

## Introduction

- 1.1 This report contains the findings and conclusions of the Committee's inquiry into the proposed *Amendments to the Annex to the International Convention for the Safety of Life at Sea, 1974, including consideration and adoption of the International Ship and Port Facility Security (ISPS) Code, done at London on 12 December 2002* (the SOLAS Convention). The proposed treaty action was tabled in Parliament with a National Interest Analysis (NIA) and Regulation Impact Statement (RIS) on 14 May 2003.
- 1.2 In this chapter the Joint Standing Committee on Treaties (JSCOT) makes some observations about the current international debate concerning maritime security and the context in which the Committee expedited its review. It also outlines the conduct of the inquiry and the factors which have influenced it.

### Australia's maritime transport security framework

- 1.3 According to the Regulation Impact Statement (RIS), the objective of the International Maritime Organization (IMO) maritime security measures is to establish a standardised international framework through which ships and port facilities can co-operate to detect and deter acts of terrorism in the maritime sector.<sup>1</sup> The Department of Transport and Regional Services (DOTARS) website states that 'the implementation of Australia's preventive maritime security

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1 Regulation Impact Statement (RIS), p. 2.

framework is considered to be both a matter of national security and an international obligation.<sup>2</sup>

- 1.4 As a party to the SOLAS Convention<sup>3</sup>, the Australian Government has determined that a nationally consistent approach to the provisions of the amendments is necessary. The provisions of the Convention will be enabled by the introduction of new legislation. This legislation will have implications for approximately 70 ports and around 300 port facilities in Australia.
- 1.5 The Committee is concerned about variances between the spirit and letter of the amendments to the SOLAS Convention, in particular the ISPS Code, and the implementing legislation. It also has issue with the practicality and workability of the legislation. Throughout the inquiry the Committee found that sections of the maritime industry share this concern.

## **Nature of proposed amendments**

- 1.6 The basis of the current proposed treaty action is three amendments to the SOLAS Convention: Chapter V, Chapter XI-I, and Chapter XI-2 (the ISPS Code is annexed to Chapter XI-2). Chapter XI-2 and the ISPS Code are amendments to SOLAS which were adopted by a Conference of Contracting Governments in London on 12 December 2002. The amendments to Chapter V and Chapter XI-I were not regarded as controversial and this view was borne out in evidence to the Committee.
- 1.7 The first amendment of the proposed treaty action, in Chapter V, amends the date for compliance with a safety of navigation provision in SOLAS regarding the installation of automatic identification systems on ships.
- 1.8 Secondly amendments to Chapter XI-I require better information on ship identity, through the permanent marking of a ship's identification number in a visible place on board a ship, and the issuing of a continuous synopsis record for each ship by its flag state.

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2 See [www.DOTARS.gov.au](http://www.DOTARS.gov.au), viewed 17 October 2003.

3 Australia became a party to the SOLAS Convention on 17 August 1983

- 1.9 Lastly, Chapter XI-2 and the ISPS Code set out special measures to enhance maritime security. These provisions will apply to ships and ports, and their objective is to 'establish a standardised international framework through which ships and port facilities can co-operate to detect and deter acts of terrorism in the maritime sector'.<sup>4</sup> It is these amendments on which most of the evidence has been taken by the Committee. Concerns about the implementation of the legislation to bring the ISPS Code into effect provided the impetus for the Committee's inspections of two ports, Fremantle and Newcastle.

## Conduct of the inquiry

- 1.10 The inquiry was announced on the Committee's website soon after the proposed treaty action was tabled on 14 May 2003 and advertised in *The Australian* newspaper on 28 May 2003, inviting members of the public to prepare submissions for the Committee's review.
- 1.11 An initial public hearing was held on 16 June 2003, at which evidence was taken from DOTARS on the amendments to the SOLAS Convention, in conjunction with other treaties tabled on 14 May 2003. Given the implications of the SOLAS amendments for the 70 ports and 300 port facilities around Australia, it was evident to the Committee that the views of the maritime industry on the proposed treaty action should be canvassed. Accordingly, letters inviting submissions were sent to port authorities, peak bodies, industry groups and other interested parties. Eighteen submissions were received.
- 1.12 Notwithstanding that in accordance with Article VIII(b)(vii)(2)(bb) of the SOLAS Convention the amendments will be deemed to have been accepted by 1 January 2004 and automatically enter into force on 1 July 2004,<sup>5</sup> the Committee recognised that it would require a longer period than the standard 20 sitting days to complete its review and therefore wrote to the Minister for Foreign Affairs on 19 August 2003 advising of its decision to extend the time-frame of the inquiry.

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4 RIS, p. 2.

5 According to this article of the Convention, amendments will not enter into force if objections are notified by more than one third of the Contracting Governments to the Convention, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet. The Committee is assured that objections of this nature will not be lodged.

- 1.13 On 5 September 2003 the Committee conducted an inspection at the Port of Fremantle. This enabled the Committee to gain an invaluable appreciation of how the provisions of the proposed treaty action would be implemented and to ascertain the concerns of port authorities and facilities operators.
- 1.14 The Committee recalled DOTARS to a public hearing on 8 September 2003 to allow the Department to comment on issues which had been raised in the course of the Fremantle inspection.
- 1.15 The Committee further enhanced its understanding of the implications of the amendments to the Convention in different environments during an inspection at the Port of Newcastle on 21 October 2003. The Committee canvassed the views of the Newcastle Port Corporation, facilities operators, the Association of Australian Ports and Marine Authorities (AAPMA) and the Maritime Union of Australia (MUA). As with Fremantle, the inspection in Newcastle enabled the Committee to gain some insights into how elements of the ISPS Code pose challenges for port authorities and port facilities.
- 1.16 The Committee again provided the Department with an opportunity to comment on concerns raised in discussions in Newcastle at a public hearing on the following day, 22 October 2003, in Canberra.

## Introduction of enabling legislation

- 1.17 During the course of the inquiry, on 18 September 2003, the enabling legislation – the *Maritime Transport Security Bill 2003* – was introduced into Parliament. The bill was referred to the Senate Rural and Regional Affairs and Transport Committee on 8 October 2003 for review and report. The Committee noted that the Senate committee held a public hearing on 27 October 2003 and that several issues of interest to JSCOT were raised at that hearing.
- 1.18 The report of the Rural and Regional Affairs and Transport Committee was tabled in the Senate on 27 November 2003.<sup>6</sup> JSCOT noted that the Senate Committee considered that ‘DOTARS has given reasonable answers to most of the concerns raised’ and that the implementation of the bill can be achieved by 1 July 2004 ‘with appropriate consideration by the Minister and DOTARS of the
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6 The Report of the Senate Committee can be accessed at [www.aph.gov.au/Senate/committee/rrat\\_cttee/maritime\\_security/report/report.pdf](http://www.aph.gov.au/Senate/committee/rrat_cttee/maritime_security/report/report.pdf)

Committee's comments, either through amendments to the bill or in the regulations.<sup>7</sup>

- 1.19 The *Maritime Transport Security Bill 2003* passed, with amendment, on 1 December 2003 and at the time of writing, was awaiting Assent. The Committee notes with interest that the amendments agreed to included the formalised recognition of the role of maritime unions as a key stakeholder in the ongoing implementation of the maritime security framework, and the requirement in the regulations that security plans detail the training and knowledge required by staff with security responsibilities.
- 1.20 The introduction of the enabling legislation and its review by the Senate committee has influenced the conduct of JSCOT's review. Some of JSCOT's preliminary concerns have been addressed satisfactorily by the Senate committee and by the subsequent legislation and therefore have been omitted from this report.

### Committee comment

- 1.21 In recent reports this Committee has been critical of the Government on the occasions when legislation giving effect to treaty obligations has been introduced prior to the conclusion of the Committee's review of proposed treaty actions, and has made comments and recommendations accordingly.
- 1.22 In this case, the Committee was concerned when the *Maritime Transport Security Bill 2003* was introduced on 18 September 2003, prior to the completion of the Committee's report. The Committee recognises, however, that the nature of the SOLAS amendments and their expected entry into force has imposed strict deadlines on all involved parties. The Committee accepts DOTARS' view that the timeframe for the implementation of the increased security measures and their potential impact on ports and port facilities has meant that the introduction of the legislation was necessary during the Spring sittings of Parliament to enable its passage into law.
- 1.23 The Committee also accepts the view expressed in the NIA and RIS that non-compliance by the 1 July 2004 deadline could have the potential to cause serious damage to Australia's trade interests.<sup>8</sup> The DOTARS website states that international ships are likely to be

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7 Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Maritime Transport Security Bill 2003*, November 2003, p. 33.

8 NIA, para. 6 and RIS, p. 9.

unwilling to visit non-compliant ports. Other effects of non-acceptance of the IMO security measures are discussed later in this report.