SYDNEY PORTS
www.sydneyports.com.au

Safety of life at Sea Convention
Submission No: ....11....

RECEIVED
01 SEP 2003
BY: Gillian Gould

SYDNEY PORTS CORPORATION
ABN 95 784 452 933
Level 8, 207 Kent Street
Sydney NSW 2000
PO Box 25, Millers Point
NSW 2000 Australia
Phone: 61 2 9296 4999
Facsimile: 61 2 9296 4742

28 August 2003

The Secretary
Joint Standing Committee on Treaties
R1-109
Parliament House
CANBERRA ACT 2600

Dear Ms Gould

RE: SAFETY OF LIFE AT SEA CONVENTION

I am writing in response to your letter of 29 July.

Having discussed this with you by phone I can only reiterate that, given the progress made by the Commonwealth Department of Transport and Regional Services in the preparation and implementation of the Maritime Transport Security Bill, making comments at this late stage could be seen to be a futile exercise.

As discussed I attach for your information comments on the draft Bill which have been forwarded to DOTARS via the NSW Ministry of Transport. Sydney Ports is of the view that there needs to be considerable consultation on the Bill and the subsequent regulations to ensure that a workable solution is devised consistent with International requirements included in the ISPS Code. Our concerns are also shared by the Association of Australia Port and Marine Authority (AAPMA) representing Australian ports. It would be worth while your contacting the Executive Director Mr John Hirst on (02) 9247 7581 regarding this matter.

Yours sincerely,

Murray Fox.

Murray Fox
General Manager
Environment & Planning

MARITIME TRANSPORT SECURITY BILL

Introduction

The NSW Government and its agencies and State-owned port corporations acknowledge the commercial necessity for maritime transport security legislation.

We do, however, have a number of concerns as the matters of principle in respect of the exposure draft of the Maritime Transport Security Bill 2003 (Cth) (MTSB) that has been provided to us.

First, we are concerned at the potential for confusion that will result from the radical departure in the Bill from the terminology used in the ISPS Code. In particular, ships (manned by foreign officers and crew) on the one hand and local ports and terminals on the other must communicate their security information and plans to one another and satisfy themselves as to the adequacy of the information and plans. To ask them to do so in effect in different languages (ISPS Code V MTSB) can only lead to, at best, misunderstandings and, at worst, to breaches of the requirements. This matter is discussed in greater detail below.

Secondly, we are concerned at the amount of discretion (with its consequent impact upon, for example, the implementation and cost of plans) rested in the Secretary of the Department. Parts 3 and 6 are of particular concern. We have been informed, in the Reading Guide and in meetings with officers of DOTARS, that in practice the Commonwealth intends to rely on the States and their port operators for advice/recommendations in relation to there matters. If that is the intention then the primary legislation should reflect this and the Secretary should have a proper reason for rejecting any such advice/recommendation. A further consequence of leaving the Secretary's discretion largely or practically unqualified is that it filters the utility of the appeal provisions of the MTSB. Furthermore, to the extent that State-owned entities are acting as agents of or conduits of information from the Commonwealth they should have legislative immunity from suit by third parties.

Thirdly, as discussed in more detail below, the exposure draft of the MTSB has the potential to impact upon and conflict with existing State legislation, particularly in the areas of the control of navigation/navigation safety and legislative management of dangerous goods. There seems to us to be no reason why the MTSB should prevail over State legislation that is important to the smooth conduct of trade unless a level 3 security level has been declared by the Secretary in respect of a maritime security zone as defined in the MTSB.

Lastly, the significance of the costs, complying with the MTSB that will be imposed upon ports, stevedores, port service providers, State police and shipping interests should not be underestimated and unrecognised. In the absence of any Commonwealth financial support for the parties required to implement its legislation, the affected parties are likely to seek to recover their costs thereby adding to the cost of trade.

MARITIME TRANSPORT SECURITY BILL

General comments

- What is the role of Australian Protective Services?

- The difference in terminology between the Bill and the ISPS Code may cause problems for port users from other jurisdictions e.g. international vessels that are familiar with the terminology of the International Code. The interface between a terminal and a vessel, when each is discussing the security arrangement of the other, must be a clear process and not confused by varying terminology.

- It is important that the regulations reflect this concern. There is for example no mention of a port security officer or a port facility (terminal) security officer in the Bill. If a declaration of security is required between ship and shore then the ship security officer could reasonably be expecting to be dealing with a terminal security officer.

- It appears that a greater reliance is intended to be placed on a port operator for coordination of activities within a security regulated port than intended by the ISPS Code. In NSW's case, the port corporations and individual officers such as the Harbour Master currently have specific delegated authority and other jurisdictions operate within the maritime environment also e.g. the NSW Waterways Authority and the Water Police. The port corporations work in conjunction with other parties and can request their involvement, however a port operator should not be held liable for the actions or non-actions of the other parties e.g. provision of cleared areas around security regulated ships within ship security zones. An example here is section 111.

- Following on from the previous point, the capacity for the Commonwealth to declare a particular maritime security level, in doing so activating State resources, needs to be considered carefully particularly if those resources are are not within the control of the port operator.

- The issues of areas of water included in a port definition and elsewhere in the Bill needs further consideration. The reading guide states that it also includes areas of open water used by ships for anchoring or holding etc. NSW port corporations operate within port boundaries which are defined in Sate legislation and also within State waters for particular responsibilities. Although visiting vessels would be in contact with the port operator they may be transmitting outside State waters or may be anchored outside State waters. The port operator cannot be considered to be a defacto Coast Guard.

MARITIME TRANSPORT SECURITY BILL

- The Regulation should include advice to Harbour Control or a port / berth manager that pre-arrival information has been completed and "permission to enter" is granted with a direct reporting relationship between the regulator of that information and the port / berth manager. (Part 5, Division 2, Section 87 (2).

- There is provision for a regulated Australian Ship to have an interim ISSC. Has consideration been given to an interim approval of the Maritime Security Plan due to the severe time constraints on both DOTARS and maritime participants?

MARITIME TRANSPORT SECURITY BILL

Specific comments on sections of the Bill

Part 2
Division 2

18 (1) (c)

Is this area the same as a port security zone or is some other area intended – if so, what?

Division 3

23 (2) (b)

The definition 'about to enter port' needs clarification, with respect to the water area for which the port operator is responsible. In our view this should be restricted to vessels within the port boundaries as defined by State legislation.

23

This clause implies that the port operator will be the prime means of communication between the Secretary and all marine industry participants within the port. As each marine industry participant's plans have to be approved by the Department, some direct communication with participants as well as the port operator would be appropriate as the information is readily available. The port operator does not necessarily have the level of "control" over facilities that are leased as implied within this clause.

Part 2
Division 4

31 (3)

If a level 3 security direction is given to a port corporation to communicate to specified industry participants who operate within the port – this could be a huge undertaking if the level 3 is directed to say a less specific target eg. Botany Bay estimate 5 individuals, up to 13 vessels, 3 service providers, 2 bulk liquid operators, 8 tank farms, 2 stevedores, 4 Federal Government Departments and 4 State Government Departments. NSW Ports have limited staff available managing vessel movements, incident reports and communications at any one time.
Support but with reservations.

32

If the Secretary provides advice direct to a ship operator or Master than the "port operator" should also be given the advice.

MARITIME TRANSPORT SECURITY BILL

Part 3
Division 5

46

The intent of this clause needs to be clarified. We understood that it was a requirement for plans to be given to the Secretary for approval. The word 'may' is used suggesting discretion.

47 (4) (b)

The 90 day period shows no commitment to performance on the part of DOTARS. There should be a performance target, with constructive feedback to the maritime industry participant. This paragraph should be deleted from the Bill, as it services no purpose.

51 (2) and (3), 53, 54

These are further examples of a non-constructive approach – regulation as opposed to consultation. The mandatory cancelling of a plan may place a whole port in a position where it cannot trade. Significant implications for Port Operators requires further consultation. No audit process in place.

54 (1) and (2)

Look at the wording suggest that the word may be replaced by must.

Part 5
Division 3

94 and 95

The secretary should not give any direction which contravenes navigational safety requirements of a type which come within the jurisdiction of the Harbour Master. This relates to removing or moving a vessel from a safety regulated port. Consultation with the harbour master is essential.
If the vessel is to be removed how and where?
Where the Commonwealth Legislation overrides State Legislation, the Commonwealth should assume liability.

MARITIME TRANSPORT SECURITY BILL

Part 6
Division 2

97 (2) (b and c)

The areas identified are likely to be outside port limits and/or State Waters, NSW port authorities have jurisdiction in areas outside port limits.

98

The map included in the reading guide excludes a tug base which is incorrect as this must be seen to be part of the port and in the ISPS Code is a port facility. A pilot boat base would also be a facility each of these parties is a marine industry participants and presumably needs a plan.

Part 6
Division 3

104, 105, 111

The declaration of a ship security zone to the port operator needs clarification as the port operator may not have jurisdiction with respect to protecting the ship from unlawful interference e.g. enforcing a security perimeter, this falling to another State government agency. Is the intention for it to be the responsibility of the port operator to co-ordinate the responses of other agencies as opposed to necessarily being the provider of the response. The port operator does not have appropriate resources. The harbour master can declare exclusion zones currently.

106

It would be appropriate for the secretary to seek the views of the port operator (as he does elsewhere).

Part 7

Screening, clearing etc.

While the regulations presumably will stipulate who or what is to be screened and under what circumstances, I would suggest that it is impractical to generally screen persons boarding cargo vessels, unless particular circumstances dictate.

Need also to highlight potential impact to port traffic, truck queuing, vessel turn around times, yard capacities of stevedores, container parks.

Prohibited Items

Certain dangerous goods are permitted to be carried, loaded, unloaded provided that they comply with the IMDG Code, State legislation and port authority requirements. The Act or regulations should not over-rule this.

Part 8
Division 2

Clarification is required as to when and how a maritime security inspector can exercise powers. It is considered excessive if, without consultation with or notice to the port operator and/or the State police, the inspector exercises powers within a security regulated port – reference Section 144.

Division 4

159.

This should not be done for a security regulated ship without consulting on navigational safety issues with the harbour master.

Division 5

The powers of maritime security guards with respect to their activities e.g. physical restraint, etc should be consistent with State legislation.
The guards should operate under the direction of the 'hirer' – port or terminal operator with respect to their duties.