

**TRANSPORT SECURITY AMENDMENT (SERIOUS OR ORGANISED CRIME) BILL 2016**

**SUBMISSION TO SENATE COMMITTEE INQUIRY– PORTS AUSTRALIA**

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Ports Australia welcomes the opportunity to make a submission to the Senate Rural and Regional Affairs and Transport Legislation Committee on the provisions of the *Transport Security (Serious or Organised Crime) Bill 2016*.

**Ports Australia - Representation**

Ports Australia is the peak industry body representing port authorities and corporations, both publicly and privately owned, at the national level. Ports Australia is a constituted company limited by guarantee with a Board of Directors, comprising the CEOs of eleven member ports. Our website is at [www.portsaustralia.com.au](http://www.portsaustralia.com.au).

**General Position**

Ports Australia supports the Bill.

Ports Australia has made previous submissions to the Government on key matters relating to measures whose purpose is to address serious and organised crime at our international gateways.

In essence our position is that the ports community will use its best endeavours to cooperate and work with the appropriate authorities, consistent with its core business and safety objectives, on what we have been advised is a serious issue which is imposing a very high cost on the Australian community. This includes being equipped, to the extent possible, to take operational measures to harden vulnerable areas of supply chains under the direct purview of port authorities and corporations along with, if it is to be effective, similar action on the part of other key players in the supply chains servicing international trades.

There is no dispute that the matter of serious crime should be addressed with resolve with the cooperation of all stakeholders in the supply chain. When first mooted we expressed some concern about the apparent store being placed by agencies responsible for tackling serious crime on the ability of an extended MSIC regime to play a central or key role in mitigating the threat of serious crime in our port based supply chains. It was a convenient and easily accessible measure but it would not of itself, we argued, prevent serious crime nor should it be permitted to distract from other more substantial measures such as effective agency coordination that, based on information made available to us, should be accorded priority.

Ports Australia has fully supported the extension of the MSIC card through the legislation now under review by the Committee. The Bill creates an additional purpose in the Maritime Transport and Offshore Facilities Security Act (MTOFSA) to introduce revised eligibility criteria for the aviation/maritime security identification card (ASIC/MSIC) schemes.

The revised eligibility criteria will shift the focus on to more serious, high risk criminal offences. This means people with a criminal history involving serious or organised crime will not be eligible for an MSIC (or an ASIC). These changes will also lift the threshold for less serious offences, reducing the requirement for some applicants to undergo discretionary assessment.

**The MSIC**

The MSIC is fundamentally an identification tool and a rudimentary means of mitigating the risk of unlawful interference with maritime transport or offshore facilities. The MTOFSA embodies provisions which are specifically designed to meet our obligations under the International and Port Facility Security Code (ISPS) to deliver certain security outcomes consistent with ensuring no undue disruptions to trade. Combatting organised crime adds a completely new dimension outside the scope and intent of the existing legislation.

Accordingly the organisational framework supporting the MSIC regime is not, in our view, designed or suited to the fight against organised crime particularly as it is recognised as essentially an all-of-supply chain issue. The scope of MSIC extends only to the security regulated zones of ports. Key facilities such as intermodal terminals and facilities where containers are packed or unpacked, and empty container parks are not within its ambit. Such facilities are now encompassed by the Department of Immigration and Border Protection's provisions designed to address, and mitigate the risk of, serious crime infiltrating our supply chains.

## **Issues**

Our Members are accordingly dealing with two layers of regulation; one under MTOFSA administered by the Office of Transport Security (OTS) which sits in the Department of Infrastructure and Regional Development, and the other under the Organised Crime Act administered by the Department of Immigration and Border Protection.

We stress to the Committee that we have an active and constructive dialogue in play with both of those agencies to ensure that, as far as possible, the respective regulations can be implemented and compliance assured, to meet as far as possible the security objectives of the Government consistent with the operational efficiency of our ports community. In particular much of this dialogue is directed at establishing a more risk based approach to security regulation to avoid, among other things, highly prescriptive and expensive measures that then become loaded onto our costs of trade.

When reviewing any regulatory measure we do not however let any opportunity go by without stating our profound and justifiable concerns about the increasing impact of regulation on port costs and the consequent impact on our competitiveness. In this respect the Government constantly reminds us that it is serious about a deregulatory agenda but we have yet to see any measurable impact on port costs. Agencies give voice to the fact that they recognise we are a highly trade dependent nation but that is as far as it goes in terms of any serious effort to reduce regulatory impacts. This is in the context that such impacts could be readily reduced without changes to outcomes.

In this regard we have had to go to considerable lengths to turn back measures imposed initially by the Australian Border Force that were hugely expensive, were not related to risk and would have a substantial impact on the viability of our regional ports in particular. As mentioned above these matters are now the subject of constructive dialogue with the Department noting however that expressions of good policy need to be converted to regulatory culture at the coal face.

Further Ports Australia has, in a number of contexts, made representations to government not only about the increasing cost of regulation, but also an increasing disposition of governments to shift the costs of the regulatory function itself on to industry. This can occur to the point where agencies also position our ports as quasi regulators. It is our position that our Members will use their best endeavours to cooperate with those who have the statutory responsibility, and do what any "good citizen" would do, to the extent that their resources and expertise will permit. We should not be expected however to fill any vacuum left by the regulator on the basis that they are strapped for resources or, for example, that expensive hardware provided by the port will substitute for good practice on the part of our crime fighting and intelligence agencies.

Thank you for the opportunity to comment on this legislation.

**Ports Australia**

**March 2016**