their role post roll-out because, for example, a truck driver may service one or more industry participants who have their own card and their own discretionary procedures. That driver, employer, prime contractor or whoever might have to apply and pay for several cards to get them access into several places.

Senator O'BRIEN—Was it suggested to you that you would need a card for each establishment or just one card for the industry?

Ms Whyte—That is not clear at all.

Mr Summers—The security card would show immediately that the employee had had a background check. We made sure that was consistent and it was a cost-saving device for the industry as well as a convenience for employees that there would be one card recognised and it would be portable. The other issue that we steered away from is access. The employee has the maritime security card; the issue of access falls on the employer to negotiate with the employee on just how and where that gets them in. That card is not going to get them in a gate or into a maritime security zone. There is an added impost on industry and another cost again as to how that card will give them access through the gate.

Ms Whyte—It was one of the issues raised by the Shipowners Association. They were concerned that if there were a ship leaving for overseas and they needed a worker within 24 hours, given that a card from another issuing body merely verifies an employee's identity, they would have to trust the process behind the issuing of that card or go through the process themselves.

Senator O'BRIEN—Under the new regime what will happen to current employees who fail to gain an MSIC? Will the employer be required to find them alternative employment?

Mr Summers—DOTARS is pretty comfortable with the fact, even though they admit they do not understand our industries, that other employment within that industry can be accommodated for that employee. They would be moved to another part of the same industry outside the maritime security zone. Unfortunately, that is not the case on a ship because an entire ship would be a maritime security zone; they cannot put you up under the forecastle any more and say that you are out of the way—I am sure they would like to. On wharves, it would be the same sort of thing. A wharfie who works on the waterfront, the interface between a ship and a wharf, cannot be moved across the road or rail track to somewhere else. I do not think enough consideration has been given to this and we have made the point again that we would be seeking compensation.

Senator O'BRIEN—On that point you could not move someone from an actual waterfront wharf to a container terminal, could you? That would still be maritime security—is that clear to you?

Mr Summers—Yes.

Ms Whyte—A secure zone, yes.

CHAIR—That would be fair enough though, wouldn't it?

Mr Summers—If that could be accommodated and everyone was happy with it that would be fine but there are specific areas, and this is just the maritime industry, such as trucking, rail and offshore. For example, you cannot move anyone other than the offshore. So there are some areas where it could work and if it accommodates the employee, we are happy for that to be facilitated. But we do not think it is practical.

Senator O'BRIEN—So you told the department this. What was their response?

Mr Summers—Their response was, 'We're implementing it. They'll have to do their best.'

Ms Whyte—It is industry's worst nightmare. In fact it was the Shipowners Association again which raised the issue of redundancies with DOTARS.

Senator ALLISON—Did you say you would be going for compensation?

Mr Summers—We would be seeking compensation.

Senator ALLISON—What does that mean? Would you seek compensation on behalf of those employees who would effectively be facing the sack?

Mr Summers—Suppose an employee had been working on the wharf for 20 years and had a fantastic work record and history. If this were brought in and if he, through whatever processes, were denied a card, could not come to work and nothing else could be found for him to do, he would be redundant and we would seek a redundancy payment.

Senator ALLISON—So this compensation you are talking about is just redundancy pay?

Mr Summers—Yes.

Senator ALLISON—You are not talking about the government providing this redundancy pay; you are talking about the shipowners providing it?

Mr Summers—We would be seeking it from the employer, whoever that is.

Ms Whyte—We do not like to contemplate that stage of the process.

Senator ALLISON—Is there any estimation as to how many might be in that category?

Mr Summers—It depends on the outcome. If it goes back to everything that is included in part II, I think we will be facing enormous disruption to the industry and enormous impost on the employers, putting employers against employees unnecessarily. If that is the case, in the extreme it could be very damaging. If it is brought to bear in the spirit of the working group, then there would be very few people, I imagine, who would pose a true terrorist risk to Australia's infrastructure.

CHAIR—What is the difference between exclusion and disqualification?

Mr Summers—The disqualified are those who commit treason and espionage—they cannot get a card and will be excluded and get a red light. The exclusionary are those that would need some further consideration.

Ms Whyte—And discretion can be applied.

CHAIR—Yes, some discretion. What does ‘harming Australians’ mean?

Mr Summers—I think that is terminology in part 5 of the Criminal Code, and I think it means blowing people up in Bali.

CHAIR—That does not include child abusers? That is harming Australians.

Mr Summers—The type of crime is identified in chapter 5 of the Criminal Code on the far left column and the example of the crime is in the centre column. I think you have to refer to the Criminal Code.

Senator ALLISON—To go back to that point on compensation, would you support the shipowners and others getting compensation from the government to pay for those redundancies? What is your position on where that money ought to come from?

Mr Summers—We do not have a position on that, because, first of all, we do not think that our members are terrorists and we do not want to contemplate it. But, in the case that they would have to be considered, we would initially be seeking compensation from the employer because the member cannot come to work anymore—it is something that is imposed on them in the middle of their working life.

Senator ALLISON—Yes, I understand that.

Mr Summers—If the companies were able to get that compensation from the government because the government made these imposts and not the companies, that would be the companies’ decision.

Senator ALLISON—Are you talking about standard redundancy arrangements or something other than that?

Mr Summers—These are unprecedented redundancies. This has not happened to anybody before, so we would be looking to what that person may have earned in the future, probably coupled with how long they had been employed.

Senator ALLISON—So this would be a special redundancy arrangement you would be going for?

CHAIR—It would be a clean-out plan.

Mr Summers—We would be looking to protect our members who are caught up in this thing that—

Senator ALLISON—We understand that, but you have not yet figured out what that protection might be?

Mr Summers—No, we have not.

Senator O’BRIEN—I want to ask some questions about the ability of non-maritime security identification card holders to gain access to secure port areas under the proposed regime. The TWU submission contends that allowing noncardholders to access to secure areas, either in the company of a cardholder or under the supervision of a cardholder, presents a security risk. The TWU submission further makes the point that supervision by closed-circuit television would not be acceptable, not least because noncardholders may be monitoring other noncardholders, and asserts that the airline industry practice of allowing people who have not been the subject of security screening to access secure areas is a significant security risk. I want someone to explain how people who do not hold ASI cards can access secure areas of airports at the moment.

Ms Whyte—This is a real problem at the airports. We can talk about people convicted of drug offences and the potential to bribe them and all sorts of other scenarios, but this is a real security risk that is happening right now. The security function—for example, of the Sydney Airport Corporation—is contracted out, but it is the Sydney Airport Corporation that has the responsibility to comply with Commonwealth security requirements.

Sydney Airport Corporation contracts out to contractor A. Contractor A contracts out to contractor B. Contractor B mostly employs casuals because this is a pretty miserable industry where there are miserable rates of pay and miserable working conditions and the turnover of staff is very high. So you have a bunch of casuals who are well removed from the person who has the primary obligation to comply with the security requirements. Because of the nature of the industry and the high turnover of staff and because of the long delays in applying for and receiving an ASI card, often the security guards themselves do not have an ASI card. In the airline industry there is the capacity to issue visitor passes and day passes. I am not precisely sure which category but a lot of those guards are holders of day passes, and those passes are extended and extended

again. There is a real question as to whether or not, given the nature of the industry, those persons should even apply for a card in the first place.

CHAIR—You could lend them to your mate.

Ms Whyte—There are all sorts of very disturbing anecdotes about the capacity for noncardholders to walk airside and into secure zones.

Senator O'BRIEN—Airports and ports are clearly very different places. You are saying that you are concerned that some of the flaws of the administration of the aviation security regime may be migrating to the maritime security regime.

Ms Whyte—Yes. We spend a lot of time talking about what will knock someone out in terms of getting a card—what will rule someone out and when discretion will be applied. We can have a very long debate, and we have had them, about those lists of crimes yet we will get someone who has never had a background check and as long as he is being supervised—and that is not direct supervision by an MSIC holder; that is by a television—we will let that person wander around when the person operating the camera and ensuring that things are picked up may not have a card themselves. That is the biggest security issue—bigger than whether or not someone has been convicted for drug offences.

CHAIR—But surely the biggest security issue is the fact that if you were the terrorists you would put someone who is the cleanskin into the system.

Senator O'BRIEN—That is a possibility.

CHAIR—You would be a dope if you did not if you were in the business of getting there. Of course you would put someone in who did not create any ripples or ring any bells. They are probably already in the system.

Ms Whyte—I do not know who said it but terrorists do not travel in containers; they travel first class and stay in—

Senator O'BRIEN—That is not quite true though, is it.

Ms Whyte—I am not saying that we said it. I suspect that is a reason that the report studying the links between crimes and terrorist activity was not actually ever released. I suspect that it did not really say what it wanted to.

Senator O'BRIEN—Have you raised this issue with the department? What response have they given you?

Ms Whyte—It is still there. I will say again that we have not had a chance to properly read the latest version but that was raised certainly in our response to the regulations a couple of weeks ago. I notice that it appeared in—

Senator O'BRIEN—You mean it has not changed.

Ms Whyte—No.

Senator O'BRIEN—Can you tell us how the needs of contractors and other persons who need access to secure areas can be accommodated while maintaining the maritime security regime?

Ms Whyte—I guess by direct and proper supervision by a cardholder. That is the theory behind it.

Senator O'BRIEN—Which of course will be a cost.

Ms Whyte—Yes.

Senator O'BRIEN—The joint union submission argues that industry participants who abuse the maritime security regime to achieve other objectives ought to be penalised. Can you explain the circumstances of the bulk vessel—I think it is the *Flecha*—and why it is your view that actions taken by the captain were an abuse of the maritime safety regime?

Mr Summers—Yes. I have got it written out somewhere in the papers I have here. Earlier this year there was an International Transport Workers Federation inspection at the request of a crew on a bulk ship in Wallaroo. The ITF went on board and found deplorable conditions for anybody who was existing on board the vessel. They came ashore and reported to me as the national coordinator. I asked them to go back and take some photographs, talk to the captain and gather some more information. When they went back, the captain had put the ship onto a security level 2 and raised the gangway to keep my inspectors off 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 of the *Flecha* got away completely unpunished and so did the company.

CHAIR—Has it been back since?

Mr Summers—The *Flecha* has not been back since. Generally what happens in this regard is if a ship has been charged with pollution or these sorts of activities they change that ship to another run so that we cannot continue to follow up. 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 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. We think that because we want to be included, because we are part of the security structure, there should not be penalties involved, especially when people like the captain of the *Flecha* were able to get away with clearly flaunting the maritime security regulations and legislation.

Senator O'BRIEN—I take it you have raised this matter with the department.

Mr Summers—Certainly. We have asked the department directly for an investigation and some understanding of how that was to happen so that it could not happen again, and that was not forthcoming.

CHAIR—With the ID, is there going to be a set way to wear this thing, instead of, for instance, that turnout that hangs around your neck which, if it got stuck in something, somebody could choke on? Is there some occupational health and safety standard of what is a safe ID?

Ms Whyte—In the airline they wear a similar chain to the kind that many organisations use.

CHAIR—Couldn't that be tangled up in something? Couldn't something around your neck choke you?

Mr Summers—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 it 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.

CHAIR—Anyhow, that needs some thought.

Senator O'BRIEN—Okay. But if you abuse the system by pretending there is a security alert, there is no adequate penalty?

Mr Summers—There is nothing—nothing that we can see in the legislation or the regulations. There is nothing to stop that captain coming back and doing it again.

Senator O'BRIEN—The joint submission says that the abuse of the coastal shipping permit system does not just affect the industry but also presents a security threat. Can you tell the committee how you believe the coastal shipping permit system is being abused and what security threat is associated with this abuse?

Mr Summers—First of all, the Maritime Union and other maritime unions support the permit system that allows other ships to trade on the Australian coast carrying Australian coastal cargoes when there is not an appropriate Australian ship. The abuse of the system is that they are given out very generously with very little notice and effectively erode Australian shipping because they compete with Chinese seafarers, for example, who work on extremely low wages of up to \$2 a day, and flag of convenience vessels, which have no taxation liabilities because of the way that they are structured—they have no regulatory framework at all and they come in here paying their crews whatever they want. So if that is the competition that we in the shipping industry have to compete against, there are really considerable security questions that come out of that—for instance, and we have used this a number of times in Senate questions, vessels that are carrying ammonium nitrate that once were the cargoes of Australian seafarers on Australian ships which are secure. The most secure way of getting anything around the coast is this way, because they cannot be tampered with, unlike a truck or a train or anything else. That has to be identified. But that is given away to the cheapest bidder.

That was the case with the *Henry Oldendorf*, a vessel that was charged with carrying ammonium nitrate into our city ports all around the east coast of Australia. There were 21 crew on board the vessel, with seven different nationalities. I know the *Oldendorf* employer likes to mix up his nationalities so they do not have a

common language, they cannot organise on board, they cannot ask for more wages and there is suspicion all around the place. There are seven different nationalities in a crew of 20 on a very poor, 20-something-year-old flag of convenience vessel whose beneficial owner is impossible to trace. It could be anybody in the world. This is the sort of shipping that we are allowing on our coast because it is a bit cheaper. It is carrying ammonium nitrate and diesel fuel, which are in abundance on a bulk carrier like that, the consequences of which are catastrophic. There is potential for a catastrophic terrorist incident. We think it should be Australian shipping. Australian employers should be encouraged to invest in Australian shipping, specifically in cargoes of high consequence but also in containers and all our coastal cargo. The maritime security benefit of having a strong domestic shipping industry can never be overstated in a security environment.

Senator O'BRIEN—A security weakness identified in the joint submission is the proposed treatment of foreign seafarers under the new maritime security regime. Will the regime that governs the entry of foreign seafarers, including the crew of flag of convenience vessels, change?

Mr Summers—No. Australian seafarers and wharfies will be put under the microscope: their backgrounds checked by ASIO, the Federal Police and DIMIA. They will go through these very intrusive, very detailed background checks, presumably for all to see the results of after 1 July. While that is happening, we believe that there are foreign seafarers invited to come onto the Australian coast with no background checks at all. It is impossible to check a Chinese seafarer's background and impossible to check a Ukrainian seafarer who works on the Australian coast for a year at a time. It is impossible to go back to the dodgy Ukrainian company in Odessa to find out their background. I think we might be a little bit surprised to see the backgrounds of those people, although we never will. So, it is very unbalanced and inconsistent. We support maritime security, as I continue to say, for Australian workers—but we think that the introduction of and the abuses by foreign seafarers taking the places of Australian workers are real security risks as well.

Senator O'BRIEN—Can you tell the committee how you think the entry of foreign seafarers should be managed?

Mr Summers—We support ILO convention 185, which says that there should be an international biometric code and testing regime for all seafarers. There are about 1.3 million seafarers in the world. We think they are generally dedicated to the parts of the world where they trade and we do not think that 1.3 million is a very big database these days. I know that our government abstained from the recent vote that saw the implementation of 185. They have their reasons; they have explained to us why they think they cannot adopt it. But they voted neither for it nor against it; they abstained from it, and as a result there is no real way of checking who is on vessels other than through some things that the department of immigration have got going.

Senator O'BRIEN—Is there any evidence to suggest criminal or terrorist organisations have interests in flag of convenience shipping operations?

Mr Summers—There is evidence. I think the international maritime security community generally accepts that, for example, Osama bin Laden owns a fleet of ships. Nobody contests that anywhere, in any security argument in the world. I have visited Canada and the United States and had these discussions. They know that there are. The capacity to completely hide what we call the 'beneficial owner'—that is, the owner that gets the money at the end of the day and who can have some control over that ship—is completely supported by the flag of convenience system. So you can buy a vessel and be sure that the FBI, CIA, ASIO and all the intelligence networks in the world can never uncover who owns that vessel. This has been exercised time and time again when flag of convenience vessels have sunk, they have left a billion dollar clean-up bill and there is no-one to pin that bill on because the owner is hidden away.

The same would be said for terrorism. At a number of terrorist summits we have been to, international experts have told us about military cells operating and owning vessels. We have some documents to hand to the committee, if I can, that show that flag of convenience has been responsible for moving people, weapons, missiles, bombs, explosives and drugs—the *Pong Su* in Sydney Harbour is a great example. The Korean government understand the flag of convenience system; they flagged out the *Pong Su* just before she took a load of cocaine and heroin—in tonnes—into Australia. They understand the effectiveness of flag of convenience vessels. Yet these vessels are cheaper, so they are brought onto the Australian coast in lieu of ours.

This goes towards some of the terrorist activities undertaken in the maritime industry. It talks about terrorists being shipped into different countries in containers, through the port of Ashdod to Israel. It talks about some instances where they have uncovered supposedly empty containers and people have obviously

been living inside them. While the person has absconded themselves, they have found laptop computers, a bank of mobile telephones and a heap of those security cards for the aviation industry in the United States.

Senator FERRIS—No-one is suggesting this is right. That is what we are trying to put an end to.

Mr Summers—I am describing some of the examples that are in this document.

Senator FERRIS—I know, but we all agree that they are inappropriate.

Senator O'BRIEN—I think what you are telling us is that these regulations, this act, do not deal accurately with the threat.

Mr Summers—That is right.

Senator O'BRIEN—You talked about these empty containers. The joint submission refers to security concerns related to the hundreds of thousands of empty containers that pass through Australian ports each year. I think you said the current screening regime does not include the empty containers.

Mr Summers—There is no checking at all.

Senator O'BRIEN—And the regulatory regime proposed in these regulations will not change that.

Mr Summers—It does not address containers at all.

Senator O'BRIEN—Can you give us any further examples, in addition to any matters that you have already presented to us, where containers have been used to conceal persons or goods that pose a security risk?

Mr Summers—I think this set of papers goes a small way in describing some of those opportunities for drugs, drug running or people smuggling. If we find one empty container with evidence that it has been used to tranship terrorists or people of dubious character, then we can safely say that it has happened many times before and will continue to happen. In Europe there are many occasions where containers full of dead people have been uncovered because the people smugglers have just left them to die. There are plenty of opportunities to see that.

Senator O'BRIEN—I want to return briefly to the application of the new regime to offshore oil and gas installations. Are there any particular challenges related to the application of the new provisions in the regulations to offshore facilities that are not present in relation to domestic ports?

Mr Summers—I do not think that the implications of the offshore regulations have been explained to the industry, and certainly to the unions involved, well enough. In a port, for example, you can draw a line around the port and know that that is the security zone. That is not necessarily the case for an oil rig, a wellhead or a floating production facility. I know that our friends in the AMWU are not very clear on the implications for their members out there as well. I think there has been a lack of communication and consultation, and the result is confusion.

Mr Johnston—We would certainly want to look at offshore facilities specifically. It is not so much the security of the individuals; it is the security of the whole structure itself and support for that security in and around its actual location. That is probably the primary concern for any threat to an offshore facility.

I am comfortable with Federal Police checks on our people working in sensitive areas. I stated that earlier. I think that it is sufficient for the Federal Police to be able to check people's backgrounds and be satisfied that they do not pose a threat to security. Our people, as Mr Summers has said, are not terrorists. There is an element of conservatism amongst our members in relation to people that are deemed to be terrorists. We have to look at and identify the areas that are critical where our people work—fix the actual facility itself and make it secure. Then those people that work in and out of that can work within the framework of that arrangement, which is made to secure that particular operation.

Senator McGAURAN—Given the time, I will be as quick as I can and ask for quick replies. But I need to know the answers to two questions before I make something of an observation. Do the security laws governing the aviation industry include what you would consider the offending section—part II of the Crimes Act?

Mr Summers—I do not know. I have not dealt with aviation. We are aware that there were union officials who had their cards taken off them because they held a stop-work meeting. That was some time ago. Clearly, that is not what security is about.

Senator McGAURAN—I would say that it is. Other major industries are under the same regulations.

Mr Summers—But there is a Workplace Relations Act to discuss and address those things. It was an industrial stop-work meeting—a meeting of members—and they had their cards taken off them because they held that meeting.

Senator ALLISON—For the length of that meeting or permanently?

Mr Summers—They had them taken off them permanently.

Senator McGAURAN—My observation is that part II of the Crimes Act, which is what you are speaking against today, covers security matters in the aviation industry too.

Mr Summers—I do not deal with the aviation industry.

Senator McGAURAN—The second quick question is this: have you looked at your rights of appeal in regards to unfair dismissal if a decision is made against one of your members—that they are a security risk—and you do not believe it is the right decision?

Mr Summers—Not in regard to unfair dismissal. We have looked at the rights of appeal. If a government makes a determination based on these regulations, we have the right to go to the Administrative Appeals Tribunal, the AAT. Before that, it depends on who makes that decision. If it is a determination made by ASIO then we have an ability to go to ASIO to ask them to look at their decision. Then we can take it to the AAT. So there are a couple of appeals mechanisms that are built in—so long as the government is making those decisions, not an employer.

Ms Whyte—That may well depend on the size of the work force. The government is talking about not giving relief for people who claim unfair dismissal if the workplace has less than 100 people. But it is dangerous to say that it is okay because people have relief through unfair dismissal. When you get to that stage, it is a pretty dangerous situation. As Dean says, for people who are denied cards there are avenues of appeal.

Senator McGAURAN—I understand the point you have made all day about not wishing to bring in industrial relations records in assessing someone's security status—whether someone has been on strike or on the pickets or whatever. We both agree with the spirit and the letter of the law, in fact. It is only part II of the Crimes Act that you object to. Every other point in the kind of—

Ms Whyte—Does part II include part IIA?

Senator McGAURAN—You agree with every kind of offence that has been listed in the regulations, other than what is contained in part II of the Crimes Act.

Mr Summers—I am not sure that there is a record kept of industrial activity. Perhaps there is; I do not know that there is. We are talking about criminal convictions; that is what they are looking for. I reiterate that it first referred to 15HB. Now we discover—Friday night, Saturday morning—to our horror that is back to everything in part II. We have to read it that way. That is everything mentioned in there, including industrial disturbances, lockouts and strikes. If there was an offence or if you had been involved in something of that nature then we go back to taking away someone's ability to earn a living.

Senator McGAURAN—You are talking about part II of the Crimes Act, aren't you—just that?

Mr Summers—Yes, we are.

Senator McGAURAN—I just want to get it clear that, other than that, you would accept every other kind of offence on the table within the regulations?

Mr Summers—Yes.

Ms Whyte—That is the table we reached consensus on.

Mr Summers—This is a very important issue that you raise. The chart that I handed up earlier is the working document. We kept on rolling this out. We went back to it and investigated what it all meant. We looked at treachery, sabotage, sedition et cetera and we supported all that. These are exclusionary, remember: they can be applied after some sort of reconsideration. But we need to know what unlawful associations are. We need to know exactly what sort of maritime context covers the last two on that list. Those last two are 'interfering with political liberty' and 'destroying or damaging Commonwealth property'. We are very suspicious that people could innocently fall into those categories when maritime security is looked at.

Senator WEBBER—If someone set fire to an Australia Post box that would be unlawful.

Mr Summers—Senator McGauran, are you talking about the regulations or the list of crimes?

Senator McGAURAN—I am talking about the regulations at the moment. Let us just put part II to one side. I want to get a clarification, yet again. Would you accept every other kind of offence that has been listed in the draft regulations as being worthy of security checks or as being an offence?

Mr Summers—Yes. We have. We have discussed this.

Senator McGAURAN—That just leaves us part II of the Crimes Act.

Ms Whyte—And part 5 of the Criminal Code, I think.

Mr Summers—We have agreed to that.

Ms Whyte—Sorry; you are right.

Senator McGAURAN—So it is just sections of the Crimes Act 1914 that you have objections to. I have asked to get a copy of it. Really, if we are going to—

Mr Summers—I can hand up a copy, if you like.

Senator McGAURAN—I should take it, because I have waited 15 to 20 minutes for it. If we are to undertake security checks in the atmosphere in which we live, we have to cover every base. Part II of the Crimes Act, which you object to, would leave a gaping hole in our security checks if it were not included. It is a matter of gravity. Matters of treachery and sabotage are included in this section. The part that offends you—industrial disturbances, lockouts and strikes—relates to the Governor-General effectively calling on emergency laws. So it is an extreme end of the industrial relations laws.

We are not dealing with industrial relations laws where there are fines, penalties or even minor jail convictions. We are dealing with the emergency powers of the Governor-General, which, I believe, have only ever been used once, on the wharves back in 1948 or something like that. You might know the history better than I do. I do not know if the powers were used under this act. We are effectively talking about emergency laws. Really, you are overstating your case. To leave out this part of the act would leave a gaping hole in our security checks. Therefore, it is against the whole spirit, the letter of the law.

CHAIR—In simple language, what he is probably trying to say is that, if you had been in London the other day, you blokes would not have been in favour of pulling a stop-work meeting or some sort of demonstration against the government in the middle of an emergency.

Mr Summers—Certainly not.

Senator McGAURAN—This has nothing to do with pickets outside the front gates or anything. You are overstating your case; that is my point.

Mr Summers—Section 29 of part IIA says:

Any person who intentionally destroys or damages any property, whether real or personal, belonging to the Commonwealth or to any public authority under the Commonwealth, shall be guilty of an offence.

Senator McGAURAN—That law has always sat there.

Mr Summers—That is right. We do not think it is a consideration for terrorism.

Senator McGAURAN—I am no judge, but I think it would only be taken as applying to a serious and grave offence. It is not for a minor strike or anything like that. This was a criminal act that was on the statute book even before the atmosphere in which we now live. Powers would be enacted in matters of grave offence.

Ms Whyte—I can partly answer that, because it is an important point. The types of offences you reeled off before are all taken care of in this table. I suggest that the question you need to ask yourself is: what does this new part II deal with that this table does not? The answer is the political and the industrial items. There is treason, espionage, terrorism and harming Australians.

Senator McGAURAN—Yes. How could you possibly leave all that out?

Mr Summers—It is included in the list.

Ms Whyte—It is included; it is there.

Senator WEBBER—If it is included in this then why do you need a new part II?

Mr Summers—I think we agreed on that in the first stage.

Senator STERLE—Take the TWU submission about the costs, certainly to your members and to a lot of truck drivers out there who are not members of the TWU—namely farmers and livestock carriers. I did take some notice when you were asked how many members or how many truck drivers this could affect. I would

not hesitate to say it would be thousands and thousands, especially when we are talking about peak periods of grain movement and such when the ships are in and getting unloaded or reloaded. Am I right in assuming that both stevedores would want their own card?

Ms Whyte—That is not clear to us. The point we make about that is that it is a real possibility that our drivers—or their employers, the prime contractors, whoever—might have to apply and pay for a number of cards to enter a number of maritime security zones.

CHAIR—We are not going to have a demarcation dispute over security, are we?

Senator STERLE—No, I am not leading down there.

Ms Whyte—No, what I am saying is that, unlike the MUA workers who are employed by P&O and go to work there every day, our drivers might go to P&O in Brisbane and then go to Patrick's in Melbourne.

Senator WEBBER—So they would have to have a different card each time?

Senator STERLE—And not only that, would they have to have an aviation card as well?

Ms Whyte—Potentially.

Senator STERLE—So the double-up in the cost could be quite astronomical for the ordinary truck driver. Mr Summers, there was a question to you about what if there were redundancies and that sort of stuff. We are talking about the transport industry, which is predominantly owner-drivers—am I right there?

Ms Whyte—There are a significant—

Senator STERLE—There is a huge number of owner-drivers who do not have the luxury of going to their employer. With the greatest of respect, it is not a free market out there; with the greatest of respect their prices are dictated, whether it be by the shipping companies, the transport companies or whatever. Is that correct?

Ms Whyte—That is right. I think I heard a figure the other day that between Sydney and Melbourne—a long distance—they cart about 95 or 85 per cent of the work.

Senator STERLE—So, when we are talking about certain parts of Australia where we have regimes with mandatory accreditation—which has been a huge cost to the transport industry—it has not been recoverable. What we are talking about here is the cost that will come onto the guys and women who are going about their normal daily business. We do not know what the costs will be.

Ms Whyte—That is right.

Senator STERLE—To listen to Mr Summers's submission about the foreign vessels, foreign crews and containers not being screened, I think we are starting at the wrong end of the spectrum. I just wanted to clarify that. Thank you.

Senator McGAURAN—I want to clarify that part II of the Crimes Act, which talks about 'industrial disturbances, lockouts and strikes', relates to the Governor-General calling on what are effectively emergency powers—as rare as that would be—and that is all it relates to. Therefore you are trying to cloud the issue of what part II of the Crimes Act actually means and extend the gravity of it into everyday strikes. You are overstating your case, you are overprotecting yourself and, in fact, it is a little anti the spirit and letter of what we are trying to achieve here—that is, a security system against terrorist acts.

Mr Summers—We take offence at that because we have absolutely committed funds, and we—that is, the union, because we do not think DOTARS covered it—have sent people to the United States and to Canada, the only two other countries to investigate this. We have demonstrated, day in and day out, our commitment to maritime security, and to say that we are acting in opposition to that is, I would suggest, ill-informed. We have proven to DOTARS that we have a wealth of information that they could not source because of their lack of a skills base, and we gave that to them. We were honest and upfront, we clouded no issues at all and we were very, very deliberate in putting our case forward so that everyone could learn, and so there can be a maritime security network in Australia that protects workers first and infrastructure second. To say that we are using it for our own advantage is just not true. To say that we can protect ourselves on the way through, in a maritime security light, is what we are all about. We are not about to give up civil liberties to facilitate maritime security. We want to protect our workers so they can get on with doing the job and having a productive and collective working environment.

Senator McGAURAN—But this law was sitting here before these regulations or, for that matter, the war on terror began. This is an old law, isn't it?

Mr Summers—Yes, it is.

Senator McGAURAN—It has always been sitting on the books, so what is your problem?

Ms Whyte—The first problem was the consultation. We agreed on this table, and last Friday that changed. That is the first point to be made about part II. The second point to be made about it is that, for the purposes of securing ports and mitigating terrorist risk, this table does it. The new part II does not add to that in any meaningful way. I am not sure what advice you have received, but I have not even had any legal advice to confirm whether or not part IIA is actually part of part II, more fundamentally.

Mr Summers—These things were referred to us on Friday night, do not forget. We have not had a chance to go through part IIA. Thanks for the explanation of what those things mean, but I am still not satisfied that destroying or damaging Commonwealth property should preclude somebody from going to work and being able to provide for their family.

Senator STERLE—While we are talking about the redundancy argument, I just want to run this past the unions: what would happen to an owner-driver or a contractor in the fabricating industry—it might be a small employer with three, four or five employees—whose only contract is on that work if he cannot get onto those sites? We can argue under industrial relations that a rank and file employee can have access to some form of redundancy, but what about the small business man; what about the contractor? Have there been any discussions about that?

Ms Whyte—I suspect they would lose the contract. They would not be able to fulfil their contractual obligations.

Senator STERLE—Exactly. I just want to highlight that. It is easy to put up smokies that we can run to other legislation to seek some compensation, but we cannot disregard the small business people who have put their house on the line and worked hard for 20 or 30 years—and perhaps they employ members of a few other families too. I just wanted to raise that.

Senator WEBBER—Whilst this has been a very informative process, I want to return to the offshore oil and gas. Being from Western Australia, it is obviously of interest to me. At the moment the way the WA Chamber of Commerce and Industry, in particular, deals with skill shortages in Western Australia is to import what they term ‘skilled labour’ under 457 categories to work in the development of the infrastructure and offshore. Are you aware if this act will actually apply to those people? These people come in having been guaranteed the job. They have signed the employment contract. Is this regime going to apply to those people, and do they currently go through any security clearances before we allow them offshore?

Mr Johnston—Guest labour, if that is what you are talking about, is currently being utilised in this country—coming from South Africa, Asia—

Senator WEBBER—Korea.

Mr Johnston—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.

Senator WEBBER—So in a way they are actually the same as those flags of convenience seafarers in terms of the risk they pose to our oil and gas industry?

Mr Johnston—Exactly. There is probably an added risk in relation to the short-term, long-stay visa applicants. If they can get continuous work for up to four years, they then get a clear shot at being a permanent resident. We have had the experience with guest labour going walkabout, for want of a better description. Even the company that sponsored them out here did not know where they were when we questioned them. When we raised the issue with Immigration, they said: ‘There is an inquiry going on. We can’t tell you anything about it.’

Senator McGauran said that we are being overprotective. I think the government are overreacting in the way they are trying to secure a workable, viable, constructive, professional security arrangement for workers in the industry—particularly when they avoid the opportunity of cooperation with the major players. There is an old saying in any industry sector that, if you go to the coalface, that is where you will find out what is going on. I

would suggest more consultation with us in relation to these things will get much better results than keeping us at arm's length.

CHAIR—That is what today is all about, despite that email, the author of which will be here later.

Senator WEBBER—I have one final issue. Are any of you aware of whether the RTBU have been consulted with on this? Or does DOTARS not realise that containers come onto ports by rail as well as by truck?

Mr Summers—The RTBU, the Rail, Train and Bus Union, are part of our submission.

Senator WEBBER—But have they been part of your consultation process?

Ms Whyte—They have a complaint about the consultation process. They were not invited, as far as I know, to be a part of the working group.

Senator WEBBER—It is the working group and the consultation process I was after, rather than the submission. Thank you.

CHAIR—Before we break for morning tea, Mr Summers, can you give an explanation of that earring again?

Mr Summers—I thought you were going to ask me to sum up my submission.

CHAIR—Put it on the record: why have you got that earring on?

Mr Summers—That is a question I do not mind answering, Senator, because at our last meeting you asked me what sort of a bloke would wear an earring and I do not think I gave you the answer that you were asking for.

CHAIR—You gave a great answer.

Mr Summers—It is a tradition of seafarers. My entire family—my grandfather, my father, my uncles, my brothers and now my son—are seafarers and we have a very strong sense of tradition. Seafarers traditionally wear an earring, a gold band, in their left ear so that, if they are washed up or they die at sea with no money, they can be provided with a Christian burial.

CHAIR—Thanks very much.

Proceedings suspended from 11.07 am to 11.21 am

BLACKWELL, Ms Susan, Executive Officer, Association of Australian Ports and Marine Authorities Inc

CHAIR—I welcome the Association of Australian Ports and Maritime Authorities Inc.—that all sounds pretty serious! If you would like to make an opening statement or do a song and dance, we would be delighted.

Ms Blackwell—The association represents the interests of government and privately owned ports all around the country, as well as the marine regulatory authorities. We have welcomed the new maritime security environment and worked with DOTARS on the implementation of every aspect of the maritime transport security regime. We started working with the department shortly after September 11. In fact, I would point out that there were risks not only in the aviation sector but also potentially in that other vital transport sector of ports. Maritime security identification cards are an important, and the latest, part of what is an evolving scene.

I agree with my colleagues on the working group. We all came together for a very useful meeting only nine months ago. It seems like a lot longer that we have been working on this, but I am told it started only nine months ago. We have developed a high level of trust with one another. Communications are at an all-time high and I compliment DOTARS on the level of its engagement on the maritime security identification card with both unions and industry through the MSIC process. It was not always thus.

It is important to recognise, and certainly our working group recognise, that MSICs are a completely different beast to ASICs. ASICs have been around for a long time and I think people have learnt a great deal about what has worked in the ASIC environment and what has not worked for the MSIC environment. For instance, it is not intended, at this stage, that the entire port population would require an MSIC; it is for those who are identified as having an operational need to enter a maritime security zone on an unescorted basis. So there are several tests, if you like.

We have worked with the department on the background checking, the AFP and the ASIO process. We agree with the list of crimes as set out in the original table that Mr Summers tabled for you earlier, but we note that from the draft regulations some of that does seem to have been a bit of a moveable feast. I note the committee's interest in the table attached under regulation 6.07C and I also note our interest in item 3 of that—offences mentioned in part II of the Crimes Act 1914. This is completely different from earlier drafts of the regulations and there was no consultation with the working group on that, which I think is regrettable. I would be interested in DOTARS' reactions to that this afternoon. I will be following their explanations on that extensively.

It is the unanimous view of all of the members of the working group that an independent government assessor should carry out the determination role for those who have an orange flag raised against them as part of the background-checking process. Any delegation of that determination role to issuing bodies will give rise to inconsistency in the application of policy relating to accepting or disqualifying the orange-flagged applicants. It will also give rise to forum shopping by applicants for MSICs, and delegating this role to an issuing body would surely involve a transfer of risk that is unacceptable to the government.

Furthermore, the model drawn up by the working group embraces a high level of confidentiality for the MSIC applicant. For reasons of privacy, issuing bodies do not want to know any of the details of the crimes listed on an applicant's MSIC consent form. A number of maritime industry participants—ports, stevedores and towage companies alike—have foreshadowed a willingness to take on the role of an issuing body. But, if they are exposed to the knowledge of an applicant's criminal past, after the roll-out period I think that a number of those issuing bodies will withdraw from the process.

We acknowledge that DOTARS is undertaking a review of its role during the implementation process, but we urge this committee to make a firm recommendation that the government mandate an independent government assessing body to carry out those determinations past the roll-out period and right through the life of the MSIC regulations.

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 AFP completes the criminal check. 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. Perhaps the committee might be interested in finding out more about that through the AFP if you are able. I commend that as an initiative in the security environment in which we are now working.

Minister Anderson made an announcement on 7 June suggesting that there might be a government-established security vetting agency, and department of transport officials have suggested that this may be set up under the Attorney General's Department. If that in fact transpires we would certainly very much support such moves, as, again, it would provide a central determination and coordination role for not only the MSICs but also the ASICs and the new ID cards that are coming in to cover the carriage of security-sensitive goods such as ammonium nitrate. I think that any ID card should perhaps be centrally coordinated—that makes sense for all sorts of reasons.

A tamper-evident feature will be imprinted on or implanted in the card and we have been aware of this need for some time. In fact, right from the very beginning we have been told about the so-called kinegram that sits on the ASICs. We have also been made aware of the limitations of that particular technology. It is of some disappointment to us that DOTARS commissioned work on a tamper-evident feature for the maritime security card only in the last couple of months. We would suggest that that could have been carried out a little earlier—considerably earlier, in fact.

One aspect that is not in the current regulations and that ports in particular are concerned about is responses to emergency situations. Regulation 6.07N talks about access by emergency personnel and refers to the Defence Force, ambulance, rescue or fire service officers who are responding to an emergency—that is on page 14 of the regulations. It assists the maritime industry participants—for example, the stevedores—from requiring MSICs of those emergency personnel so that they do not need to have an MSIC when coming into the port. I would suggest that there are a range of other emergency personnel that also need access to the port in the event of oil spills, so I also commend that as a possible amendment to the regulations. Again, I know that DOTARS are working on getting legal advice on this. It is not, however, in the current regulations. I want to state for the record that my association is very keen, as is the Australian Maritime Safety Authority, AMSA, on having that regulation amended to allow the appropriate officers who treat oil spills to come into the port.

Turning specifically to the terms of reference established by the committee, I have already addressed the privacy issues. We believe the cost recovery model is appropriate, as the regulations permit issuing bodies to recover their costs. I believe there will be sufficient competition amongst issuing bodies to allow for a range of prices to be set for an MSIC. One MSIC will be issued per person. The MSIC is designed to be a nationally recognised identity card. It is not an access card. There was some confusion at the beginning of our deliberations about issues pertaining to identity and access. We have concentrated our deliberations on what we fondly call a 'dumb' identity card.

On law enforcement mechanisms, we believe that there has to be greater liaison between DOTARS and the respective state police forces to ensure that the police are aware of the offences under the Maritime Transport and Offshore Facilities Security Act. We have had a number of incidents around ports in maritime security zones where people have done some silly things, perhaps alcohol fuelled, and the local police have been unsure as to whether to charge them. There has been some uncertainty as to whether they should be charged under a local crimes act or under the maritime transport act. We suggest that DOTARS undertake much greater liaison with the state police and have a much greater education campaign for the police to tell them that this is a new act and there are new provisions in a lot of instances. For instance, the penalties for trespassing are much higher than they would be under the old state criminal acts.

On the oversight and compliance inspection mechanisms, we are not sure that DOTARS have enough inspectors to carry out the audits of the maritime security ID cards and all the issues surrounding them. We are not sure that there are enough personnel for the task. We share the concerns of our union colleagues on security checks for foreign seafarers. There seems to be a hole in the system in that Australian seafarers have a much higher degree of security identity attached to them than foreign seafarers. However, of course, we must recognise that those foreign seafarers are subject to the laws of different countries. Perhaps that is something that should be progressed through the International Maritime Organisation and the International Labour Organisation. Whether you would ever get consistency, goodness only knows. I am not sure about that.

We recognise that we are living in a security environment that is event driven. The working group have accomplished a significant amount of work and we are a very flexible group; we respond to the unfortunate

events that occur from time to time. I urge DOTARS to consider extending the life of the working group. As we have all noted this morning, it has provided a tremendous level of trust and communication amongst all the parties in the maritime environment.

CHAIR—Would the dumb card that you talk about be a card that I could lend to my mate and he could swipe to get on the wharf?

Ms Blackwell—No; I hope not.

CHAIR—How will they get around that? You can do that at the airports at the moment.

Ms Blackwell—A dumb card is just an ID card. It has a photograph and says that you have gone through certain security checks and says who you are. It does not give you access to any of the facilities.

CHAIR—What will the access process be?

Ms Blackwell—The access process will be set by the stevedores who run the facility or by the port.

CHAIR—So we do not even know.

Ms Blackwell—There will be a separate access card, and that certainly is getting more sophisticated as we go on.

CHAIR—Will that overcome someone making a deal down at the pub and saying, ‘I’ll give you five grand if you give me your card; I want to go on tonight and do something’? Has your working group considered that?

Ms Blackwell—Yes, we have. This is a photographic ID. It is not an access card. You can build access into the back of the card. There is a substrate that will take access.

CHAIR—There has to be some way of identifying who is going in other than by a swipe.

Ms Blackwell—The identity card will not be a swipe card like an access card, unless it has access provisions built into it.

CHAIR—So there will be no gates where you just swipe your card to get in.

Ms Blackwell—Not the identity card, unless it has access provisions.

CHAIR—Don’t worry about what card it is.

Ms Blackwell—It does not. It is an ID card only. It just says that the person has had a certain level of security checks run on them and that they are who the card says they are.

CHAIR—But will there be anywhere where you can drive onto the wharf by swiping your card and there is no-one there—there is only the machine that opens the gate when you swipe?

Ms Blackwell—Using the ID card, no.

CHAIR—No, forget the ID card. Do you consider that security?

Senator O’BRIEN—Using an access card.

Ms Blackwell—Yes, we have. Under the maritime security plans that all the port facilities are required to have, there are very stringent access provisions—yes, very sophisticated access cards are there. But the maritime security card also calls for a level of access, escort and monitoring. So we are also using CCTV as well, particularly to monitor those access points.

CHAIR—So you will not be in favour of anywhere where, through the access card, you can just swipe it and drive on; there has to be some sort of photo ID to confirm that I have a beard, two eyes, one head and three legs or whatever.

Ms Blackwell—Absolutely; that is quite correct.

Senator FERRIS—I have a few points that I would like you to expand on. From your comment about ASIO being the vetting agency or using an ASIO type of process, do I detect therefore that you would prefer ASIO to do the checks rather than the AFP or a state police agency?

Ms Blackwell—Let me clarify what I said. I believe that DOTARS is suggesting that a central security vetting agency would be a new body established under the aegis of the Attorney-General’s Department and would combine the effects of an ASIO check and an AFP check so that everyone would feed into this new central security agency. So the ASIO checks would still be undertaken for security checks and the AFP checks would still be undertaken for criminal background checks. The two would complement one another.

Senator FERRIS—They would be dynamic in the sense that they would be ongoing rather than ticked off and the card issued.

Ms Blackwell—Once you sign a consent form, the ASIO checks are live and ongoing.

Senator FERRIS—And you prefer that structure to be incorporated in this checking process?

Ms Blackwell—I would like to see the AFP move to a similar live and ongoing check. I think that would provide us all with a much more comfortable security environment.

Senator FERRIS—I thought that is what you meant but I just wanted to clarify it. The second point that I would like to clarify is in relation to this government security agency. You may have heard the evidence of our previous witnesses, who expressed some concerns about the way in which this data might be held and how it might subsequently be transferred back to employers and therefore be open to possible incursions into personal privacy. Do I take it then that you would support a government agency not only carrying out the checks but also permanently holding the data?

Ms Blackwell—Very much so. Everybody on the industry working group, even those not here today, are adamant that they support that. Nobody wants that private data coming back to issuing bodies. In the aviation sector, the issuing bodies have access to that data. We understand that the assessment of orange-flagged people, for want of a better term, has been inconsistent. We are looking for consistency and clarity through a central government vetting agency such as we discussed.

Senator FERRIS—The third point I would like to raise is that on page 5 of your submission you mention briefly, and only briefly, the cost recovery model. You say:

We believe the cost recovery model is appropriate as the Regulations permit Issuing Bodies to recover their costs.

Do you have any thoughts on how that would occur? Are you suggesting, for example, that a person who applies for a job and is subject to this vetting agency would have the cost of that deducted from their salary until it is paid for? How do you see the cost recovery model working?

Ms Blackwell—We are told that the cost of applying for the criminal checks and the ASIO checks amounts to approximately \$55, I believe.

Senator FERRIS—I think it was suggested that it could be up to \$150.

Ms Blackwell—There are, on top of that, administration costs as well and the cost of manufacturing the card. That, of course, is dependent on the quality of the card and the tamper-evident feature, which we know nothing about as yet. So there is a huge unknown. People are talking about costs of anywhere between \$114 and \$200. I would not like to see that cost treated like a HECS repayment for the employee. I think it is a cost of doing business, and I believe that most employers will probably pick up the cost of that card. I am not 100 per cent certain that that will occur but certainly ports, unlike airports, have received no government funding for the implementation of security and have picked up all the costs themselves. I believe this will probably be treated along much the same lines.

Senator FERRIS—So your association would be happy to have a situation where the employers bore the costs?

Ms Blackwell—I think that is preferable to lumbering the employee with a new cost to their employment.

Senator O'BRIEN—On that point, it is not clear from draft regulation 6.09A that the employer would pay, is it?

Ms Blackwell—No, it is not. That is left open. I am just suggesting that it is something that employers would definitely consider as part of their employment.

Senator O'BRIEN—The employers that you represent or employers generally?

Ms Blackwell—I cannot speak for all employers, no. I can only speak for the ones I represent.

Senator O'BRIEN—Did your association play an active role from the start of the working group?

Ms Blackwell—Yes, we did.

Senator O'BRIEN—Did the working group discuss issues beyond the introduction of the MSIC and the extension of the maritime security regime to offshore oil and gas installations?

Ms Blackwell—No, we did not. I believe that has been handled by a completely different set of officers within DOTARS. I am unfamiliar with the consultation processes established there.

Senator O'BRIEN—That is offshore?

Ms Blackwell—Yes. We did have a representative of Woodside Petroleum on the MSIC working group because of Woodside's interests both at ports at Dampier and on offshore facilities.

Senator O'BRIEN—I took it from your earlier comments that there was some satisfaction with the way the consultation was going but you have suddenly been presented with a regulatory proposal which is not satisfactory. Have I understood you correctly?

Ms Blackwell—That is correct. We were all scurrying around the database this morning to find out exactly what part II of the Crimes Act said, and we are not entirely sure what that coverage really means. We are looking for clarification. May I ask the committee if you might perhaps on our behalf pursue that this afternoon with DOTARS? We have not had that opportunity, so I would be interested in finding out whether Senator McGauran's interpretation is in fact correct, or what in fact it means. There does appear to be some duplication.

Senator O'BRIEN—I think the department will expect me to ask them some questions about that.

Ms Blackwell—Thank you.

Senator O'BRIEN—So up to that point consultation has been good but at this stage we understand there is a suggestion that there will be no further consultation.

Ms Blackwell—That indeed worries me, because we have a set of regulations here that are incomplete; they do not encompass everything that the working group has discussed. For instance, I wanted to see and comment on the regulations on access for emergency response personnel. To be told in an email on Friday that the consultation period has effectively ended with the tabling of these regulations—well, I simply will not accept that, I'm afraid. I do appreciate that regulations are easier to amend than an act. However, we will maintain constant vigilance.

CHAIR—So will we.

Senator O'BRIEN—In evidence this morning the MUA, the TWU and the AMWU expressed concern about the arrangements that give non-holders of maritime security identification cards access to secure areas. Draft regulation 6.07I defines a visitor to a maritime security zone as a person who is entitled to be in a zone because he or she is being escorted or continuously monitored. It also defines an escort as a person who escorts or continuously monitors another person in a maritime zone. But draft regulation 6.07J exempts visitors from the requirement to display a valid MSIC if his or her escort holds an MSIC or is otherwise exempt.

Ms Blackwell—We discussed that over several meetings. They specifically cover several areas. For instance, if I take up Senator Sterle's point, during earlier evidence, about the truck driver who comes in from the farm once a year to deliver a truckload of grain: he or she will not have an MSIC; they do not have a requirement for an MSIC. But they must be allowed to enter that maritime security zone to deliver the grain to the waiting ship. These provisions allow that person to be either escorted or continuously monitored by the use of CCTV so that business is not hampered and so that our exports can continue. There will be a range of visitors like that who will come to the port and who will not need an MSIC but who can be escorted. I am eligible for an MSIC, but I would never go down to a port and walk around on my own; there are simply too many other occupational health and safety issues. I definitely want to be escorted. It is a very dangerous working environment, and I think that is only sensible.

Senator O'BRIEN—But you are unlikely to be a terrorist, whereas someone who had other intentions might be very happy not to be escorted.

Ms Blackwell—These provisions provide penalties for those who do not provide that escort, so the onus is on the facilities and the port to provide an escort.

Senator O'BRIEN—But 'escort' does not necessarily mean being escorted, does it? It means that or being covered by closed circuit television coverage, right?

Ms Blackwell—That is correct, absolutely. To bring up another example, the port of Gladstone is about to undergo a tremendous expansion. They are going to get a new coal loader and new coal loading facilities, and there will be hundreds of workers building those facilities. That facility is right in the middle of a maritime security zone because it is right in the middle of all of the other coal loaders and the coal loading areas. So hundreds of workers will not need MSICs but they will be in maritime security zones. They will have to be

escorted and monitored. So it is trying to cover as many contingencies as we possibly can in a developing port environment as well as anybody else.

Senator O'BRIEN—Is your association saying that coverage only by closed circuit television of these non-MSIC accredited visitors will be satisfactory arrangements for a secure port environment?

Ms Blackwell—Every port facility is required to have a maritime security plan. That plan will have been assessed and approved by DOTARS and is continuously checked and audited.

Senator O'BRIEN—But you do not think that the department has the officers to do the audit and checks?

Ms Blackwell—We do worry about the level of expertise. I might come back to that in a moment. That is another particular concern. But we are looking at all sorts of technology that can provide the necessary backup that is required on ports. Ports are very large physical areas in some places. If you look at some of the regional ports, there simply is not the manpower there to continuously escort a contractor who is going down to the berth to do some urgent repairs. So we are looking at a range of provisions that provide us with the risk coverage that has been assessed as necessary for that particular berth. There are a whole range of things that can be applied to different berths. We have to look at different berths in different security lights as well, I think.

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. On one famous occasion I was told that ports were easy to lock up: just like airports, you put a fence around them. When I asked how deep would that person like that fence to go, I was told not to be silly. So we have had a steep learning curve.

My association has run a number of working meetings with officers from the Office of Transport Security to try to bring them up to speed and help them, and they have been grateful for that. But there is tremendous mobility within the OTS; people come and go—some people stay for only two weeks. The fluidity in that department is distressing; it really is a problem for us. That area is also growing enormously and more and more responsibilities will be put on that as a result of last Thursday. People simply cannot cope; it is a very steep learning curve for them all. We are finding that particularly in the maritime environment. It is a real problem. This all comes back to other issues such as skills shortages in the maritime environment, which we can address on another occasion.

Senator O'BRIEN—So that is the experience of your association with the Office of Transport Security.

Ms Blackwell—Yes, there is very little experienced maritime expertise within the department. There are one or two who are spreading themselves very thinly.

Senator O'BRIEN—Are you suggesting that we should view with caution the advice of the department on maritime matters because they lack the qualifications?

Ms Blackwell—No, I am not, because they are there to do a very difficult job and in the most part I think they are doing it very well in a very tight time frame. But they do have to get out more. They do have to come down to ports and berths. We are very happy to show anybody around, and we will do it at the drop of a hat. A couple of months ago, before an MSIC working group, we took a whole raft of young people from OTS around the port of Melbourne. We took them around for three hours and we showed them everything. They were tremendously excited. They loved going around and watching. The truck booking system at Patricks had them absolutely fascinated. They really had a tremendous time. We are very happy to do that at whatever facility they like around the country to help them through that process. It is very important.

Senator O'BRIEN—To bring them up to speed.

Ms Blackwell—We are happy to do that for any group—international groups or whatever. I think they have to get out and consult more, come to the ports and not stay in Canberra quite as much.

Senator O'BRIEN—One of the problems of course is the difficulty in getting people with experience and qualifications to fill the jobs in the first place. You are suggesting that there is almost a perpetual booking of advertisements by the department in the *Australian* to try to get the qualified people.

Ms Blackwell—That is correct. They are looking for the right kind of people, but there is not that body of people out there dying to work in Canberra. They are probably located in the more regional areas.

Senator O'BRIEN—But isn't it a problem generally, even for your members, to get people with the qualifications and experience to do the port based jobs? Even the industry as it stands is having difficulty filling the qualified positions at sea.

Ms Blackwell—That is absolutely true. It is a crying shame that more and more young people are going elsewhere. In fact, my association is looking at a number of programs to try and attract school leavers into the appropriate courses and to try and get pilots trained for Australian conditions. For instance, if I go to maritime pilots, it takes approximately 12 years to get a master class 1 qualification. We are looking at a program—it is in its very early developmental stages—of trying to short-circuit that so that we can get qualified pilots into our harbours and ports around Australia. We are seeking to address that on an industry wide basis, yes.

Senator O'BRIEN—I digress, but I thought we should deal with the underlying problem when we are talking about the department's problems. 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. It does not concern Defence Force or emergency service personnel because of separate regulations, which I can detail if you need me to, but has the department told you what persons or classes of persons will be eligible for such an exemption?

Ms Blackwell—No-one will be exempt from carrying an MSIC. This, I believe, covers situations such as the responders to emergency situations. If you have an emergency situation in a port, certain people will require immediate access. It is not envisaged, for instance, that the police force, ambulance or fire officers will all have to get MSICs. These regulations, 6.07M and 6.07N, are ones that I would look at for the department to amend substantially to cover those emergency access provisions—for example, if we have an oil spill such as we had a few years ago. The *Laura D'Amato* had a great oil spill in Gore Bay in Port Jackson. It was on the television every night for several nights, and immediately the environmental interests, of course, moved in.

If that happened today, I think the environmental concerns would outweigh any of the security concerns. All of a sudden you would have a lot of people rushing into a maritime security zone—remember that a maritime security zone is also a water zone around the vessel—and you would require those people in there to respond and to try to effect a clean-up response very quickly. But you are not going to know who they are; you are not going to know where they come from. The various state environmental offices will have to be there. The various local councils will move in very quickly. There are oil spill plans and exercises that are carried out and community groups know what they have to do. So you have a whole raft of people suddenly moving into a maritime security environment. We are not going to know who they are and it will be up to the port and the facility to manage that from a security angle as well.

Senator O'BRIEN—So will the department say, 'This is an example of the area in which 6.07M will be given effect'?

Ms Blackwell—Yes, I hope so. But I would like to see it substantially reworded so that you do not have to go to the secretary for permission to lift the requirements of the MSICs or the maritime security plan. Quite often, getting that permission can take hours, if not days—if not weeks, in some cases. We have to be able to move in, lift the security level and do the work that is required for a maritime clean-up. It probably will be an environmental situation.

Senator O'BRIEN—I want to ask about an exemption that applies to this disqualification from entering a maritime security zone. Draft regulation 6.07K subsection (1) provides that a person who has been given a disqualifying notice must not enter a secure area. A disqualifying notice can be issued to a person who has been convicted of an offence listed in items 1 and 2 of the table in 6.07C, including treason, espionage and supplying weapons of mass destruction. I assume your association is comfortable with the exclusion of persons convicted of those offences from entering secure areas of your ports?

Ms Blackwell—Definitely, yes. If they have been disqualified then they cannot enter, they cannot be escorted and they cannot be continuously monitored. If, however, they have booked a cruise, they can be escorted under 6.07K subsection (2). They can get on a cruise vessel.

Senator O'BRIEN—They are actually more than escorted. It says that the application 'does not apply to a person who is a visitor to a zone for the purpose of boarding or leaving a vessel'—it does not say a cruise vessel—'as part of a recreational activity'.

Ms Blackwell—I believe that, in the redrafting of that, cruise vessels were the intended target of that particular subclause.

Senator O'BRIEN—It does not say that, does it?

Ms Blackwell—No, it does not. It talks about a recreational activity.

Senator O'BRIEN—It could be a sailing vessel.

Ms Blackwell—Sailing vessels are not in a maritime security zone—small sailing vessels, sorry. I am thinking of small yachts.

Senator O'BRIEN—I can think of Hobart as an example. There are plenty of sailing vessels that pull alongside.

Ms Blackwell—Small sailing vessels that pull alongside a cruise ship should be—

Senator O'BRIEN—I am not saying that a cruise ship is there at all; I am saying that, in the commercial wharf area in Hobart, it is not uncommon for sailing vessels to be alongside what I would consider to be the working port area.

Ms Blackwell—I think that they should continue to be allowed to be there. As a keen sailor I want to continue using every working port. However—

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—I take your point. I think that has to be tightened up. 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.

Senator O'BRIEN—It does not say 'excluded' either.

Ms Blackwell—No, I take your point. I think that could be tightened up as well.

Senator O'BRIEN—It seems that an employee who has a lesser conviction might be excluded, if we go to the revised set of regulations, whereas someone who has these high-level disqualifications might actually get in under the current regulations.

Ms Blackwell—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 breach 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.

Senator ALLISON—I have a question regarding something the unions, who appeared before you, raised about employees who are disqualified from getting an MSIC. This must apply as well to port authority employees. Do you see the requirement to provide them with redundancy packages as being a responsibility of the port authority as the employer and not some other body like the government? Have you broached this subject?

Ms Blackwell—We have broached this subject in the working group meetings. Let me say that none of us is looking forward to the day when one of our employees is prevented from holding an MSIC. That is going to be a frightening and terrible occasion for everybody involved. In the port environment, it may be possible in some areas to redeploy that person to a less security-sensitive area. However, we do not really operate with spare capacity any longer on the ports. I know that the port authorities will employ every means of structural adjustment possible to try and retrain that person and find them an alternative position within the maritime environment. After all, that person has worked very satisfactorily for us for a number of years. They were employed under certain terms and they have not breached those terms. This is a new qualification on their employment and it is going to be a violent shock to everybody involved if a person can no longer work because they do not hold an MSIC.

I would like to see some government assistance, certainly, given to retrain those people that cannot hold MSICs because it is of no fault of their own. As I said, they have been satisfactory employees up to the day that they cannot hold an MSIC. I do not see why ports should wear all of the costs of security; however, that is a sad reality of this environment that we live in. As I mentioned earlier, aviation has had at least \$90 million to \$100 million worth of government funding, but ports have not had one penny. This would be a nice area in

which to receive some government assistance. However, if that is not forthcoming then, yes, the employers—the port authorities—will be providing compensation, as Mr Summers called it.

Senator Allison—If I may suggest this, it is not that long ago that the ports and the wharves were seen as providing appropriate employment opportunities for people who came out of prison. It is not that long ago that criminal activity in the port areas was commonplace. I would imagine that there are some leftovers of that kind of employment.

Ms Blackwell—It is a sad reflection on our society that when people did come out of jail the only place that they could find employment was on the wharves. That is very sad.

Senator ALLISON—That is right. I am not criticising the wharves for it. I am suggesting there may be a hangover from that practice.

Ms Blackwell—That is right. That is why we are approaching this whole area of the disqualifying and exclusionary crimes on tiptoe. We are very concerned. We do not know what we are going to find out there. In many cases—not in all but in many—qualification for employment did not include undergoing a police background check. I acknowledge that in some cases in the last couple of years some employers have asked for AFP background checks. But that by no means covers long-term employees on the wharves. It is a characteristic that people do work for 30, 40 or 50 years on the wharves. There is a length of service there. It is possible that we will find something.

However, it is also worth noting that those people have worked on the wharves for 30 or 40 years. They have obviously found steady employment. They have obviously kept their noses clean. I have spoken to a couple of senior people on the wharves who have talked about providing guidance. They have done the crime; they have done the time. They recognise that they are now earning a good wage and that some of their superannuation will be quite good. They have provided guidance to some of the younger ones who they thought might go astray and do something foolish. They have provided a firm hand. Some of the older ones have provided that leadership. But we do not know what we are going to find. We are very sensitive to this, and that has guided our deliberations on the sets of crimes.

Senator ALLISON—We all think that what this is about is terrorism but, in the case of ports and wharves and so on, instead of a well-informed approach to preventing terrorism, are we going to be running after petty criminals and people who, as you say, have done their time and are holding down jobs and have done so for a long time? I will ask a broad question: do you get the sense in all of this that we are really going to nail terrorists? Even the chair says that, if you were a terrorist with ill intent, you would want to be a cleanskin going into an environment like this. How confident are you that this is about catching terrorists?

Ms Blackwell—The list of crimes focuses on terrorist crimes, which involve things like bomb threats, espionage, involvement in the sale of weapons, inciting mutiny, hijacking, endangering the security of ports, money laundering, crimes associated with organised crime and racketeering, people smuggling, counterfeiting and falsification of identity documents. People who have done crime are also benefiting from the spent convictions schemes as well, so those will also come into play. If they have done petty crimes and they have committed those crimes some time ago, they will benefit from the spent convictions schemes that apply on a state by state basis. I am confident that the list of crimes negotiated by the working group will cover crimes involving terrorism and serious organised criminal activities.

Senator ALLISON—Would people be questioned, for instance, about visiting Afghanistan for ‘training opportunities’, shall we say?

Ms Blackwell—That would come under an ASIO check and a flag would be raised against them.

Senator ALLISON—So you think that would be picked up?

Ms Blackwell—I am sure that if ASIO knew about their visit to Afghanistan, ASIO would pick it up. But I would ask that you perhaps address that question to ASIO. They are more qualified than I am to answer that question.

Senator STERLE—I want to ask a question about part of your submission regarding responding to emergency situations. What sorts of groups are we talking about? What are the possible numbers of these emergency response groups?

Ms Blackwell—That is the sixty-four million dollar question. It depends on the nature of the oil spill, it depends on the nature of the environmental incident and it depends on the nature of the incident in the port. If I take the *Laura D’Amato* spill back in Gore Bay in Port Jackson a couple of years ago, a whole range of people

were called in by the State Emergency Service. Maritime security is run by the federal department of transport but emergency spills are often under the guise of the state department of environment, so you could get a real clash, if you like, of cultures. I think in this particular environment we would be worried about which one wins. Is it security or is it environment?

You are going to have a whole raft of people—many hundreds of people; we do not know how many—responding. Where have those people come from? What right do they really have to be there? We are not going to be able to check every single one of those people coming in to do the job that they say they are going to do. There will be, I believe, a heightened level of risk within the port environment during that clean-up process. Hopefully we will have well-meaning people who are there to do the job they are trained to do, but we could have a situation—simply because it is the maritime environment and you cannot put a fence around it—of having all sorts of people wandering in and we do not know who they are and what they are supposed to be doing there. So I believe we will have to call on our friends in the police force, and the water police particularly, to monitor those situations a little bit more carefully.

Senator STERLE—There certainly would be a clash between state agencies. In my state of Western Australia, chemical spills, dangerous goods or explosives come under a different regime, which is so underfunded that there is no way it could possibly respond to a major spill and still keep the security to a point where we would want it to be. That is certainly my concern too.

Ms Blackwell—Yes, I agree with that. It is true.

Senator WEBBER—Going back to your evidence about the supervised access regime for the people who do not have to have an MSIC, I want to pick up on some evidence that Ms Whyte gave earlier about the operations of CCTV in the aviation environment. Would it be a requirement of those in, say, regional ports where the monitoring is done by CCTV that they have an MSIC or can they just be anybody? We could have anybody supposedly supervising anybody. Meanwhile other people lose their jobs because they cannot get an MSIC.

Ms Blackwell—I understand from our discussions with DOTARS at the last working group meeting that those who monitor and those who issue MSICs are required to go through the same checking and clearing process themselves. I would argue that the very fact that you are monitoring somebody in a maritime security zone means that you are there in a virtual sense yourself and therefore you definitely require the same background checking.

Senator WEBBER—But is it actually outlined that they must be?

Ms Blackwell—I think that is a very good point. I do not believe that it is as adequately outlined as it might be. I would certainly be recommending to my members that people undertake those checks. It is clear that people in issuing bodies who are working on the issuing of MSICs are required to have an MSIC but it is not clear that those who are monitoring the CCTV should also have it. That is a very good point.

CHAIR—Thank you very much.

[12.08 pm]

GRIFFETT, Mr Trevor A, Director, Canberra, Australian Shipowners Association

CHAIR—Welcome. Would you like to make an opening statement?

Mr Griffett—Thank you for the opportunity to contribute to this consideration of the draft legislation. For my sins, I have been involved with the development of the maritime transport security regime in this country since before the Bali bombings, appearing on behalf of industry in London through the drafting of the ISPS Code and through the subsequent development of the legislation. I have to say on behalf of the operators of Australian controlled shipping that there are a lot of aspects of this regime that we are relatively comfortable with and which I think sit quite squarely with the ISPS Code being applied internationally. The events of Bali in 2002, however, very palpably shifted the nature of the considerations during the development of the regime here. Unfortunately, as a consequence of that incident, we ceased looking for a security regime where international consistency was the primary concern. It very much became an Australian problem requiring an Australian solution for which consistency internationally became somewhat of an important but nonetheless second-hand consideration.

I said that we were relatively comfortable with the great majority of aspects of the regime. There are, however, some aspects where there is lingering concern amongst Australian operators. We have outlined those in some detail in our written submission, which I assume you all have. They focus particularly on one key area, which is the proposal to authorise disclosure of personal information beyond the federal and government bodies and agencies. The reason we are particularly concerned about that key aspect of this regime focusing on the maritime security identification card is the issue of confidence in the system combined with the portability of the MSICs between employers. One key aspect of employment in the maritime industry—and it has perhaps ever been thus—is that there is quite a deal of portability of seafarers between employers. We get a great many seafarers who have the good fortune of spending their whole careers working for one company. However, there is a large segment of the industry where seafarers specialise in being relief seafarers. Well-skilled and well-experienced in operating on a range of different vessels, they can at very short notice—sometimes simply a matter of hours—fulfil the requirements of crew on whatever vessel seeks their services. That requires a portability of MSICs for them to move between employers that starts to shift the nature of this aspect of the maritime security regime away from the aspects of the aviation equivalent upon which this model was based.

Through the nine-month implementation period, which is currently scheduled to commence on or about 1 October of this year, DOTARS, or more specifically OTS, have indicated that they will act as the central conduit for the receipt of criminal background reports from ASIO and the Federal Police and, where necessary, from the department of immigration. However, they have said that beyond 30 June of next year—the end of the nine-month implementation period—they have no current intention of maintaining an active involvement in that process beyond their capacity as scheme auditor and in setting or overseeing the criteria for assessment and determination of applications. It is anticipated that the majority of employers will retain the issuing body function in-house—I apologise for descending into some of the jargon of the act but it is necessary for accuracy. And, even where they do not, the only third-party issuing bodies that are about at present—and of course we are still some months prior to the implementation of this scheme—or that have been placing themselves to perform those functions have indicated publicly that they have no intention of making the determinations in respect of MSIC applications and that that function would remain with the employers.

From the outset, as Ms Blackwell indicated, employers have steadfastly reiterated the privacy and other difficulties they will be facing by receiving the criminal backgrounds of their employees from the Federal Police—it is their primary concern. ASA has maintained that there may in fact even be conflicting corporate disclosure obligations to shareholders, for example, in some situations if an employer is in possession of this information. For example, an employer forced to receive this information as an issuing body could receive information which is not disqualifying but is potentially exclusionary. They are then in receipt of knowledge of a criminal background—one or two instances of theft, perhaps—that does not indicate a pattern of behaviour sufficient to warrant not issuing an MSIC. However, that employer is in possession of information that one of their employees on a ship, for example, has committed theft. What are the employer's obligations to the shareholders of that company, knowing that one of their employees has that background? It is a vexing question.

We see that there are a number of quite significant benefits to the regime of a continued direct involvement, which we would suggest, by OTS or DOTARS in this direct function. In relation to consistency of application

of the criteria, we are concerned that if this is divested directly to issuing bodies, despite comprehensive guidelines for issuing, there will be a subjectivity of application consideration—forum shopping, potentially. That directly impacts upon confidence in the validity of issued MSICs. A central issuing body maximises the confidence in the system and also provides a centralised approach to the development of a basic database of issued or approved MSICs.

I indicated earlier that the nature of the maritime industry is often such that relief crews are provided at very short notice. That has been facilitated within the industry to ensure that trade moves swiftly—that a vessel does not miss a tide or is not held up for a period of time while they wait for a crew member. When putting a new crew member on board, there is simply no possibility for a detailed MSIC background check. You have to rely upon the veracity of the MSIC held by that potential relief crew. We would suggest that the ability to make a phone call to a centralised database would be quite simple within OTS, to the operations centre they maintain, and would at least provide some basic level of certainty that this person is who they say they are and that the MSIC that they are presenting is in fact valid. The privacy issues of employers receiving the criminal histories of their employees are overcome. It is simply a case of an employer being told yea or nay about whether to issue it. They would be, we would say, necessarily ignorant of the reasoning for that being the case.

The MSIC is in fact an identity card, not an access card. We would suggest that there has been some blurring of the distinction between identity and access. A relationship with an employer or union should not be required to establish background. There are current proposals being put forward by OTS to require such a relationship through what has been known, for want of a better description, as a sponsor's letter. Confirmation of an applicant's identity and the suitability of their background is established by the ASIO and Federal Police checks or, in some circumstances, immigration checks. A sponsor's letter adds nothing to this process. There has been some suggestion by senior departmental officials that the requirement that a letter be provided by a maritime employer or union stating that the person has a reason for making the application prevents non-maritime applicants from obtaining MSICs. However, we would suggest that it virtually presupposes that port facility or ship security arrangements will fail, assuming applicants would be granted entry on the holding of an MSIC alone. As I said, an MSIC is an identity card; in and of itself it does not provide access. Separate requirements established in every approved and audited ship or port facility security plan determine whether access will be granted, not the holding of an MSIC card alone.

Turning to the cost recovery model, for the majority of ship operators, the whole of a ship is declared as a ship security zone. By extension, every member of the crew will be required to hold an MSIC. In some respects, this is different from the port or port facility experience, where there are often more limited security zones. As such, for seafarers the MSIC will effectively become a new and necessary condition of employment, much in the same way as the requirement for a valid AMSA medical or appropriate seagoing qualifications. However, it is not a condition of employment that has been implemented by employers or internationally. Rather, it is being imposed by the Australian government for security purposes.

Whilst ASA members appreciate the underlying philosophy behind such a requirement, it must be said that it is an additional employment cost that has been imposed by the Australian government on an industry that has well-documented concerns about labour costs. Industrially, it is likely to prove very difficult to recover this cost from employees, certainly in the case of existing employees, even over a period of time. It would thus fall upon the employers. It remains unclear how the application costs of new entrants or returnees to the industry would be treated.

As for the adequacy of existing security checks for foreign seafarers, this is also a vexing legislative issue. It is the opinion of ASA that the MSIC regime is essentially driven by shore based labour concerns—that is, the certainty of the appropriateness of the employees of ports and port facilities to be handling cargoes. Unfortunately, however, ports and port facilities and ships are treated equally under the act, and the requirement for one 'maritime industry participant' extends to the other.

Many Australian ship operators believe that they are inheriting an identification system not directly intended to be applied to their crews. Due to legislative limitations, it is also a system that cannot apply to the majority of crews—that is, foreign crews—servicing Australia's trade. Whilst MSICs will apply to all relevant personnel in every Australian port and port facility, they will apply only to a minority of crews in those facilities—that is, the Australian crews present in those facilities at any given time. That is not to say that foreign crews have not been considered. ASA continues to contribute to the working group established by the Department of the Prime Minister and Cabinet, considering whether a new category of seafarer visa should be established for foreign crews. In some respects this will redress the balance between domestic and foreign

crews. However, it does appear to have been driven as much by the shoreside desire for MSICs as by the need for more effective border control.

As for the terms of reference of this committee and specifically the fair operation of security checks with respect to existing employees, we are still some months away from the implementation of this scheme and it is very difficult to say whether there will or will not be fair operation of the scheme. However, ASA believes that, to be considered fair, it is essential that there is consistent application of the MSIC criteria across applicants and accordingly reiterate that that can only be achieved with a central body determining applications that present potential exclusionary offences.

For ship operators in almost all circumstances, holding a valid MSIC will constitute a condition of employment. Where an existing employee fails to obtain an MSIC, all attempts will be made to find alternative duties. This not a redundancy per se. However, it must be said that, for a seafarer who no longer holds the requisite certification for employment, the MSIC—as opposed to being redundant to operations—it may in a great many circumstances be very difficult to find suitable alternative duties.

Finally, with respect to the adequacy of consultation, since the events of September 11 in New York and subsequently in Bali, consultation is the one area that the department of transport and the Australian government must be complimented on. There has been no shortage of consultation with the industry with regard to the development of this regime; in fact, on some occasions it has been difficult to fit the number of forums into one's diary. The government does need to be complimented on that fact: it has been open, transparent for the most part and forthcoming, with a great many robust discussions around the table to develop the key facets of this regime. I do not wish to add anything further but I am certainly willing to answer any questions.

Senator O'BRIEN—Are you aware of the communication that other witnesses have told us about? There was an email last Friday that said basically that, with the current version of the draft regulations, the consultation was at an end and the regulations would be submitted to the executive council on 21 July.

Mr Griffett—That has been brought to my attention this morning.

Senator O'BRIEN—How does that affect your view of the consultation process?

Mr Griffett—It disappoints me, I have to say. There was a process we went through with the development of the regulations that accompanied the initial act that ASA felt was particularly effective. It was time consuming, and we accepted it was time consuming, but it was a comprehensive development of the regulations over three days, whereby DOTARS and OTS specifically work their way down the pyramid, if you will, from them to the key state authorities, to the port and port facilities and, finally, on the third day, to the ship operators. There was a degree of duplication in that process, but what occurred was a negotiation and amendment of the regulations that was finalised over three days. We lobbied for a similar process to occur this time around. It did not occur. There have been a number of opportunities to comment on the regulations to date and we have utilised those opportunities, but it was only this morning that that timing was brought to my attention.

Senator O'BRIEN—On the issue of privacy, which you have dealt with in some detail, I understand that it is your association's understanding that the Department of Transport and Regional Services will effectively withdraw from the maritime security identification card application and assessment process from 1 July. Who has advised your association that the department's withdrawal relates to its funding?

Mr Griffett—That has been advised to me by the executive director, Andrew Tongue.

Senator O'BRIEN—Your submission also says that you reluctantly embrace the cost recovery model. Under the proposed regime, do you believe employers will ultimately have to foot the bill for the administration of the scheme?

Mr Griffett—I believe that is likely to be the case. The implementation process for existing employees is such that with a new obligation imposed upon the government there has been no indication from the government that that would be funded. It is consistent with the rest of the maritime, transport and aviation security models that there be cost recovery. We disagree with that approach to an extent, but we acknowledge the consistency.

With regard to existing employees, we anticipate that the onus is going to fall in the first circumstance on the employers. There are a range of responses from our members to that at the moment, and I do not believe any of those responses are finalised as yet. We have no final quantum of costs as to what the process will be,

and that could potentially drive considerations as well. There are some employers who are openly acknowledging that this is part of the overall maritime security regime. They pay for everything else. They pay for medicals and so on and so forth, so it is consistent with their operations to also pay for the application cost of an MSIC.

At the other end of the spectrum, there are other employers who are looking at the recurring costs of MSICs over a period of time, which in some operations is not inconsiderable. They are exploring options for how they may or may not seek to recover that from employees. That would be onerous in some circumstances. There are some employers that are considering the notion of recovering that over a period of time. Having said that, I am not aware of those processes extending to discussions directly with the employees or their representative unions at this stage. We would expect that there would be resistance from the unions to that approach.

We see the problem more so with new entrants to the industry or for returnees to the industry, particularly those that specialise as relief crews. It may be that they are between employers and have no specific employer. Who pays for their MSICs? Who pays for the new entrant—the 18-year old student who has finished their HSC or equivalent, is looking at starting up at a college and may be putting themselves through initial training? Who pays for that? You will not be able to get sea time without an MSIC because you will not be able to work as a seafarer even in a trainee capacity on a ship. That is a particularly difficult problem and one that I think is some way from being resolved. It would be a particularly difficult problem if there was an expectation, we would suggest, that the first employer off the rank has to refund the costs. It will discourage some employers from being that first employer off the rank. It would further penalise the companies that are training, for example.

Senator O'BRIEN—You have talked about the foreign seafarers issue. You talked about a working group in the Department of the Prime Minister and Cabinet. Can you tell us more about that?

Mr Griffett—It was approximately this time last year that there was a working group established through the SCNS to look at a couple of key issues following a review of maritime security that was done. It looked at the implementation of the MSIC, on one part. It has also considered whether or not there would be a new category of visa for foreign seafarers. I understand that no decision has been made in relation to that. The discussions have been progressing since that time, and there have been at least two subsequent meetings considering the details of that and how that might be integrated into the existing immigration requirements—for example, the predeparture passenger systems that currently exist.

Senator O'BRIEN—The current visa category for seafarers means there is a very basic check, doesn't it? There is no real substantial check of the background of the seafarers in the current visa—

Mr Griffett—That is correct. There is currently no requirement for foreign seafarers coming in or going out, and in the case of foreign seafarers working on continuing voyage permits, their visa is deemed for a period not exceeding three months. That said, every seafarer, foreign or otherwise, coming into this country is required to have a valid seafarer qualification, evidence of that seafarer qualification and a valid passport. This would simply add a new requirement, as it is currently mooted, that foreign seafarers would have a seafarer visa prior to their arrival. It is currently suggested that it would be an electronic visa, and it would be—

Senator O'BRIEN—It is like a tourist visa.

Mr Griffett—Like a tourist visa, exactly. That is how it is being described at present. It may extend for some period of time beyond the three months; it may not.

Senator O'BRIEN—That is what is being contemplated?

Mr Griffett—That is what is being discussed currently.

Senator O'BRIEN—You have not heard about any further progress on this since last year?

Mr Griffett—Since approximately early May; late April or early May was the last meeting, if I recall correctly.

Senator O'BRIEN—This year?

Mr Griffett—Yes. There was a further meeting between us, Shipping Australia Ltd, which primarily represents foreign operators, Immigration and Customs. I believe that would have been reported back to Prime Minister and Cabinet.

Senator O'BRIEN—How many seafarers are we talking about who might require visas under this new category?

Mr Griffett—There would be a great many seafarers coming in. I could not estimate an accurate number.

Senator O'BRIEN—Is it thousands?

Mr Griffett—It would be a case of thousands, yes.

Senator O'BRIEN—Your submission expresses concern about the objective assessment of MSIC applications by issuing bodies. I guess that means following the roll-out period after 1 July 2006. That is the reason you are suggesting that, for consistency, the department or some government controlled body ought to be the ongoing issuing body?

Mr Griffett—There is a range of reasons why we believe it should be the case that there be a centralised body. Concern about the subjectivity of application considerations is one of the reasons why we believe that to be the case. Essentially this is an identity system, at its core, and to have any effectiveness there needs to be a confidence in the validity of that identity scheme—be it by the actual employers, be it by authorities or whoever—and that the person is who the card says they are and that they have, as part of the MSIC, satisfied the criteria underlying that system and that they are justified to be in a security zone.

The concern that we have is in relation to a situation where this divests to issuing bodies. As I indicated before, the majority of issuing bodies are likely to be employers and, in the case of third-party issuing bodies, they have been saying that they are not going to be making those decisions; they will be following the direction of their client, the employer. So it is still the employers. Our concern is that an applicant could, for example, make an application in one far-flung port on one side of the country that is rejected. It is a lineball case and it gets rejected. They take themselves away and make an application on the other side of the country. As is the case in circumstances where there is that sort of scheme for application, it is inevitable that there will be subjective interpretation of the guidelines and they may or may not—they may, in fact, after having already been rejected—have a successful application.

Senator O'BRIEN—Isn't it the case that one factor that might become operative, even though the regulations would not intend this, is how desperately the skills of that person might be needed by an employer?

Mr Griffett—That is also why we have been suggesting that a centralised body will facilitate that urgent need for skills in some circumstances. We say that because if it were centralised it would be a very simple exercise to record some very basic information of an applicant, such as name; last valid address; seafarer qualification, which is unique; and MSIC number, which is unique. That is very basic information, but it would allow an employer requiring a seafarer with certain skills at short notice to in some part address the security risk by making a very simple call to the OTS operations centre and saying: 'I've got Joe Bloggs in front of me here to go on the ship. He has MSIC number ABCXYZ. Can you confirm that that's valid—yes or no?' It is a basic check, but it could only be achieved if there were a centralised body because, in reality, the alternative is MSICs that have been issued by employers and the reliance that the other employer made their decision appropriately and objectively. We believe the system will start to fall over and the participants in the system will lose confidence in the scheme if that is allowed to occur.

Senator O'BRIEN—Is your association satisfied with the proposed access to secure areas by non-MSIC card holders under escort or continuous monitoring?

Mr Griffett—We think that there are going to be difficulties and teething issues once this becomes valid. We are glad that there is a nine-month implementation period through which some of those teething problems will be able to be experienced and addressed. One of the concerns that some maritime operators have is that increasingly when in port a lot of maintenance work is done by shore side contractors. These people are going to require unescorted or unsupervised access to a ship's security zone. Those people are going to in all likelihood have to apply for MSICs.

The question is: should that apply in all circumstances? We would suggest that potentially there is going to have to be a horses for courses approach depending on the circumstance. That nine-month implementation period will be the opportunity to find that happy medium. We are not certain that any regulation, however expressed, is going to hit the ground running and be faultless on day one. It certainly was not the case with the Maritime Transport Security Act, but there was a six-month implementation period there and we worked through the problems. We had some full and frank discussions along the way, but we worked through the problems and had some reasonable outcomes at the end of it. We would like to think that a similar approach will apply through the nine-month implementation of the MSIC regime.

Senator O'BRIEN—Your submission says that holding an MSIC will be a condition of employment and existing workers who fail to gain a card will lack certification for employment. You contrast this to being made redundant to operations and say that, while all attempts will be made to find alternative duties, alternative duties will not always be available. Does that mean that some workers will simply lose their jobs without compensation?

Mr Griffett—That is potentially the case, in the same way that there have been other requirements. For example, when the move from the old certificates of competency to the new standards of training certification and watch-keeping provisions was implemented internationally, some seafarers did not update their certification. They ceased to have the appropriate qualification to continue working. That is a controversial situation. I can imagine the eyes of some of the other people in the room on the back of my head, but that is the reality.

Senator O'BRIEN—Particularly in light of what appear to be changes to the list of offences that might exclude a person from gaining an MSIC, including damaging or destroying Commonwealth property some time previously in the person's life or an offence under section 28 of the Crimes Act. I could not say I understand how that may have been interpreted in the past or will be interpreted in the future.

Mr Griffett—There is an important aspect of that part of the Federal Police check that I think is at times overlooked and, with all due respect, is at times referred to somewhat hysterically by some people. The Federal Police check and the equivalent state checks that form part of that process look at the last 10 years, for the most part. There are slightly differing regimes state to state and federally, but they look at the last 10 years. You outlined earlier the disqualifying offences, and no-one would disagree that they are appropriate disqualifying offences. With regard to the potential exclusionary offences, we are looking at a pattern of convictions or, alternatively, convictions that led to, if I recall correctly, imprisonment for 30 months or more. They are quite serious crimes. It is limited to a period within the last 10 years.

As was outlined by Ms Blackwell in her submission earlier, there are a great many people who work not only on the wharves but also on ships who may have found their way to that employment as an avenue of last resort. We do not anticipate that there is necessarily going to be a huge problem with people failing MSICs. We really do not believe that that will be the case, because the persons who would fail the exclusionary offences test are such that they are not going to be in employment in all likelihood.

Senator O'BRIEN—Have you looked at the current form of regulation 6.07C?

Mr Griffett—I am aware of the shift in the offences. We were certainly quite comfortable with the old list of offences, and we understand that that has been expanded. Considering the requirements for the period of incarceration and also a pattern of offences to justify an exclusionary situation, we still do not believe that is going to knock out a great many seafarers.

Senator FERRIS—I want to clarify a couple of points that were raised by the previous witness. One of those relates to the checks that are carried out, the ASIO check and the AFP check, and the storage of the data. Do you agree with the previous witness that the data should be stored in the Attorney-General's Department? Do you feel strongly about that?

Mr Griffett—We do not have any particularly strong feeling about which agency or department that information should reside in specifically. We would have expected that the results of those background checks would in all likelihood be maintained in some manner or form by the Office of Transport Security.

Senator FERRIS—But not by employers?

Mr Griffett—But not by employers.

Senator FERRIS—I heard your comments earlier to Senator O'Brien about cost. Do you agree that the cost of the security check, whether it is \$150 or \$200 or whatever, should be carried by the employer? Or do you believe that the employee should have to pay it back in some way through a deduction in wages and so on? What is your view on the cost recovery process?

Mr Griffett—Amongst our members there is a range of attitudes towards the cost recovery process. As I indicated to Senator O'Brien, there are a great many employers who refund or pay up front the costs of medicals and the like. An argument can be mounted that the requirement for an MSIC, whilst different, is of a similar character and it would be consistent for the employer to pay those fees as well. A similarly convincing argument can be mounted that, for seafarers who are going to require MSICs in virtually all circumstances, an MSIC has become tantamount to a condition of employment. In the same way, for example, that an employer

is not expected to pay for a drivers licence, some other type of licence or background check, an MSIC should be funded by the holder.

I am not suggesting that one approach or the other is necessarily the right approach; I think all have their merits and all have their difficulties to encompass. But I believe that the ability exists—or at least a serious discussion could be had—to look at options, depending on the nature of the operation. There is a great range of operations amongst ASA's membership to explore that, in different circumstances—specialist relief crews, for example.

Senator FERRIS—So you are really quite equivocal about it on behalf of the association?

Mr Griffett—There are a great many aspects of the maritime security requirement that we do not believe employers should have funded. This is primarily not a cost that directly benefits ship operators in many circumstances. It benefits ports, port facilities and the general public.

Senator FERRIS—And the employees.

Mr Griffett—And the employees as well. A convincing argument can be mounted that this is a requirement because it benefits the general populace and therefore the funding should come from consolidated revenue so that the beneficiaries of the regime pay for it through the broadest means possible. We would see the MSIC as part of that regime, and a consistent argument applies. Having said that, employers can acknowledge the fact that—as is the case in the aviation scheme—the maritime scheme has been based on a cost recovery model. We see this requirement as consistent with that model.

Senator O'BRIEN—Just following up your comments about the cost of issuing the card and some of the issues about those who may fail to achieve the necessary standard and fail to get an MSIC: has that been fully discussed to the satisfaction of your organisations within the working group?

Mr Griffett—That is an issue that has been pretty much done to death by the consultative groups. A position was adopted by the department as to what would be the case. It is an issue that has also been canvassed with the Department of the Prime Minister and Cabinet early last year, when this regime was first put on the table. I have to say that at that point in time, whilst it was flagged—and it was flagged not only by ASA but also directly by some of the stevedore companies—the proposal was not received with open arms, which will come as no great surprise. It has certainly been on the table since then.

Senator O'BRIEN—Given all the discussion, the changes in the regulations at the last point, with the advice that effectively no further correspondence would be entered into, flies in the face of the whole consultative process, doesn't it?

Mr Griffett—I would not say that it flies in the face of the consultative process; there has been a full, frank and open consultation process.

Senator O'BRIEN—But it is a views and consensus process?

Mr Griffett—Whether or not the advice that was sought from industry was adopted or not is a different issue. That does not mean that there was not consultation. There has certainly been consultation, but the prevailing view as it currently stands, to the best of our knowledge, is that there is a reluctance on the part of the government to embrace funding any redundancies that may flow from the introduction of this scheme.

Senator O'BRIEN—But I mean the change to the list of offences that might lead to exclusion or disqualification.

Mr Griffett—That change has not reopened the discussion, to the best of my knowledge.

Senator O'BRIEN—Although, I understand from earlier evidence, that effectively the previous iteration of the regulations had broad support.

Mr Griffett—I think that is probably a fair estimation. It certainly had the broad support of ASA and its members.

Senator WEBBER—Just following on from that, are you fully aware of the changes between the previous draft that was being consulted on and discussed, and the current draft as we got it last Friday? Are you fully aware of all of the changes within it?

Mr Griffett—I have not had an opportunity to review in detail all of the changes since last Friday, no.

Senator WEBBER—But you are—

Mr Griffett—Broadly aware.

Senator WEBBER—You are broadly aware; could you broadly outline to me what you think they are?

Mr Griffett—From what I understand, there has been a shift in the breadth of the offences that are now encompassed.

Senator WEBBER—And that is a shift outwards or inwards?

Mr Griffett—A shift outwards.

Senator WEBBER—And that is it, as far as you are aware, in terms of the changes?

Mr Griffett—In terms of the broad detail, yes.

Senator WEBBER—But your association has not been notified by the department that they are changing their approach?

Mr Griffett—It is possible that we were notified on Friday but I have not had an opportunity to review that yet.

Senator WEBBER—It is an unusual approach. There is just one other matter. I just want to go back to the issue of foreign crews. Earlier in your evidence I got the impression that you seemed to think that our security concerns were about Australian crews and the Australian work force rather than foreign crews and a foreign work force. DOTARS is saying that the MSIC is going to come in and that there will be no further consultation and no further correspondence entered into even before this committee can report. So it will be compulsory for people working as Australian crews. But meanwhile, we are going to have foreign crews who can come in and wander around the security zone without our knowing who they are.

Mr Griffett—I would suggest that, no, they will not be in that position.

Senator WEBBER—They will have stay on their ship? They will not be allowed anywhere while they are in port?

Mr Griffett—How I have characterised the application or the potential introduction—and I reiterate that it is only a potential introduction of a foreign seafarer visa—is that it is driven from the beginning by—

Senator WEBBER—I am actually talking about now rather than a potential new visa. I will get to that issue in a minute. At the moment the MSIC is coming in lickety-split no matter what we all think. We will have Australian crews and Australian seafarers and Australian workers in the extended industry required to have this and go through a process, but foreign crews will still only need their seafarer's qualification and their passport to be able to wander around that maritime security zone—or do I misunderstand this?

Mr Griffett—I would suggest that potentially, yes, there is an element of misunderstanding. Security zones came into full effect on 1 July last year with the coming into force of the Maritime Transport Security Act and, by extension, the ISPS Code.

Senator WEBBER—Yes, and a ship is a security zone.

Mr Griffett—Australian ships and security regulated foreign ships have similar provisions. Ships are security zones and we would expect that under their own flag and their own jurisdiction they have similar types of provisions in place. It is slightly different. For the great majority it is more of an ISPS than a Maritime Transport Security Act type regime. In terms of your question about people being able to wander around the ports, ports and port facilities have had security zones from 1 July last year. That has been applying for 12 months now. Over that period of 12 months it has been the case for Australian seafarers and foreign seafarers alike that they have not been able to wander around willy-nilly in those security zones.

Senator WEBBER—No, but they do have access. My point is that with this new regime Australian workers wanting access are going to have to get over a greater security hurdle than foreign workers who have access.

Mr Griffett—In fact the Australian operators are probably going to be treated no differently from the foreign seafarers because—

Senator WEBBER—Except they have to have a MSIC and foreign seafarers do not.

Mr Griffett—A MSIC is an identity card, not an access card, as we were indicating before.

Senator WEBBER—But it is an identity card with a security clearance.

Mr Griffett—Yes, but it is still not an access card.

Senator O'BRIEN—Are you saying that ports will say that despite the fact someone is a seafarer on a vessel tying up alongside, they will determine which crew can get off the boat and have access to the secure area?

Mr Griffett—And walk through a port or port facility unescorted, yes. That is the case now and that has been the case for 12 months and for a great period of time.

Senator O'BRIEN—So could you tell us what sorts of restrictions are currently applied to crews in those circumstances?

Mr Griffett—It differs depending on the ports and how hectic the business activity is within the port. There is a great difference between Mourilyan—when it is operating—and, say, Port Botany. But the reality is, for occupational health and safety reasons, if nothing else, that seafarers—foreign or otherwise—are not permitted to walk around willy-nilly within a port unescorted. What has happened with the introduction of the Maritime Transport Security Act is that the powers that have been granted or the obligations that are encompassed within that legislation have really given a whole new set of teeth to the occupational health and safety limitations that existed preventing seafarers—Australian or otherwise—walking through ports and port facilities. That is why I say that in many respects the situation that currently exists will not change. Australian seafarers with a MSIC are not granted access to ports and port facilities to be able to walk willy-nilly—using your example—any more now than they were prior to the introduction of MSIC, or even prior to the introduction of the MTSA as it then was, on occupational health and safety grounds.

CHAIR—Is the present arrangement such that if I am a crew member on a foreign vessel and come from whatever land and I lob into Sydney and I want to go and buy a few beads and bangles for the girlfriend or the boyfriend, can I get off the ship and go do that?

Mr Griffett—That is something we have concerns about from a welfare point of view. It is going to be a problem not only for foreign seafarers but also for Australian seafarers. Unlike airplanes, ships are not just a place of work; they are also a home. The last thing that ASA and its members want to see is seafarers confined to a ship.

CHAIR—But, at the present time, what is the answer? Can I get off and buy some beads and bangles?

Mr Griffett—The answer is, in most circumstances, yes, provided that is notified to the port or port facility and that you are escorted through the thick of it.

CHAIR—If I do that can I then get through the security to get back onto the ship?

Mr Griffett—Presumably, yes, but it has to go through the appropriate security of the port.

Senator WEBBER—Do you need your passport?

Mr Griffett—You would need your passport on first arrival. You do not necessarily, I understand, need your passport—

Senator WEBBER—So I do not need any photographic ID, you will let me off the ship to go and buy beads and bangles—picking up on the chair's point—and let me come back?

Senator FERRIS—You have to have a passport.

Senator WEBBER—I understand that, Senator Ferris, but what I am told is that you need that initially; you do not actually need to take it with you when you wander into, say, Sydney to buy your beads and bangles and then you come back.

Senator FERRIS—You have to go through a Customs point when you get off ships.

Senator WEBBER—That is when you arrive. It is not to get on and off.

CHAIR—Maybe you are the wrong person to ask these questions of.

Mr Griffett—There are other people who could answer them better than I.

CHAIR—I have not asked the killer question yet; I will save that for someone who can answer it.

Senator WEBBER—So you do not actually need to carry photographic ID or anything with you?

Mr Griffett—There are other people who could better answer that question than I.

Senator WEBBER—But in your understanding?

Mr Griffett—My understanding is no, not necessarily.

Senator FERRIS—You have to go through a Customs point every time.

CHAIR—We will get that answer. Is it the wish of the committee that the submissions numbered 10 and 11 be accepted as evidence? There being no objection, it is so ordered. In submission no. 11 it says:

Under current arrangements Customs risk assesses every commercial vessel in advance of its arrival ... 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 ... The details of every crew member are entered in to a Customs system that is checked against Passenger Analysis, Clearance and Evaluation ...

Et cetera. Do you think the present arrangements are adequate? The word on the street is that it is tougher for Australians and Australian crew in terms of security than for the crew of flag of convenience foreign-owned vessels. If I lob into Sydney and say that I want to go and buy some beads and bangles but in fact I am carrying something, would I get inspected as I leave the wharf—if I had a backpack on with a device in it, for example?

Mr Griffett—Whether or not you were inspected would be subject to the details of the port or port facility security plan.

Proceedings suspended from 12.59 pm to 1.48 am

MORRIS, Mr Stephen John, Executive Director, Customs Brokers and Forwarders Council of Australia

CHAIR—Welcome. I invite you to make an opening statement.

Mr Morris—The Customs Brokers and Forwarders Council of Australia, the CBFCA, is an industry association which represents service providers in international trade logistics and supply chain management. The CBFCA has had an interest in this legislation since its inception in 2003 in relation to the access of its members to ports in servicing their clients. The CBFCA has a different want and need than other participants from whom you have heard today—the unions in relation to the stevedoring industry and port operatives, shipowners and ship operations—and other service providers from which you will hear.

As I said, the CBFCA has had a long involvement with this legislation and provided comment on the initial legislation in relation to what it perceived as some of the difficulties that would be experienced in terms of maritime security cards and identification, the issuance of such port and depot access and the multiple controls that exist within ports from a security, customs or quarantine environment. Since October 2004 the CBFCA has been a participant on the maritime security identification card working group and sees that that process has been very professional in relation to the Office of Transport Security. It has been thorough and, as referenced by other people at this hearing, the discussions have been robust, and many of the issues that have been taken on board by the Office of Transport Security have been resolved. An issue register has been created. That issue register had about 117 items that were addressed or brought forward by the parties in the working group. Those issues were identified, reviewed and, as far as possible, determined.

The CBFCA has a wider issue in relation to security than other people who may be attending here, because our members relate not only to the maritime industry but also to the aviation industry in terms of cargo movement. Therefore, the CBFCA is both maritime and aviation focused. The CBFCA sees that, in terms of its responsiveness on the maritime security identification card issue, the Office of Transport Security has been quite clear in what it set out to achieve and had a goal in mind when the first meeting was held in October 2004.

Suffice to say, I am happy to address any questions you may have as to the terms of reference, save for any specific reference in relation to item (e), which Mr Trevor Griffett of the Australian Shipowners Association has addressed.

Senator O'BRIEN—How many members does your association have?

Mr Morris—I have 350 corporate members and, within that corporate sphere, they have about 9½ thousand employees. Many of those are licensed by the Australian Customs Service as customs brokers while others have regulatory control through the Department of Transport and Regional Services in relation to dangerous goods and regulated agents arrangements.

Senator O'BRIEN—How many of those employees will be required to have an MSIC?

Mr Morris—On the basis of those entities, probably about 700 to 800 will need access to the wharves to carry out various functions with Customs, AQIS and the Shipowners Association.

Senator O'BRIEN—Will they need an MSIC or will they be able to go in escorted?

Mr Morris—They could go in escorted but it would be more appropriate for these people to have a maritime security identification card, on the basis that Customs, AQIS or other parties who will be there on the wharf do not need to be travelling around with these people while they are working in the waterfront environment. For example, if they are discharging boats or vessels from the deck into the water, these people will need to be in an environment alongside vessels and on vessels for a considerable period of time.

Senator O'BRIEN—Did your association play an active role in the working group?

Mr Morris—It did—since the first meeting in October 2004.

Senator O'BRIEN—Do you believe that the consultation on the new maritime security regime, including the new draft regulations, has been adequate?

Mr Morris—You made a comment in relation to the new draft regulations that have come out in the last seven days or the regulations that were out in early June. The consultation leading up to those has been extremely good. In dealings with other regulatory environments, the CBFCA found the consultation process to be very effective.

Senator O'BRIEN—I take it that you are excluding the new draft regulations from your comments?

Mr Morris—Following on from the comments made by other parties here, although the regulations have been out for a period of time, to access the most recent ones in order to be able to make full comment on them is something that I have not been able to achieve because of other commitments. There have been some changes but, on balance, we would support those changes to the regulations.

Senator O'BRIEN—But you say that you have not had a chance to look at them in depth?

Mr Morris—No, not in depth.

Senator O'BRIEN—Do you have any privacy concerns related to the proposed administration of the MSIC scheme, including its administration after 1 July next year?

Mr Morris—I think one of the greatest challenges, whether it be for the Office of Transport Security or even for government, is to balance the rights of the individual or the citizen vis-a-vis societal needs and to strike the balance of what is sometimes called the social contract. From the point of view of my members, their privacy issues are able to be protected in relation to the MSIC.

Senator O'BRIEN—Do your members want to be issuers?

Mr Morris—No. The association does not want to be an issuer of MSICs, for a couple of reasons. One, because of the lack of critical mass that we have, it would be a cost imperative for our people on that low number of MSICs.

Senator O'BRIEN—Who do your members want to be the issuer?

Mr Morris—We would probably accept the issuing bodies that have put their hands up to do that. They are some of the major stevedores. We would accept the port authorities. We would accept as an issuing authority a third party who is complying with the requirements of the regulations and the Office of Transport Security requirements.

CHAIR—In those parts of the world that would be the issuing bodies, would there be a risk that there would be mates that would look after one another? Would the process be a bit incestuous if you did not have some sort of outside authority?

Mr Morris—On the basis of good governance principles in organisations that I am aware of in the aviation industry, large employers in the international express carriers industry—

CHAIR—Did you say in the aviation industry?

Mr Morris—Yes.

CHAIR—There are plenty of blokes walking around airports that should not be in airports—they are bloody crooks.

Mr Morris—I find it difficult to comment on that. In their own internal governance process, most other organisations look to ensure that their people meet certain desired standards. Most employers are not in a position to determine a police record due to the privacy issues of their employees.

CHAIR—The best of luck!

Senator O'BRIEN—How will the proposed cost recovery arrangements work? Will employers or employees have to foot the bill for the administration of the MSIC scheme?

Mr Morris—I think it is accepted practice within any government stream that cost recovery or user pays exist. Whether that cost recovery comes from government requiring the cost recovery or whether an activity required by government needs to be cost recovered by the private sector, user pays is an accepted practice.

Senator O'BRIEN—Who is the user?

Mr Morris—I do not think it is going to be a community service obligation charge that government will pick up, as has been shown in other forums, such as the Australian Customs Service container examination facilities. While there may be a community option or outcome here, I think that, whichever way it goes, it will be the employer's responsibility to meet this cost of doing business. Employers in the industry sector that I represent meet the cost of accreditation requirements or licences if their employees are required to have certain levels of accreditation or standards with the Australian Quarantine Inspection Service or to be licensed by the Australian Customs Service as brokers.

Senator O'BRIEN—Is your organisation satisfied with the proposed access to secured areas by non-MSIC holders—that is, under escort or continuous monitoring?

Mr Morris—I do not think continuous monitoring is an appropriate outcome—either you are escorted or you have the opportunity to be unescorted under an MSIC. I think continuous monitoring leaves open the ability to move outside the monitoring process.

CHAIR—Human failure.

Senator O'BRIEN—And it depends on the vigilance of the monitoring person or persons.

Mr Morris—Correct. That is an appropriate comment. On the basis of people having to monitor several activities within a waterfront sphere, one of those activities may be subject to less vigilance than others at times.

Senator O'BRIEN—What will happen to existing employees of your members who fail to gain an MSIC?

Mr Morris—From what you have heard this morning, those in other sectors have a more difficult test to meet than our members have. A lot of our employees are not necessarily physically required in the organisation—that is, they are clerically based people who have a requirement at times to move into an environment where a maritime security card is required. There is an opportunity to redeploy those people within any business into a different area because of the opportunity to move staff from point A to point B and not have the redundancy requirements that may be required in other areas.

CHAIR—If I am a colourful character working for you on the wharf—

Senator O'BRIEN—You would be!

CHAIR—and I am into whatever comes along and I have been done for whatever a disqualifying issue is, are you saying that I could then be moved into an administrative task in your organisation?

Mr Morris—I am saying that you could be but are probably not likely to be because you have a disqualification issue—

CHAIR—Let us say it is an exclusion issue.

Mr Morris—An exclusionary issue will be brought to a person's attention when they apply for the MSIC and they will be told that there is an exclusionary issue. The employer would then be able to ask what the exclusionary issue is and whether that person would be prepared to share that with him. If that person were not prepared to, that would leave open in the mind of the employer as to whether that person could even work in the business.

CHAIR—My question goes to the cost of what I would call the 'clean-out'. Wherever you go there are people who probably should not be there. Even in prison there are people who should not be there.

Senator McGAURAN—Even here.

CHAIR—Are you referring to me, Senator McGauran? Would the temptation to avoid the problems of redundancy costs in some way influence them to move people into an administrative job—where I would have thought, if you were the right sort of character, you could do as much damage as if you were physically on the waterfront? Would that not be a temptation?

Mr Morris—I could not speak on behalf of the employees but, from my point of view, I do not think so. There are other environments in which they have to work in terms of maintaining their requirements under the Customs Act. Most of these operate what are known as section 77G depots under the Australian Quarantine and Inspection Service requirements. So, if you did not move that person out of your environment, there would be a myriad of compliance requirements that would create issues for you as the employer with regulatory agencies. So I do not think that people would look at the redundancy issue as not being an alternative.

CHAIR—Mind you, we would have to be reasonably careful as to what was an excluding offence. If it were pot-smoking and things like that, half the universities would have no staff. As there are no further questions, thank you for being here today.

Proceedings suspended from 2.02 pm to 2.14 pm

GEORGEE, Ms Patricia, Section Head, Maritime Branch, Department of Transport and Regional Services

HALLINAN, Mr Ross Stephen, Acting General Manager, Maritime Security, Department of Transport and Regional Services

LIUBESIC, Ms Patricia, Section Head, Maritime Security Identity Team, Office of Transport Security, Department of Transport and Regional Services

TONGUE, Mr Andrew, Executive Director, Office of Transport Security, Department of Transport and Regional Services

CHAIR—Welcome. If you would care to give your name, rank and serial number and make an opening statement, now would be the time.

Mr Tongue—I will touch on a few issues relating to the background to today's hearing. The [Maritime Transport Security Amendment Bill 2005](#) was passed by the House of Representatives and the Senate last month. The Maritime Transport Security Act was amended to allow for security regulation of Australia's offshore oil and gas facilities and to allow for the introduction of the maritime security identity card.

Australia's oil and gas industry is an enormous part of our economy. The total revenue of the petroleum industry was \$16.7 billion in 2003-04. The changes to the Maritime Transport Security Act flowed from a review of offshore security arrangements conducted last year at the government's request. The announcements to amend the act and introduce MSIC were made by the Prime Minister on 15 December 2004. The target to bring the offshore oil and gas sector under the Maritime Transport Security Act is 30 September this year.

What the amendment to the act means for operators of offshore facilities is that they will have to conduct a security risk assessment on their operations and then use that assessment to create a security plan that indicates measures and procedures to manage risk. This is consistent with what we do elsewhere in the maritime sector and in the aviation sector. The regulations that are proposed to be made under the act indicate the various matters that need to be incorporated in the risk assessment security planning process.

We have consulted extensively as part of this change process and we are certainly able to provide the committee, if you wish, with dates, times, people and places. One comment I would make, though, is that we are very conscious of the time frames and the need to get this up and going to meet the government's requested time frame.

CHAIR—Thanks very much. Ms Liubestic, were you instructed to send the email saying that there was a cut-off date for amendments to the regulations?

Ms Liubestic—That email was the last of a rather extensive process we had in trying to finalise regulations in order to get them ready for executive council approval to meet a particular meeting date of 22 July.

CHAIR—That did not answer the question.

Ms Liubestic—As I said, it was the outcome of an extensive process.

CHAIR—You are still not answering the question. Were you instructed to send it out or did you do it off your own bat?

Ms Liubestic—I was instructed to send it out.

CHAIR—Who instructed you?

Ms Liubestic—The executive I work for in OTS.

CHAIR—Who is that?

Ms Liubestic—Ross Hallinan, who is acting general manager.

CHAIR—This bureaucratic code that everyone talks in is wonderful. It is a pity that we do not live in a black and white world where you just say yes or no. I take it that we should not see this as flying in the face of this process here today?

Mr Tongue—Absolutely not. All we were trying to do was round up a quite extensive process of consultation that we are trying to get done and get comments in from industry so that we can meet some pretty tough deadlines.

CHAIR—But you can understand that there may be—

Mr Tongue—I certainly do and I apologise.

CHAIR—And I am sure Senator O'Brien—

Senator O'BRIEN—But that email does not seek to finalise a date for comment; it says it is closed. That is what the email says. It says: 'This is it; we can't take anything further because it has a cut-off date of the 21st.'

Mr Tongue—At some point we have to cease the consultation process, draw it to an end, and say: 'People, enough is enough.'

Senator O'BRIEN—Sure, but at the same time as you do that you change, without consultation, a fundamental part of the regulations that relate to the offences, which might exclude people from eligibility for an MSIC. Part II of the Crimes Act replaces section 15HB, which is a pretty critical change—and at the same time you close off consultation.

Mr Tongue—It is a change. It reflects some decisions that were taken by the government in the context of background checking in the aviation and maritime sector. Whilst we could have talked about it for longer with the industry, my judgment is that it was not going to affect the government's consideration of where it wanted to go with that change.

Senator O'BRIEN—When did the government make that decision?

Mr Tongue—I recall that it was about 7 June, in the context of changes that were announced in connection with the aviation industry.

Senator O'BRIEN—How many meetings with the industry took place between 7 June and last Friday?

Mr Tongue—One meeting.

Senator O'BRIEN—Was that government policy flagged at that meeting?

Ms Liubestic—We spoke about the general changes that were being considered by government at that time. However, the list of crimes which appears in the regulations were the crimes that were agreed to by the working group in February of this year.

Senator O'BRIEN—So they were not told that there was going to be a change?

Ms Liubestic—They were told that there were changes being considered by government.

Senator O'BRIEN—But not with regard to the list of offences?

Ms Liubestic—Sorry?

Senator O'BRIEN—But not with regard to the list of offences?

Ms Liubestic—The details of the changes—there are no decisions at this point in time.

Senator O'BRIEN—Sorry, I thought you said that the government had made a decision on 7 June.

Mr Tongue—It had made an announcement that it was going to tighten background checking arrangements for ASICs; that it was going to look at the question of creating a centralised background checking agency—

Senator O'BRIEN—Sure. I do not think there is a lot of controversy about them—if the government were going to take that responsibility—from the evidence we have had today.

Mr Tongue—That is right. I think that is clear. And the decision was effectively to also have a look at the MSIC crimes list, with a view to ensuring that it reflected the community concern that was evidenced at airports, to ensure that we had both MSICs and ASICs tuned correctly with regard to the list of crimes.

CHAIR—Can I go back to the start. The legislation had passed parliament, and there were some working arrangements made to have an inquiry into the regulations—is that correct?

Ms Liubestic—That is right.

CHAIR—Do you think this is a waste of time—what we are doing here today?

Mr Tongue—No, Senator, I do not think so.

CHAIR—Well, why would you then say that, given that we are not going to report until 9 August, all of this has got to be done by 21 July, at Executive Council?

Mr Tongue—That is if we are going to meet the time frame that was set down for us. But, of course, subject to considerations of the committee and evidence that is taken, the government might move the time frame.

CHAIR—But when that decision was taken that is in this email, you would have been aware of this Senate process. Just answer yes or no; do not talk in code, please.

Mr Tongue—Yes.

CHAIR—So, in my view, what you are doing is telling us to go to hell; you are not, but someone is. I would like to think that the parliamentary process is a valid process. There are always unintended consequences and discovery of things that are subject to human error and there are failings that could come out of a hearing like this. But obviously this is an internal bureaucratic process not attached to a political process, because the political process is that we should investigate the regulations, as demanded by parliament, and report back on 9 August.

Mr Tongue—I would make two points, Senator. We feel keenly the responsibility to deliver government decisions on transport security—

CHAIR—So do we!

Mr Tongue—and if we there is a charge that has been levelled against us from time to time it is that we have moved too quickly. The second point I would make is that we anticipate that, as we roll out this process, we will have to change the regulations. We experienced this previously in the sector, with the initial roll-out of the Maritime Transport Security Act. Although we consulted, they were created and they hit the ground, sometimes there were unintended consequences and we had to go back and amend them. Whilst we are searching for a time frame that allows us to build this and meet the government's requirements, the regulations are not set in stone.

CHAIR—So you are saying there is room for that?

Mr Tongue—Absolutely.

Senator McGAURAN—I have one question, in three parts. I do not know whether you heard the MUA's evidence and their opinion of the legislation, but you probably already know that the particular part of the legislation that they are not happy with is the late inclusion of Part II of the Crimes Act 1914. It was not part of the original negotiations. The meaning of section 29, 'Destroying or damaging Commonwealth property', troubles them—does it mean the cutting of a padlock, is it the planting of dynamite, how wide is it?

CHAIR—Dynamite is a bit old-fashioned.

Senator McGAURAN—Anyway, you have the picture. In section 29, the one that particularly worries the MUA, the penalty gives away the gravity of the crime. It is 10 years imprisonment. There is no fine attached to it—it is an imprisonment term of 10 years; it looks mandatory. It means that it is a serious crime of material damage, and any conviction would be a serious conviction. Would you agree with that? Secondly, wouldn't your department, which oversees security, want to know about someone who has breached that part of the act? Isn't the protection of the meaning of that act against misuse of the separation of powers itself? I know this is an offence against the government but it is a judge who will decide. It is quite clear that it is a penalty for a serious offence, not just for cutting a padlock in a lock-out situation or a heated strike situation but for planting a bomb, for example. As I said to the MUA, they are overstating the case if they think that this will be used in some industrial relations act. The spirit of the regulations—let alone the law—is as it states: to tighten security against terrorist acts.

Ms Liubestic—I can answer that question. It is basically 'yes' to all you have just spoken about. We are interested in looking at serious destruction or damage of Commonwealth property. That point has been made at various working group meetings—to all the working group members.

Senator McGAURAN—Finally on that point: this legislation has been in place for quite some time and could have been used at any time. Quite frankly, wouldn't it be that anyone who has breached this act would already have trouble getting a job down at the waterfront?

Ms Liubestic—That would be accurate.

Senator McGAURAN—So that is another 'yes'. That ought to be recorded. I hope you hear that, Mr Chairman, when you come to write your draft report. This legislation would already prevent someone from working down on the waterfront.

CHAIR—Are you referring to the long-term Crimes Act?

Senator McGAURAN—I am finished.

CHAIR—There you go.

Senator McGAURAN—I know that you will write the first draft report, and that was a very important point. I want you to pay attention.

Senator O'BRIEN—Can I just go to the matter of criminal offences so we can be absolutely clear. The Crimes Act has applied for some time, but when did the act which gave effect to the maritime security identification card, MSIC, gain royal assent?

Mr Tongue—It was 26 June.

Senator O'BRIEN—So it has been in effect for about a fortnight?

Mr Tongue—Yes.

Senator O'BRIEN—It is awaiting these regulations to come into full effect?

Ms Liubestic—That is right.

Mr Tongue—To give effect to the management of the operation of the scheme.

Senator O'BRIEN—So the MSIC will come into effect and the potential exclusion of employees will come into effect after these regulations are given effect?

Ms Liubestic—The background checking will start on 1 October 2005.

Senator O'BRIEN—So when would we expect exclusions, if any, to take effect?

Ms Liubestic—At any time after that point.

Senator O'BRIEN—At any time after October this year?

Ms Liubestic—After 1 October this year. That is right.

Senator O'BRIEN—So that is the length of the regime we are talking about. It is not for the long term, as Senator McGauran was just suggesting.

Mr Tongue—The issue is that it will depend a little bit on how quickly the names are given and the forms filled out. They come in for us—

Senator O'BRIEN—Some time after 1 October 2005?

Mr Tongue—Yes.

Senator O'BRIEN—Perhaps we will put that in the report, Senator McGauran. In dealing with the issue of those criminal offences under the Crimes Act that we have been talking about, draft regulation 6.07C talks about maritime security relevant offences, conviction of which constitutes an adverse criminal record as provided in draft regulation 6.08A. Item 3 in draft table 6.03C identifies an offence mentioned in part II of the Crimes Act 1914. Can you confirm that in an earlier draft item 3 referred to a serious Commonwealth offence within the meaning given in section 15HB of the Crimes Act 1914?

Ms Liubestic—That is right. In an earlier draft, it did.

Senator O'BRIEN—So why has this changed?

Ms Liubestic—In the preparation of these regulations a number of versions of draft regulations were prepared. There had been a number of errors in them. As we have progressed through the various drafts we have picked up the errors, but the original intent of the crimes list was as agreed by the working group.

Senator O'BRIEN—The original intent of the crimes list was as agreed by the working group.

Ms Liubestic—That is right.

Senator O'BRIEN—We have a document which was tabled entitled *List of disqualifying and exclusion crimes relating to the MSIC*. I wonder if you could have a look at this particular document. Is that the agreed working group list of crimes that you are talking about?

Ms Liubestic—It is, with the exception of the two bottom categories. This document was prepared for a working group meeting in February, at which the working group members wanted to see what criminal record or history of anybody who applies for an MSIC would be revealed in the process. The bottom two categories indicate crimes that would be revealed during the process of preparing this information on a particular applicant but would not be used in the assessment of the process. Categories ranging from any offence against part 5 of the Criminal Code right down to the bottom category of immigration violations are in the crimes list. The last two categories indicate the crimes that would be revealed in our background-checking process.

CHAIR—In that list there are a whole lot of exclusion crimes. Are they considered to be in some way less serious than the disqualifying ones?

Ms Liubestic—They are considered against the fact that, if somebody has been convicted of those offences, we would want to see the circumstances of those offences. So basically you have two categories here. You have the disqualifying categories—

CHAIR—Where there are no questions asked.

Ms Liubestic—There are no questions asked, absolutely. And there is the exclusionary category, which would indicate that we would be interested. They would throw up an orange flag. For anybody who had been convicted of those particular crimes, we would be looking into the circumstances of those offences.

Senator O'BRIEN—I am given to understand that this is a consensus document from the working group.

Ms Liubestic—That is right.

Senator O'BRIEN—I am also given to understand that there was no indication to the working group that the department had any problem with it.

Ms Liubestic—That is right.

Mr Tongue—At the time of the working group meeting.

Ms Liubestic—That is right.

Senator O'BRIEN—Which was subsequent to 7 June?

Mr Tongue—This document was tabled back in February.

Ms Liubestic—That is right.

Senator O'BRIEN—But, subsequent to that, at no meeting since then has there been an indication that the department had a problem with this?

Ms Liubestic—No.

Mr Tongue—No.

CHAIR—So if I were convicted of treachery, sabotage or hijacking an aircraft there would still be a chance that there would be a reason why I hijacked the aircraft that allowed me to go back and work on the wharves—is that the case?

Ms Liubestic—We would look fairly closely at the circumstances of that particular offence.

CHAIR—But why would you look that? Are you serious about that?

Mr Tongue—It includes unlawful drilling, unlawful associations—

CHAIR—Yes, but I would have thought that if I hijacked a ship or aircraft I would be automatically disqualified as a suitable person who would not be considered to be a security risk.

Mr Tongue—The list is trying to break a large mass of people into green lights, red lights or automatically disqualified.

CHAIR—I understand all that. But it is a pretty generous set of lights you have.

Ms Liubestic—This is a consensus list.

CHAIR—I am sure it is, and I beg to differ with the mob that put it together. I would have thought that if I hijacked a ship under no circumstances would I be a suitable person to go and work on a bloody wharf or rig somewhere.

Ms Liubestic—There are also circumstances where perhaps somebody was under the influence of drugs or alcohol and tried to attempt to hijack a ship or aeroplane. The intent behind listing that particular group of offences as exclusionary is that we wanted to be able to look into their circumstances.

CHAIR—Have you got to be convicted of these crimes?

Ms Liubestic—Yes.

CHAIR—If I am convicted of hijacking a ship or an aircraft then all of the things that you are talking about would have already been taken into consideration. I would not have received a guilty verdict in the court if there were some extenuating circumstances.

Senator O'BRIEN—What is the relevance of the penalty in all of this? I can't see anything in the regulation that talks about the penalty as being a qualifying factor, although a witness earlier today said that a certain level of penalty would be needed before these exclusion events would be taken into consideration. Is that right?

Ms Liubestic—It is related to being convicted of these crimes.

Senator O'BRIEN—Yes. That is what I thought. That is what the regulations say.

Ms Liubestic—That is right. That is exactly what it is.

Senator O'BRIEN—And once you are convicted of a crime—let's take the current regulation—under part II of the Crimes Act you are either disqualified or excluded.

Ms Liubestic—That is right.

Senator O'BRIEN—And there is no threshold in terms of sentence, penalty or other factor, other than a finding that no conviction be recorded?

Ms Liubestic—That is right. It is based on a conviction.

Senator O'BRIEN—So there is no tempering qualification, and somebody then makes a decision as to the orange light situation—as to whether or not that offence is so serious that the person should be denied an MSIC?

Ms Liubestic—That is right.

Senator O'BRIEN—There is nothing in this that I can see—perhaps you can point it out to me—that talks about including interference with political liberty in the list of disqualifying or exclusion crimes.

Ms Liubestic—That was a point that we took on board very early on in the process. We were not going to exclude people specifically because of those sorts of crimes.

Senator O'BRIEN—But according to the new draft they will be excluded.

Ms Liubestic—No. Part IIA was never part of the MSIC crimes list. Part II is, but part IIA is not.

Senator O'BRIEN—Isn't section 28 in part II?

Ms Liubestic—Section 28 is in part II. That is right.

Senator O'BRIEN—And that is the one that talks about interfering with political liberty?

Ms Liubestic—That is right.

Senator O'BRIEN—So under the current iteration of the regulations section 28 is an exclusion crime?

Ms Liubestic—Yes. That means that judgment will be exercised, and we would look at the circumstances if there were any offences in that list in that particular category of crime.

Senator O'BRIEN—But why should it be in the list at all? What is the relevance of section 28 to maritime security? Can you explain that to me, please?

Ms Liubestic—It was because there were a number of other categories in that part. That is why the whole part appears in the crimes list.

Senator O'BRIEN—If the regulation had said 'part II, except sections 28 and 29', for example, that would equally cover what you intended to cover?

Ms Liubestic—That is right.

Senator O'BRIEN—So it could be a drafting error.

Ms Liubestic—Yes.

Senator O'BRIEN—What about 29? Why is that in there?

Ms Liubestic—Again, it is the same sort of issue where the part was relevant to what we were trying to do, so we just included the entire part.

Senator O'BRIEN—You have already said this, but I just want to be clear, and I think your view equates with mine—that is, reference to part II of the Crimes Act does not automatically include part IIA of the Crimes Act.

Ms Liubestic—That is exactly right.

Senator O'BRIEN—And you have taken advice on that?

Ms Liubescic—Yes. In fact, it has never been a point of discussion with any member of the working group whether that part was in or out. It was always part II, not part IIA.

Senator O'BRIEN—So you have been talking about part II of the Crimes Act rather than all of it, but certainly none of part IIA?

Ms Liubescic—That is exactly right.

CHAIR—I want to go back to this wonderful cooperative document that you have here and just get this into my tiny head: if I am an importer or an exporter of drugs or if I am guilty of sedition—and if you look at the definition of 'sedition'—

Senator FERRIS—Do you mean 'convicted'?

CHAIR—You have to be convicted. You are saying that there might be circumstances under which I imported the drugs or that I am rehabilitated. Why wouldn't you just disqualify these people?

Ms Liubescic—Because under that particular—

CHAIR—If someone is an importer of drugs or a partner in organised crime, do they really need to be working on the wharf? You can be part of organised crime and, not this year, but next year you can shop around for the right issuing body—because, like magistrate shopping, there will be body shopping—to get back onto the wharf. This is bloody crazy!

Senator O'BRIEN—Can we have an answer?

Ms Liubescic—Yes. Thank you.

CHAIR—No, thank me. I am asking the question.

Ms Liubescic—With that particular category of crimes, because of the definition of production, supply and import—and they are very small amounts—we have to be absolutely sure that we have the discretion to knock people out if we have to. On the other hand, we do not want to knock people out for other sorts of—

CHAIR—Let us just stick with the example of the hijacking of an aircraft or a ship for which I have been criminally convicted. There is a famous High Court case of a priest who had been interfering with altar boys for 20 years and who got sympathy from the court because he was a situational paedophile trapped by a vow of celibacy. Is that the sort of lunacy that is going to be in this?

Mr Tongue—No, I do not think so.

Senator O'BRIEN—There is nothing to do with celibacy in this.

Senator FERRIS—Let us try and get the answer.

CHAIR—We are.

Senator FERRIS—But you are continuing to accuse them and we do not get to hear the answer.

CHAIR—What kind of hijacker is okay?

Mr Tongue—It includes, for example, illegal carriage of dangerous goods on board an aircraft or a ship. Some of the offences, as I understand it, that relate to illegal carriage of dangerous goods are strict liability offences—you did it or you didn't do it; it does not go to motivation.

CHAIR—But you have to be convicted, right?

Mr Tongue—You need to be convicted.

Senator FERRIS—I want to hear the answer.

CHAIR—I want to get the right answer.

Senator FERRIS—You will not get any answers the way you interrupt all the time.

Mr Tongue—In looking at how we have categorised the crimes, if we make too many of them automatically disqualifying we start to knock people out at the bottom end of some of these offences or classes of offences that, on balance, you would want to make a judgment and say, 'We probably don't have a concern from a national security perspective about that person.' So what we are seeking to do is give ourselves—and we are the decision makers in this instance—a little bit of discretion at the margins.

CHAIR—Let us stick with something very simple: hijacking an aircraft. If I were criminally convicted of hijacking an aircraft, what would be the circumstances under which you think it would be all right for me to go back and work in a secure, sensitive position on an oil rig or something?

Mr Tongue—I cannot imagine that there are any circumstances, and this list—

CHAIR—Why would you not then disqualify that person?

Mr Tongue—The way that we have crafted this list would allow us to exclude somebody. Another way of re-presenting this list would be to try and make it as long as the list of crimes that we could come up with across—

CHAIR—We do not need to hear all that. So there are some hijackers who are okay, because if there were not you would disqualify them.

Mr Tongue—No.

CHAIR—Why would you not disqualify them straight up? If they are criminally convicted of hijacking an aircraft, what is there to talk about?

Mr Tongue—All this list does is group crimes by type of crime and then provide some examples. It sets up the basis that there are some categories of things that are automatically disqualified and some categories that allow us to exclude—

CHAIR—Let me put it more simply. Do you think a person who is criminally convicted of hijacking an aircraft or a ship would be a security risk?

Mr Tongue—Yes, and as I am the delegate they probably will not get an MSIC.

CHAIR—So why would you not disqualify that person?

Mr Tongue—As I am the decision maker, and it is an exclusionary crime, we can make the decision not to issue—

CHAIR—But why would you not automatically disqualify the person? Wouldn't you think that was fair? There is need to frown.

Mr Tongue—No, the challenge for us from a public policy perspective has been, through this process, trying to group crimes in a way that enables us to build the system to give us some flexibility—

CHAIR—But why would you not just add this to the disqualifying list—say, take hijacking and put it up the top with terrorism? Why would you not have done that? You are saying that if you are criminally convicted of a hijack, somehow there might be a way out for you. Why would you not have just put it up there with treason, espionage and terrorism? What is there to argue about? Tell me what the argument might be that it is all right for me to go out this afternoon and hijack an aircraft and then in three months time apply for a job on a rig?

Senator O'BRIEN—You would still be in jail.

Ms Liubestic—Given the way that we have categorised that list of crimes, DOTARS, as the decision maker in this circumstance, would see the circumstances of that crime and the person who has hijacked the aircraft or ship would not get an MSIC.

CHAIR—But why have that process of consideration? If you are a bloody hijacker, you are a hijacker.

Ms Liubestic—That is a fair point.

CHAIR—Why do you not change it? It is crazy.

Senator FERRIS—What is the difference between 'exclusion' and 'disqualification'? I understand that 'disqualification' means 'under no circumstances'. What does 'exclusion' mean to you?

Ms Liubestic—Exclusion gives us the ability to have a look at the circumstances surrounding the crime. For example, in identity crimes we might pick up somebody who has been caught producing drivers licences and things like that or we might pick up somebody who has committed a more serious identity theft, and we would have the ability to look into the circumstances of that particular crime.

Senator FERRIS—Would that mean that they might get, for example, access to one part of a waterfront or an oil rig but not to another?

Ms Liubestic—No. Determination on the particular crime would be made by DOTARS, so it is not like you are getting an MSIC for certain areas. Either you get one or you do not get one. There are no temporary arrangements in place.

Senator FERRIS—Is an appeal mechanism forecast for this?

Ms Liubescic—There are two appeal mechanisms—one is to the secretary of the department and the other is to the AAT.

Senator FERRIS—We had some evidence earlier today from a couple of witnesses who suggested that there is a difference between the ASIO checking mechanism and the AFP checking mechanism, in the sense that ASIO has a more dynamic and ongoing checking mechanism. My understanding is that you are planning to use both of those mechanisms to build a structure to examine people's credentials. Is it intended that the inquiry into a person would be ongoing, using, for example, new ASIO information that might come to light on somebody who already has a security pass? If so, would that pass be able to be revoked, even if it had been issued for, say, five years?

Ms Liubescic—As I understand, ASIO's checks on individuals are live, so they are able to revoke passes if they come across information of interest.

Senator FERRIS—So, even though somebody might have got a five-year pass six months ago, if ASIO came upon something that made it worth revisiting that security pass they would be able to do so?

Ms Liubescic—That is right.

Senator FERRIS—Can you give us any further information on a further piece of information that was given by a previous witness to do with a centralised agency for the holding of security information within Attorney-General's? Can you confirm that this information may find its way into storage within an Attorney-General's facility?

Mr Tongue—One of the areas that the government is giving some consideration to—given that background checking as a security device is growing across the economy, moving from aviation and maritime into ammonium nitrate and a range of other areas—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.

Senator FERRIS—Do you accept the concerns that have been raised by previous witnesses and that I imagine were also raised in your consultative group in relation to likely breaches of privacy if that information, as is currently planned, would be passed on to employers for them to hold?

Mr Tongue—Certainly in my engagement in discussion about the creation of such an agency, it would basically be taking, say, the various regulatory regimes around MSICs, ASICs or ammonium nitrate, coordinating the background-checking process against guidelines that would be provided by various agencies and effectively providing a yes or no answer. In advance of government decisions—and I will qualify that—it is not envisaged that it would be passing information back to employers; it would be passing a decision back, either to us as the agency responsible or—

Senator FERRIS—So the raw data would remain secure in a government agency—is that what you are saying?

Mr Tongue—That is certainly one of the models that is being looked at. It is a bit hard for me because it is an issue that is still being considered.

Senator FERRIS—Have you got a preference about whether or not that is the most appropriate way to hold the information?

Mr Tongue—We are super-conscious of the privacy issues. Part of building these systems is to not build them in isolation from engagement with people on the waterfront or at airports about the importance of security. If they have a concern that we are treating private information in a cavalier way then we are less likely to be able to engage with them around improving security. From my perspective—

Senator FERRIS—It may well be, for example, that an individual who might have committed a childhood crime of shoplifting or something relatively minor but recorded a conviction might tend—and here I note that others are talking. Is it possible to have only one meeting taking place here, Chair? I would not mind being able to ask my questions without your cross-talk, if you do not mind.

CHAIR—I do, but I will let you continue.

Senator FERRIS—Thank you. If somebody has had a childhood conviction recorded against them some years ago, presumably they would have to disclose that as part of the checking mechanism. You are confirming for me that that information, which may not have been disclosed by that person in their employment, which may already be in a maritime environment, would then not be passed on to the employer; it would be held as raw data in a secure agency.

Mr Tongue—If it was a childhood offence or an offence early in a person's life, it could well be that such a conviction is spent. That means that nobody sees it; we do not get access to it.

Senator FERRIS—That is 10 years, isn't it?

Mr Tongue—It depends on the jurisdiction.

Ms Liubestic—Each jurisdiction has a different spent convictions scheme.

Mr Tongue—If it were a more serious crime then in this initial process of rolling out MSICs, that would be something that we would see in making the decision as to whether to exclude somebody or not.

Senator FERRIS—The third point I would like to raise is the question of cost recovery. I know this is a subject that has been traversed several times here. There seems to be a somewhat equivocal view by different groups on how the cost of this, which may be \$200 or \$300, should be retrieved. A previous witness said that some of his members were in favour of the applicant taking it up and having an arrangement that they pay the costs back through their pay packet, while other members of his association took the view that it should be absorbed as part of, for example, a medical check. I notice that your department thinks it should be on an industry cost recovery basis.

Mr Tongue—Yes.

Senator FERRIS—Are there any circumstances, given the costs in the airport regime, where there would be an advance made to employers to cover the cost of that?

Mr Tongue—I cannot imagine that, no. The government's position on critical infrastructure protection is that the costs of security are a cost of doing business. The only area where we have gone beyond that principle is in the area of small regional airports, where funding has been provided for a range of protective activity. But I cannot imagine—

Senator FERRIS—There would be small ports that would qualify in the same way.

Mr Tongue—Potentially, but there is no thought at the moment that any assistance would be provided.

Senator FERRIS—So it is accepted that either the employee pays or the employer pays?

Mr Tongue—That is correct.

CHAIR—I have a chemical users course certificate. I had to pay for it so that I can buy chemicals. No-one offered to pay it for me.

Senator FERRIS—Yes, but you are not an employee; you are a small business man in that circumstance, and presumably it was a tax deduction for you, anyway.

CHAIR—I go back to this famous list. Could you confirm for me that, if I have blown up an aircraft or a ship, I am not automatically disqualified?

Ms Liubestic—That is right, Senator.

CHAIR—Do you think the average Australian—and there are probably no average Australians listening to these proceedings today; they probably have better things to do—would think that that was stupid?

Ms Liubestic—Possibly, Senator.

CHAIR—Why are we doing something that the average cocky would think was stupid? That is stupid. If you have blown up a ship or an aircraft, there should be nothing to talk about.

Ms Liubestic—Well, we would see the circumstances and come to that exact, same conclusion.

CHAIR—Why give the opportunity and send the signal to every person of that nature, 'If I can get through the system and shop for the right agency next year, I've got a chance to get a job on an oil rig, even though I've blown up a ship'?

Ms Liubestic—There will be no chance of shopping around and going to another issuing body.

CHAIR—Forget about the shopping around. The message still is: 'There's a possibility that I can get a job on an oil rig, even though I've blown up a ship or an aircraft.' That is the message you are sending.

Ms Liubescic—Senator, I do not think there is a possibility because we would see that the nature of—

CHAIR—If there is no possibility, why aren't they in the 'disqualified' column? This is crazy.

Mr Tongue—All this list tries to do is take hundreds and hundreds of crimes, boil them down and present them in a way in which we could talk to industry about them.

CHAIR—Do the regulations actually say that, if I am criminally convicted of blowing up a ship or an aircraft or if, for instance, I am a convicted member of organised crime—these are all convictions—I am not automatically disqualified? Do the regulations reflect that?

Ms Liubescic—The regulations state that that particular type of activity—

CHAIR—I said 'reflect that'.

Ms Liubescic—would be an exclusionary type of crime.

CHAIR—Yes, they reflect that; they reflect this document here. In other words, there is an area of doubt as to whether or not I should get a job—

Senator O'BRIEN—With respect, I think that is actually wrong. Crimes involving a bomb threat or an actual bomb are disqualifying, so I do not think the example you are using is correct. It says 'destruction of an aircraft' in the area you are talking about; blowing them up is a different thing.

CHAIR—Sorry; so you could fly an aircraft and somehow destroy it—

Senator O'BRIEN—And, if you live through it and when you get out of jail—

Senator FERRIS—You have got the answer you want; why are you labouring the point?

CHAIR—Because this wonderful working group has concluded that all this is okay, and in my view that does not reflect what ordinary Australians would reckon is a fair thing.

Mr Tongue—Senator, could we take this document—which was a consultation document—and re-present it to you against the way the regulations are drafted?

CHAIR—I have had a quick look at the regulations. You can be a bomb carrier—in other words, criminally convicted of smuggling explosives—and be given some consideration with regard to getting a job on an oil rig, under the regulations. That is in the regulations.

Mr Tongue—No, Senator. The decision would come to us, and we would exclude you.

CHAIR—Yes or no; you are up for the exclusion consideration?

Mr Tongue—You are up for an exclusion consideration—

CHAIR—That is right.

Mr Tongue—and we would exclude you.

CHAIR—So you could possibly get a job.

Senator FERRIS—No.

CHAIR—You cannot say that: otherwise you would have them in the 'disqualifying' column.

Ms Liubescic—The information would come to the decision-making body of DOTARS, and we would—

CHAIR—That is a load of rubbish.

Senator O'BRIEN—As I understand it, in 6.07C items 1 and 2 are disqualifying and the remainder are exclusionary. Is that right?

Ms Liubescic—That is right.

Senator O'BRIEN—The only change in that document from the previous draft, as I understand it, is item 3.

Ms Liubescic—Item 3 has been listed as one of the crimes, since the working group's consideration in February.

Senator O'BRIEN—Where does the term 'harming Australians' in item 1 come from? It is from part 5 of the Criminal Code, I take it.

Ms Liubescic—'Harming Australians' comes under part 5 of the Criminal Code.

Mr Tongue—Part 5 covers treason, espionage, terrorism and harming Australians.

Senator O'BRIEN—What does it actually mean?

Ms Liubestic—I understand that it relates to harming Australians in overseas locations—committing a crime against them.

Senator O'BRIEN—Are the remainder of the provisions organised in the way they are because of where they appear in the Crimes Act, or is there another reason?

Ms Liubestic—Sorry, Senator?

Senator O'BRIEN—Are items 3 and below in 6.07C set out in that way because of where they appear in the legislative instruments?

Ms Liubestic—I understand that they comply with drafting instructions for regulations, so I presume yes, with regard to your question.

Senator O'BRIEN—Draft regulation 6.09A provides that an issuing body may recover the reasonable costs of the issue of an MSIC from the person who asked the body to issue the MSIC. Can you tell us who ultimately has to pay the costs associated with the issuing of these cards?

Ms Liubestic—At the moment, the person who pays for the cost of the card could either be the employee or the employer. However, there is no clause in these regulations stipulating who pays.

Senator O'BRIEN—What will be the cost?

Ms Liubestic—We have estimated it at \$130 and that is for a card which has got a validity of five years.

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 Liubestic—Yes, that is right.

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

Ms Liubestic—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.

Senator O'BRIEN—Or by someone who is in a control tower looking out with binoculars?

Ms Liubestic—Yes.

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

Ms Liubestic—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.

Senator O'BRIEN—There is nothing in the regulations about that at the moment?

Ms Liubestic—As I say, we are considering the issue at the moment.

Senator O'BRIEN—Draft regulation 6.07L makes it an offence not to escort or continuously monitor a visitor in a secure area. How will the department enforce compliance with these requirements?

Ms Liubestic—The department would have a monitoring role in making sure that everybody in those zones wears MSICs.

Senator O'BRIEN—How?

Ms Liubestic—There are inspectors who will go out and physically inspect the wearing of the cards in the zones.

Senator O'BRIEN—How many inspectors are there?

Mr Tongue—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.

Senator O'BRIEN—How many inspectors are there?

Mr Tongue—At the moment, it is drawing on the 70 or 80 people we have got in our state offices and a handful of people from Canberra, about another 10 or 20 people, that we use.

Senator O'BRIEN—So all of the people in the state offices are inspectors?

Mr Tongue—They would have those powers and delegations.

Senator O'BRIEN—How many of those, in the state offices, would regularly visit these workplaces as well as do their other duties?

Mr Tongue—I will have to take that one on notice to give you an accurate answer.

Senator O'BRIEN—I am just thinking that, given other responsibilities, this is going to be a difficult area for the department to monitor nationally with 70 staff who are not necessarily based at every port.

Mr Tongue—One of the things we are doing is recruiting more staff. The government has allocated \$47 million over four years for the maritime security function. A large part of that resource is going into recruiting more staff into our state offices—so the 70 number will increase over time. It is a large task. We will have to do it on a risk basis and target those ports that we consider to be relatively more important and then, within ports, those areas of ports that we consider to be relatively more important. But it would be foolish of me to pretend that we are going to be able to cover huge areas encompassed by some of these ports.

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

Senator O'BRIEN—So it is not, as someone has suggested, about getting people in to deal with an oil spill or something.

Ms Liubestic—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.

Senator O'BRIEN—So that is covered under the act.

Ms Liubestic—That is right.

Senator O'BRIEN—If there are occupational health and safety circumstances where the wearing of the card will be the subject of consideration for exemption, is that defeating the purpose of the card?

Ms Liubestic—It is an exemption from being displayed rather than actually holding the card. You would still have to go through all the background checking processes so you would still have the card. We would envisage some circumstances, such as in the offshore oil and gas situation where you are working around machinery, where the card dangling around your neck may cause a problem in terms of occupational health and safety, but you would still have to go through the process of obtaining the card.

Senator O'BRIEN—Earlier today I drew attention to draft regulation 6.07K, which states:

A person who has been given a disqualifying notice ... must not enter a maritime security zone.

Draft regulation 6.07K operates in conjunction with draft regulation 6.08D, which relates only to background checks before 1 July 2006. Why is this so?

Ms Liubestic—I believe that that refers to the situation where, during the roll-out period, if somebody has been found who is disqualified from holding or is not eligible to hold a particular card, during the implementation phase that person is not able to enter a maritime security zone. Basically the scheme will start from 1 October. If you have committed an offence that would exclude you from holding an MSIC, we are not going to wait until 1 July to exclude you from that zone. The intent is to remove that particular individual from the zone during the implementation phase.

Senator O'BRIEN—Again, 6.07K(1) provides that a person who has been given a disqualifying notice must not enter a secure area. It can be issued to a person who has been convicted of an offence listed in items 1 or 2 of the table in 6.07C, including treason, espionage and supplying weapons of mass destruction. Draft

regulation 6.07K(2) provides a significant exemption, I would suggest, to this prohibition on entry for a person convicted of a disqualifying offence who is:

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

Why should those persons be exempted for that purpose and thus be able to, unescorted, potentially enter a secure maritime zone?

Ms Liubestic—I do not think it actually says that. I think it means that somebody who has been convicted of those particular crimes actually needs to be escorted.

Senator O'BRIEN—I am sorry; where does it say that?

Mr Tongue—Can we come back to you on that one?

Senator O'BRIEN—You certainly can. I make the point that there does not appear to be anything that I can see in the regulations that would require—

Mr Tongue—The intention is the reverse. We will have to check with our drafters.

Senator O'BRIEN—Sure.

ACTING CHAIR (Senator Ferris)—I think you offered to Senator Heffernan before he left that you would put a paper to us which might clarify that list of disqualifying factors and give us some context for them. It would be very useful if the committee could have that.

Mr Tongue—Certainly.

Senator O'BRIEN—Under the new regime, what will happen to existing workers who fail to gain an MSIC?

Ms Liubestic—If workers are eligible to have an MSIC the onus will be on the employer to ensure that the person does not have access to a maritime security zone—so, in effect, a redeployment away from the maritime security zone.

Senator O'BRIEN—And if there is no other position with that employer?

Ms Liubestic—Our position is that it is a redeployment issue for the employer.

Senator O'BRIEN—The explanatory memoranda for the Maritime Transport Security Amendment Bill 2005 estimated that about 130,000 people would require an MSIC. In May Mr Kilner told this committee the number could be as low as 100,000. Do we have a clearer understanding of that?

Ms Liubestic—The 130,000 was based on some feedback we received from the maritime industry participants, when we went out and asked them formally how many people entered zones. That 130,000 covers not only port workers but also truck drivers and all the other categories of affected people who work in and around ports.

Senator O'BRIEN—How many do we currently think would require an MSIC?

Ms Liubestic—Our best estimate at this point is 130,000.

Senator O'BRIEN—So it is everyone: truck drivers—

Ms Liubestic—Everybody who enters a maritime security zone would be required to have an MSIC.

Senator O'BRIEN—But there is provision for people to enter without an MSIC and be escorted or monitored.

Ms Liubestic—Monitored continuously; that is right.

Senator O'BRIEN—So in addition to the 130,000, how many people do you think will have to be escorted and monitored?

Ms Liubestic—We do not have a figure for that at this point.

Senator O'BRIEN—Can the committee be provided with a breakdown of costs associated with the introduction of an MSIC and an extension of the maritime security regime to offshore facilities?

Ms Liubestic—Certainly.

Senator O'BRIEN—The committee heard evidence that a small number of industry participants have abused the maritime security regime to achieve other objectives, including preventing representatives of the International Transport Workers Federation from communicating with ships crews. In May Mr Kilner told the

committee that the department had investigated two complaints related to this issue. What is the outcome of those investigations?

Mr Tongue—I am not aware of that. I will have to take that one on notice.

Senator O'BRIEN—What action has the department taken to prevent security measures being used to achieve non-security objectives?

Mr Tongue—We have engaged in a lot of activity with the industry in briefing and meeting players. We are tracking now on a weekly basis the amount of engagement we have with the industry to try and explain the intent of the act. It will be a long-term process to pick up some of the vessels that arrive from various parts of the world, but we are actively engaged in trying to explain the purposes of the act with the industry. We are looking, as part of this MSIC rollout, at a communications initiative to try and get information in the hands of people in the maritime industry.

Senator O'BRIEN—The point has been made today that for someone not displaying their MSIC there is a significant penalty. But there is no penalty in the regulations for someone who abuses the provisions for other purposes and engages in a pretence that there is a security issue to avoid scrutiny for other purposes, for example. Does the department view that as a proper activity under the legislation?

Mr Tongue—One of the difficulties for us is being able to prove that.

Senator O'BRIEN—But if, as has been put to us, someone closes the gangway and declares a security event, they would have to tell you what the event was, wouldn't they, or is there no provision for that?

Mr Tongue—If it is a foreign flagged ship we have to go back to the flag state. As the implementers of IMO requirements in Australia we have to go back to the flag state to get the information to challenge that assertion.

Senator O'BRIEN—You have Buckley's, then, if you are going to Liberia.

Mr Tongue—It is certainly hard for us, given flags of convenience and other things, yes. I suppose there are limits within the international regime that mean that you have to work in a particular way.

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. Given how long some of these ships are in port—

Senator O'BRIEN—But you would not do that if you thought there was a bomb on board, surely?

Mr Tongue—Under international law, we have to have reasonable grounds to act. So if we thought there was a bomb on board, that would be a reasonable ground to act. But if we do not have reasonable grounds then there are limits, under the IMO's international regime, as to how we can act with foreign flagged vessels.

Senator O'BRIEN—So if a foreign flagged vessel were about to be inspected by the ITF and—unbeknownst to you, with no communication or no knowledge of any alert—suddenly the captain said, 'We have security issues with this vessel; I am running up the gangplank,' you would not inquire of the captain what the event was?

Mr Tongue—If the captain said, 'I'm moving to IMO level 2,' which is a higher security status, and we had doubts about that, we could inquire of the captain, but our ability to enforce that on the captain is limited. Our recourse, under the IMO requirements, is to the flag state in the first instance because it is the flag state that generates IMO level 2.

Senator O'BRIEN—Suppose they run up the gangway and they say: 'There is a security event and we are running up the gangway. This ship is under threat.' Are you able to satisfy yourself as to whether that ship might be the subject of a bomb hoax, for example, or whether it is an invention of the captain?

Mr Tongue—If the captain said, 'This ship is under threat,' that would be a reasonable ground for us to move to act. But if the captain said, 'My flag state have advised me that I need to move to IMO level 2,' then

we have to go to the flag state. So there are some grey areas within the relative recency of this international law. Our legal advice is that there are limits to our powers in this area. Our recourse, in the first instance, has been to flag states.

Senator O'BRIEN—In the absence of a response, what do you do?

Mr Tongue—From a flag state?

Senator O'BRIEN—Yes.

Mr Tongue—If, say, the vessel has called and we have written to the flag state and not got—

Senator O'BRIEN—You have written to them?

Mr Tongue—Contacted them. 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. If we conduct an investigation and we determine that it is all an invention of the captain, then the next time that ship comes into Australia we can flag that in our risk assessment process and do a more detailed security inspection, because they have given us grounds to do that.

Senator O'BRIEN—That sounds pretty amazing. Is the department satisfied that employees' privacy rights will be protected in the post 1 July 2006 regime, when employers may receive detailed outcomes of background checks?

Ms Liubestic—The commitment that the department has given to the working group is that the department will review its position with regard to background checking during the implementation phase. So no decision has been made yet as to whether all of that information will revert back to the employers as the issuing body.

CHAIR—Do you think an employer is entitled to know if he has a criminally convicted hijacker on his staff?

Ms Liubestic—During the implementation phase, the employer will be told that the person is either eligible or not eligible for an MSIC.

Mr Tongue—But then after that, as the regime applies to new employees, our position with the industry is that we will do an implementation review. It is now caught up in this wider process of government consideration of background checking generally. The provisions of the Privacy Act apply to employers in the aviation industry who have access to this information, and we have not detected any privacy breach. There are 80,000 ASICs now out in the aviation industry and we have not detected a breach of privacy.

Senator FERRIS—Could I clarify one point related to Senator O'Brien's question. If you determined somebody was marginal in one or the other exclusionary category and you decided on balance to give that person an approval, even though they had actually been convicted of one of these crimes, would the employer be entitled to know that you had made that decision based on a careful weighing of all factors? If, for example, the person fitted one of these categories—I do not want to be inflammatory about this; I am just trying to clarify something—would that employer be entitled to know that you had decided to go on the balance of probabilities that they would not reoffend, or would that stay with you as privileged information?

Ms Liubestic—That would stay privileged information with DOTARS as the determiner of the MSICs during the implementation phase.

CHAIR—Where would DOTARS get the profound wisdom of whoever the wisest person is to be able to make that decision?

Ms Liubestic—We will seek legal assistance in making those determinations.

CHAIR—Wouldn't that be something for a court?

Senator FERRIS—Hang on. We have a person who may have, as Senator Heffernan said, hijacked an aircraft or a ship, but—

CHAIR—Criminally convicted.

Mr Tongue—They were criminally convicted, yes.

Senator FERRIS—on the balance of probabilities you have decided they can still get a tick in that box. Would the information that led to that tick remain with you and not be available to the employing company?

Mr Tongue—Yes.

Ms Liubestic—That is right.

CHAIR—So next year, when there will potentially be other issuing bodies, not DOTARS, are there people among those bodies who were part of the unanimous tick given to this document, the *List of disqualifying and exclusion crimes relating to the MSIC*?

Ms Liubescic—Yes, there certainly are.

CHAIR—So wouldn't they be conflicted in that position?

Mr Tongue—If we move in the direction of issuing authorities, we will have to provide guidance material to them about how—

CHAIR—The longer the bureaucratic trail becomes, the more disintegrated the decision making becomes. If the wisdom that is in this document, which I think is a very unwise document, is then going to be used by the issuing body—the same group of people, more or less—I fear for ordinary Australians. Anyone who thinks that a person who has hijacked an aircraft, destroyed a ship or done that sort of thing should be given some sort of halfway house consideration sends a message to every potential hijacker that you can do that and maybe still get away with it and have a job on an oil rig somewhere. The minds that came to the decision which is embodied in this document are going to be the minds that give consideration to whether or not that person gets a job.

Senator O'BRIEN—If we want to make speeches about this matter, we will be here all day.

CHAIR—It does not matter if we are here all day.

Senator O'BRIEN—It may to the witnesses. I think the point is that there are some items on that list that I can conceive of circumstances in which you would have to say, 'What has this got to do with the maritime security issue?' Whether or not you want to quibble about items, there are certainly items on the list that you would not want to be disqualifying, whilst there may be some—

Senator FERRIS—But there are some confusing items, Senator O'Brien.

Senator O'BRIEN—I am saying that there may be some where you would argue as to whether they should be disqualifying or exclusionary.

Senator FERRIS—If hijacking an aircraft is an exclusion but harming Australians is a disqualification, what does it say to the pilot? Surely the hijacking of an aircraft—

CHAIR—Do not have any Australians on it.

Senator FERRIS—When you do the paper for us, Mr Tongue, these are the sorts of things that I need to better understand. An aircraft is being piloted or a ship is being captained and that person is presumably an Australian; I would have thought that they were harmed by a hijacking. Therefore, how is it that you can have hijacking in an exclusion area and harming Australians in a disqualifying area?

Mr Tongue—It depends on what a person is charged with. A person may commit an offence and be charged with multiple offences.

CHAIR—These are not charges; these are criminal convictions.

Mr Tongue—They may be convicted under multiple parts of—

Senator FERRIS—Can you explain that in the paper you send to us? That confuses me; I would have thought that that pilot was potentially being harmed.

Mr Tongue—Okay.

Senator O'BRIEN—Can you advise the committee of whether or not any deficiency in the administration of the coastal shipping permit system has been identified by any internal or external audit?

Mr Tongue—I am aware that there has been an internal audit undertaken, but I confess that I do not have the detail of it.

Senator O'BRIEN—Can you supply that to us on notice?

Mr Tongue—Certainly.

Senator O'BRIEN—Do you know whether any of the deficiencies have security implications?

Mr Tongue—None have been drawn to my attention.

Senator O'BRIEN—Am I correct in understanding that foreign seafarers will not be affected by the new maritime security regime—that is, the current screening arrangements will remain in place?

Ms Liubescic—MSICs are applicable to foreign seafarers who have access to maritime security zones on board Australian-flagged ships.

Senator O'BRIEN—But they will flag on foreign vessels with single or continuing voyage permits on the coast.

Ms Liubescic—If they are a foreign-flagged vessel.

Senator O'BRIEN—We understand that, under current arrangements, they simply need a passport and some sort of identification document to be accredited to work on the Australian coast.

Ms Liubescic—I understand they are also subjected to a movement alert list, which is administered by the Department of Immigration and Multicultural and Indigenous Affairs.

Senator O'BRIEN—Do we know how many foreign seafarers enter Australian ports each year?

Mr Tongue—In excess of 200,000.

Senator O'BRIEN—Do we know how many of those crew are from flag of convenience vessels?

Mr Tongue—No. I have to take that one on notice.

Senator O'BRIEN—They are the ones where you have to go to the country of registration to deal with some of those other problems. Some you have to write to; you cannot even ring them up. On 23 May, Mr Kilner told this committee that the department had read with interest the report of the Australian Strategic Policy Institute entitled *Future unknown: the terrorist threat to Australian maritime security* and was looking at its recommendations. How many of its recommendations have the department addressed with industry stakeholders?

Mr Tongue—I am not aware that we have taken them up with industry stakeholders yet.

Senator O'BRIEN—Have any of the recommendations found expression in the draft regulations?

Ms Liubescic—I am not aware of any.

Senator O'BRIEN—With respect to foreign seafarers the report says:

There are strong grounds for requiring foreign crew who carry domestic cargo regularly between two or more Australian ports on a continuing voyage permit, over a three-month period, to be subject to the same checks as those on Australian crew members in ships entering Australia or operating in the coastal trade.

Can you tell us why the MSIC regime does not incorporate this recommendation?

Mr Tongue—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.

Senator O'BRIEN—Like a tourist visa.

Mr Tongue—Involving more background checking, basically.

Senator O'BRIEN—Sorry, involving all background checking?

Mr Tongue—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.

Senator O'BRIEN—So the ability to background check in other countries is a limitation on our ability to ensure that we have not allowed a person of risk onto our wharf secure areas.

Mr Tongue—The current means for doing that for people coming to Australia is the visa process, the movement alert lists and all of that. That is the regime we are looking at in the maritime sector.

Senator O'BRIEN—One of the issues raised in the joint union submission to this inquiry, and identified as a security gap in the ASPI report, is poor container security. We are told that no empty containers are screened, but how many empty containers are brought through Australian ports each year?

Mr Tongue—We tend to deal with Customs on that one. I would be chancing my arm on empty containers. Can I take that one on notice?

Senator O'BRIEN—Yes. We are told, and perhaps you can confirm, that the number screened is zero.

Mr Tongue—I will have to take that on notice.

Senator O'BRIEN—Is the department aware of any examples here or overseas where containers have been used to conceal persons or goods that pose a security risk?

Mr Tongue—Yes.

Senator O'BRIEN—Is the department considering improved container security measures, including the 24-hour manifest rule recommended in the ASPI report?

Mr Tongue—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.

Senator STERLE—Mr Tongue, could you tell me who are, or who have been, the DOTARS reps on the working group?

Ms Liubescic—I can give that information to you. They are basically representatives of port operators, employee associations and—

Senator STERLE—No, who was representing DOTARS?

Ms Liubescic—I have represented the department on the working group. The secretariat is contained within my team in the Office of Transport Security.

Senator STERLE—I picked up on a line that has been bandied around here. Mr Tongue, you said earlier on that you used extensive consultation—that there has been an extensive consultative process. When the unions put their submissions through, they certainly said that it was very extensive and inclusive; as did the industry bodies, until last Friday afternoon. When we talk about extensive consultation, what happened last Friday afternoon? Why wasn't there any consultation and all of a sudden there was a change to the regs?

Ms Liubescic—I will address that point. As I said to Senator Heffernan earlier, that was the end of a month-long exposure of those draft regulations. The first set of draft regulations was issued to the working group in early June. They then had some three weeks to look at the regulations. We got back about 110 comments on the regulations. We then had a face-to-face working group meeting with all the members participating, where we went through the regulations page by page. We put all those changes into the draft regulations where they were relevant. In preparation for the Executive Council meeting later on in July we had to draw a close to the comments that we could take for those regulations. So we think that there was nothing of significance that came out of those regulations that would have been a surprise to anybody that had been participating in the whole process.

Senator STERLE—I am getting a completely different picture listening to the submissions today. I will stand corrected and apologise if I am on the wrong track but it came out very clearly to me from industry and the union submissions today that everything was going along until all of a sudden, bang, Friday. In fact, one of the unions, I believe, did not even find out until this morning, because, for whatever reason, it had not checked the emails after about 3 pm, I think it was, on Friday. Now that is not extensive consultation, so I come back to the question: what happened on Friday?

Ms Liubescic—I reiterate that the regulations that were sent out on Friday had been seen extensively in the month before.

Senator STERLE—Somebody is telling us differently. There is a group of industry representatives and unions that have told us something completely different today. In my view that is not extensive consultation, so it takes me to my next question. I would like to find out more because I think we will agree to disagree on what happened on Friday afternoon and I do not want to let it disappear; that is still certainly on the frontburner. When did the offshore oil and gas industry become part of the MSIC process?

Ms Liubescic—A decision, I understand, was taken in December 2004 to include the offshore oil and gas industry under the MTSA, as it was at that point.

Senator STERLE—With the greatest respect to the AMWU, who have put in a submission and who are represented here today, how many meetings did they attend?

Ms Liubescic—I addressed an industry meeting with the offshore oil and gas people in April this year and they were invited to become members of the working group at that point in time.

Senator STERLE—April this year—and they were who?

Ms Liubescic—That was the industry group.

Senator STERLE—And when was the AMWU invited on?

Ms Liubestic—The AMWU?

Senator STERLE—The AMWU—the union that represents—

Senator WEBBER—One of the key unions—they and the AWU.

Ms Liubestic—The Australian Workers Union were consulted back in April.

Senator STERLE—April this year—two or three months ago?

Ms Liubestic—Yes.

Senator STERLE—And the AMWU?

Ms Liubestic—And the AMWU—that is the marine officers union?

Senator WEBBER—No, the Manufacturing Workers Union.

Ms Liubestic—We spoke to them on two occasions in the department and we offered a briefing to them.

Senator STERLE—And that was when?

Ms Liubestic—That was probably about two months ago.

Senator STERLE—One was in April and one was two months ago, so I go back once again to extensive consultation: how many meetings of the working group were they at?

Ms Liubestic—The AMWU?

Senator STERLE—Yes, the AMWU.

Ms Liubestic—Because we already had an established working group process in place, we certainly invited the industry association of the offshore oil and gas industry to participate in working group—

Senator STERLE—That is one half of the industry, the employer half—I understand that—but I am going back to extensive consultation with the union that represents the majority of workers. There are two major unions out there. I do not know the membership of the AMWU but they are not small in the offshore oil and gas industry or representative of the industry. They were only briefed two months ago?

Ms Liubestic—That is right.

Senator STERLE—How many meetings did they attend?

Ms Liubestic—There has only been one meeting since that time, and that was at the end of June.

Senator STERLE—So in terms of extensive consultation—I find it offensive that that is a statement that has come from DOTARS—that is not extensive consultation by any means. It might have been with the employer side of it but we are talking about both sides and the effect that it will have on certainly AMWU and AWU members. It is very poor.

Mr Tongue—Because of the wide-ranging effect of this act, some judgments have to be made about how many people we are capable of consulting with. In looking at the breadth of the maritime sector and all the people that engage with it, to be frank, we could have hired the Great Hall and invited hundreds and hundreds of players. We made judgments about who was involved. Where it was drawn to our attention that we had inadvertently excluded a player—

Senator STERLE—A major player.

Mr Tongue—I can guarantee it would have been inadvertent. Where we had excluded a major player, we made an effort to meet with them.

Senator WEBBER—To be frank, Mr Tongue, there are not that many organisations in the offshore oil and gas industry. That may be an industry that DOTARS is not very familiar with. Those of us from Western Australia are. There are only two key employee organisations, neither of which were extensively consulted with and both of which obviously had to pursue the department, rather than the department consulting with them.

Ms Liubestic—As far as consulting with the Australian Workers Union goes, we met with them at the industry meeting on 20 April. We also met with them at their offices. When we briefed them, they were quite happy with the ways things were going. We certainly got no negative feedback at that time.

Senator STERLE—I will not argue with you, because I do not have any feedback from the AWU. But I am saying very clearly it is not extensive consultation. I understand that you could hire the Great Hall, Mr Tongue.

In fact, I would be happy to address a meeting in the Great Hall. But, quite clearly, I think we are being led down a different path. There has not been extensive consultation. Bear in mind that industry groups who have put submissions today have also made the statement that everything was going along fantastically and consultatively until last Friday. So it is not just the unions that have taken offence to that. I will go back to my line of questioning. Who decided to add part II of the Crimes Act to this regulation?

Ms Liubestic—Part II of the Crimes Act was always there. It was always an original part of the crimes list, as it was agreed to by the working group members.

Senator STERLE—So the working group members actually sat down and went through part II? Excuse my ignorance, but I have to get it stuck in my head. There has been grief from something that was added on Friday, whether it was part II or part IIA.

Ms Liubestic—With respect, there seems to be an interpretation that part IIA is included in the crimes list. That was never the case, as I have stated previously.

Senator STERLE—So it is coming out?

Ms Liubestic—It was never in there in the first place.

Senator STERLE—So why have unions taken offence to something that was, in my terminology, stuck in late on Friday afternoon?

Ms Liubestic—I am sorry, but I cannot answer that.

Senator STERLE—That is what I would like to get to.

Senator FERRIS—That is not a fair question to ask.

Senator STERLE—Why not? Didn't it come from this department?

Mr Tongue—We cannot know—

Senator STERLE—Did it come from this department? Someone clear this up for me. If I am wrong, put me on the right path. Did it come from DOTARS?

Senator FERRIS—But it is for the unions to respond on how they feel.

Senator STERLE—Excuse me, Senator Ferris. I let you have your questioning.

CHAIR—And I am chairing the meeting, so I will shut you up for a second. I do not think you are entitled to ask someone from the department, in the manner that you have, why the unions are unhappy. That is a matter for the unions, not for the department.

Senator STERLE—It was also raised by the employer bodies.

Senator FERRIS—Well, ask them; do not ask the department.

CHAIR—I do not think it is the department's role to answer why anybody is unhappy.

Senator STERLE—I will move on to my further questioning. What does part II add that is not already agreed in the list of crimes?

Ms Liubestic—As I said, part II has always been in the crimes. There has been no change, from our perspective.

Senator WEBBER—We have this list that Senator Heffernan has been exploring in detail. As I understand it, this was the consensus document. This was the agreed position until Friday.

Ms Liubestic—Yes.

Senator WEBBER—Then, all of a sudden, part II is there. What does part II bring to the table that is not on this consensus document? Why the change?

Ms Liubestic—This list has been converted into this type of list for these drafting regulations. It has not been inadvertently slipped in. There was always the intention of bringing these crimes into this format.

Senator WEBBER—So all of part II was always there?

Ms Liubestic—Yes.

Senator WEBBER—So sections 28 and 29 were always there? We always knew they were there?

Ms Liubestic—As part II, yes.

Senator WEBBER—And everyone agreed with that? They all knew it was up there?

Ms Liubestic—Yes. I have part II listed here.

Senator WEBBER—Yes, and we have part II over here too. So everyone knew that all of part II was going to be in there, at all times?

Ms Liubestic—Yes.

Senator WEBBER—Why bother to produce this then?

Ms Liubestic—As I have reiterated, this list was produced very early on—at the February meeting of the working group.

Senator WEBBER—And it was still being discussed as late as June?

Ms Liubestic—No.

Senator WEBBER—No?

Ms Liubestic—It was agreed upon in February as the crimes list that would be used to assess MSIC applications—apart from those two categories that are listed at the bottom.

Senator WEBBER—But in June the discussions were still around the issues on this list. The discussions were not about part II. Part II is a lot more extensive than this list. But you are telling me that everyone always knew that all of part II was going to be in the regulations?

CHAIR—I will assist the committee by asking a question on top of your question. Do the regulations reflect this list exclusively or this list with some changes?

Ms Liubestic—No. It reflects this list. We have asked the drafters and the Office of Legislative Drafting to reflect his list.

CHAIR—Thanks.

Senator O'BRIEN—Earlier, we established that the draft prior to Friday's draft—if I can put it that way—had reference to 15HB of the Crimes Act rather than part II.

Ms Liubestic—As I reiterated before, there had been some errors in the drafting of the instructions. We had sought to clarify that. I understand that that mistake was in a very early draft of the regulations.

Senator O'BRIEN—But 15HB is entitled 'What is a serious Commonwealth offence or a serious State offence that has a federal aspect?' Are you saying that that was in there by mistake? It says:

(1) For the purposes of this Part, *serious Commonwealth offence* means an offence against a law of the Commonwealth:

- (a) that involves theft, fraud, tax evasion, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit by vice engaged in by others, extortion, money laundering, perverting the course of justice, bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory, bankruptcy and company violations, harbouring of criminals, forgery including forging of passports, armament dealings, illegal importation or exportation of fauna into or out of Australia, espionage, sabotage or threats to national security, misuse of a computer or electronic communications, people smuggling, slavery, piracy, the organisation, financing or perpetration of sexual servitude

... ..

that is punishable on conviction by imprisonment for a period of 3 years or more.

Ms Liubestic—Could I take this on notice? Obviously, there have been various versions of the regulations sent out. I am looking at the most current version, which does not have that issue listed.

Senator O'BRIEN—The significance of all of that is that Mr Griffett, who had not caught up with the last iteration, thought that the lesser offences under part II were qualified by this point about offences punishable on conviction by imprisonment for a period of three years or more. But that is not the case, is it?

Ms Liubestic—No, certainly not.

Senator O'BRIEN—Mr Griffett, on behalf of the Australian Shipowners Association, seemed to have the very firm view that the seriousness of the crime will be judged by the level of the sentence that it attracts. Where would he get that from?

Ms Liubestic—It has always been our position that it is a conviction rather than the seriousness of the crime.

Senator O'BRIEN—So he was just plain wrong on that?

Ms Liubescic—I cannot comment on that; I did not hear what he said.

Senator WEBBER—I want to go back to the change that happened. As Senator O'Brien was saying, previous drafts referred to 15HB. You are alluding to the fact that that was a drafting mistake and it was always meant to be part II.

Ms Liubescic—Yes.

Senator WEBBER—Was the working party told that that was a drafting mistake and that it was always meant to be part II?

Ms Liubescic—After the first issue of the drafting regulations was sent out for the working group to have a look at, we had a meeting of the working group at which we did say that we had picked up various errors in the draft.

Senator WEBBER—Did you tell them that it was not meant to be 15HB, it was meant to be part II, and that that was a drafting mistake? It seems to me that if you had, it would have prevented a whole lot of angst.

Ms Liubescic—I certainly recall there was mention of it. But it was a very long meeting.

Senator WEBBER—So they were told?

Ms Liubescic—My understanding is that they were.

Senator WEBBER—Were you there?

Ms Liubescic—Yes, I was.

Mr Tongue—Can we go back and check the minutes of the meeting?

Senator WEBBER—That would be useful. This is a significant change. If they were not told that there was a drafting mistake in the earlier regulations that you were having your extensive consultations around—and we were coming up with an agreed consensus document around—we have a fundamental problem.

Senator STERLE—What has been discussed in the group with regard to access for emergency personnel to things such as oil spills, dangerous goods spills and for people including local councils, community groups? Is it in the regulations?

Ms Liubescic—The working group has agreed that, in those circumstances where emergency personnel are responding to an incident, they would not be subjected to the MSIC requirement.

Senator STERLE—In terms of the tamper evident feature on the card that has been discussed, I am led to believe that those discussions have only just taken place and the fear of the working group is that it could have happened nine months ago, so it is going to stall the process, delay the possibility of getting it in.

Ms Liubescic—The tamper evident feature has been the subject of looking, basically, at the maturity of the tamper evident feature market. We have had to conduct investigations as to what products are on the market. We have now completed that investigation. We have also had to look at various issues about the threshold limits for the tamper evident feature. Those discussions could have been conducted a lot more quickly; however, they have taken a bit of time to make sure that we are not setting limits which are inappropriate or irrelevant to the MSIC card.

Senator STERLE—I understand that that is part of the process and it does take time and you want to get it right.

Ms Liubescic—That is exactly right.

Senator STERLE—And that is not the argument. It leads me to ask you this question: will DOTARS give an undertaking to let the members of the working group have a further opportunity to comment quickly on the latest draft regulations?

Mr Tongue—Senator, I think we face a timing problem. We can get them out and try to get comment back quickly, but we would need the indulgence of the industry. It would be a lightning sort of a process, but we will do our best. We will do our best to have a look at timings and see if we cannot get them out again.

Senator STERLE—And you will come back to us on this?

Mr Tongue—I will.

Senator WEBBER—With your indulgence, Chair, I have a couple more issues I would like to explore. Before I do that, Mr Tongue, you undertook to come back to us with a table.

Mr Tongue—Yes.

Senator WEBBER—Within that table, can you give me a definition of what serious damage to Commonwealth property is?

Mr Tongue—We will do our best, talking to lawyers—

Senator WEBBER—In this document, is it graffitiing and blowing up an Australia Post box, which is Commonwealth property—and that is damage—or is it throwing eggs at a Commonwealth car that Senator Heffernan or Senator O'Brien may be in? What is it? It seems to me that that is going to be an important issue for some of the people working on the waterfront.

Mr Tongue—Certainly.

Senator WEBBER—In your earlier evidence you said that there are potentially 130,000 people that are going to need MSIC.

Mr Tongue—Yes.

Senator WEBBER—Yet there are 200,000 people that access and work on our waterfront that are not going to need to go through that because they are overseas workers, they are foreign seafarers.

Mr Tongue—Yes.

Senator WEBBER—So we are going to have more people in security zones that do not have to go through our security processes than people that do; is that correct?

Mr Tongue—They will not be in security zones.

Senator WEBBER—I thought a ship was a security zone. I may have this wrong, because I am not as experienced as you people, but I thought a ship was a security zone.

Mr Tongue—The best way I can describe it is that, if a foreign ship on a turnaround at, say, Port Hedland comes in—

Senator WEBBER—Yes, a place I am very familiar with.

Mr Tongue—and the crew come off the ship, they are subject to access control arrangements as part of the port security program. And those access control arrangements go to the issues of monitoring and supervision and those sorts of things. I was referring to the point that, because those are foreign nationals, our means to check them relies on the immigration system. We are working with the immigration department to see if we can tighten that system within the application of Australian law to get a better bead on those seafarers.

Senator WEBBER—But that is going to take some time and in the meantime, as I say, this regime is coming into place. So we are going to have 130,000 Australian workers who have been through a much tougher, tighter security regime than 200,000 people who access security zones on the Australian waterfront.

Ms Liubescic—Those 200,000 foreign seafarers will not be able to just walk around security areas.

Senator WEBBER—No, but they are able to come on and off their ships, surely.

Mr Tongue—Subject to access control arrangements.

Senator WEBBER—Access control arrangements in some regional ports, after you have been through your initial customs clearance, mean that your passport is locked up and you are just on a list—your name is marked off as you leave the port and your name is marked off as you come back in. So one Bill Heffernan can leave the port and a completely different one can come back in, because you do not have to have photographic ID or anything. So the security regime is actually a lot more lax for the 200,000 accessing our security zones at our ports than for the 130,000.

Mr Tongue—I would say that, in background checking the 130,000 Australians, we are trying to—

Senator WEBBER—I am not arguing that it is not a good idea to background check; I am arguing for a much tougher regime for the 200,000.

Mr Tongue—Part of the reason for that is to enhance the security culture at ports. It only applies to some of the 200,000. Many do not get off the ship at all; many stay on.

Senator WEBBER—I am not surprised when they go to Port Hedland!

Mr Tongue—I would never say that. I think it is a much smaller number than 200,000. Part of the MSIC regime is designed to tighten the whole security environment at the port.

Senator WEBBER—It is up to the master of the ship whether they come off or not—it is not up to DOTARS or anyone else—

Mr Tongue—Unless we have moved to a higher level of alert or put in place special requirements.

Senator WEBBER—so that they can go and buy their beads and bangles, as Senator Heffernan was referring to earlier. What regime do we have in place to check for the transport of, say, things like ammonium nitrate by foreign flagged ships with foreign crews? Do we have a security arrangement for that? It could potentially go around Australia.

Mr Tongue—One of the things that occurs if, say, ammonium nitrate is being carried on a single voyage permit or a continuing voyage permit, is that we get information on the nature of the cargo when the cargo is being carried. We have some information on what is in those vessels.

Senator WEBBER—Is that information that they willingly give you?

Mr Tongue—No, that is part of the process of going for a continuing voyage permit or a single voyage permit. That is part of the process.

Senator WEBBER—How do you find out? We have heard how only a very small number of containers are screened, so how do you know?

Mr Tongue—Senator, you are going a bit beyond my knowledge there, and I do not have the relevant person with me. Can I provide that on notice?

Senator WEBBER—That would be lovely. My last issue returns to the offshore oil and gas industry. In Western Australia—and this is an argument that we have all been having—one of the ways that we deal with skills shortages is that we import skilled labour. These people usually come in under a section 457 visa from places as varied as Korea, South Africa and what have you. In WA, most of their employment contracts are drawn up by the WA Chamber of Commerce and Industry. These people arrive in Perth with an employment contract. They have an offer of employment. It is usually for a contractor working in that industry. Because they are from overseas, how are you going to make sure that they get the appropriate security clearances? They are going to work offshore; I presume they are going to need an MSIC.

Ms Liubescic—That is right; they will be subjected—

Senator WEBBER—So how are you going to do that, considering that they are from Korea?

Ms Liubescic—to the same background checking requirements that anybody else would be in getting an MSIC.

Mr Tongue—But there are practical difficulties in working through that process.

Senator WEBBER—Have there been discussions with DIMIA about how you are going to arrange for that to happen?

CHAIR—Would they be ineligible to come in if they cannot get an MSIC?

Ms Liubescic—Unless they can be escorted or continuously monitored in their duties.

CHAIR—So some consideration should be given to getting the MSIC before they get the passage?

Ms Liubescic—That is right.

Senator WEBBER—They are still overseas at that point; they have not entered Australia.

Ms Liubescic—They are subjected to the same sorts of immigration checks as any person coming into Australia—that is, by running through the movement alert list.

Senator WEBBER—Yes. There are issues about the checks that section 457s go through. This is an additional security requirement to just carrying a passport and being ready for work.

Ms Liubescic—In effect, the MSIC will become a tool of trade to work in the maritime industry.

Senator WEBBER—Therefore, do you see that there would be any need to start talking to DIMIA or other agencies? People are arriving with contracts of employment and now they will discover that they need an MSIC as well.

Ms Liubescic—We have been talking to DIMIA since very early on in the process, so they are certainly aware that this requirement is coming.

Senator WEBBER—But are arrangements in place? The Korean government is not exactly going to be lickety-split at complying with this just so that one of their nationals can work on the North West Shelf. It would seem to me that we need a regime in place if we want these people to work.

Ms Liubescic—We are also conducting an extensive communications campaign to make sure that everybody who is affected by this particular measure understands and is aware of it well before it is put into place.

Senator WEBBER—Such as labour hire companies and so on?

Ms Liubescic—Exactly right.

CHAIR—Could I interrupt for a second. To put all this in context, this morning a very interesting gentleman on Radio National pointed out that there are 3,000 British nationals who have been to al-Qaeda training camps and have gone back to England. Do you think that would show up? This is the problem you are up against, isn't it?

Mr Tongue—That sort of information would be available to ASIO.

CHAIR—But if I am a Korean who comes off the 19th floor of downtown somewhere, how the hell does anyone know anything about me? How do you know if I have been to—

Mr Tongue—Typically, what we rely on with any of those people coming to Australia, in any context—be it a work arrangement, a holiday or anything else—is movement alert lists that are run by the immigration department. In the last few years those movement alert lists have increased considerably in size and scale.

CHAIR—I am not aware of the sophistication. Obviously I am an old, worn out welder and a wool classer. It just amazes me, in trying to specify what to do about what is going on in Britain at the moment. They have 3,000 people who have been away at al-Qaeda overseas training camps and they gleefully let them back in, do not lock them up and wonder why they have a problem.

Mr Tongue—We can only build a system that is as good as the intelligence that is available to us. We cannot go beyond that. We rely on the intelligence agencies.

CHAIR—Every day that I hear these things I think that the longer people sit at the front of planes and live in the lounges of airports the less I can rely on them.

Senator WEBBER—I have one final issue. Regarding the people who access the maritime security zones and do not have an MSIC, they get escorted around or they can be monitored by closed circuit television?

Ms Liubescic—On a continuous basis.

Senator WEBBER—Do the people monitoring them on the closed circuit television on a continuous basis have to hold an MSIC?

Ms Liubescic—We are looking at the legal advice about that issue. It has been raised with us but quite late in the process.

Senator WEBBER—It was not something that anyone considered until very recently?

Ms Liubescic—As I said, we are looking into the issue at the moment.

Senator WEBBER—What is the initial thought? Is this something we think we have to address?

Mr Tongue—Our preference would be that those people had an MSIC, but we are yet to talk to—

Senator WEBBER—It seems to me that, if that is the way you are going to monitor the people who do not qualify for an MSIC, there is really not a whole lot of point in having an MSIC—

Mr Tongue—That is right.

Senator WEBBER—because we have the non-eligible wandering around being monitored by the non-holding.

Mr Tongue—Yes, if that is the monitoring regime that is in place. It depends on the nature of the monitoring regime.

Senator WEBBER—Which is the case, particularly in a lot of regional ports, because they do not have the personnel to escort. That is all, thank you.

CHAIR—I thank everybody and apologise if you were offended by me yelling at you. You should have been offended, so I apologise for that. But you would have an understanding of where I am coming from.

Mr Tongue—Yes, Senator, we do.

CHAIR—Thank you. I apologise for any offence.

Mr Tongue—That is all right.

Committee adjourned at 4.10 pm

