

## Coastal Shipping Policy and Regulation Inquiry

### Comments from the Attorney-General's Department on the Terms of Reference:

**1. Outline the nature and characteristics of the Australian shipping industry and the international and coasting trades**

No Comment.

**2. Review the policy and regulatory arrangements in place for the coastal shipping sector**

Relevant Commonwealth Legislation

The *Crimes at Sea Act 2000* gives legal force to a cooperative scheme for dealing with crimes at sea, and some other purposes. Under the scheme, the States, Territories and Commonwealth agreed that the criminal law of certain jurisdictions will apply in certain areas adjacent to the Northern Territory's and States' baselines. The Crimes at Sea Act deals with general criminal law and jurisdiction for criminal acts at sea. It is not regulatory in nature and should not affect the competitiveness and sustainability of the Australian coastal shipping sector.

The counter-terrorism offences under the *Criminal Code Act 1995* apply to the offshore environment as they apply to land. Therefore, acts of terrorism at sea would be captured under the Criminal Code and investigated accordingly.

**3. Assess strategies for developing an adequate skilled maritime workforce in order to facilitate growth of the Australian coastal shipping sector**

Maritime Security Identification Cards

One of the issues confronting the coastal shipping industry is consistent background checking of people who require unescorted access to a maritime security zone. A person who needs to work unescorted or unmonitored in a maritime security zone must hold a Maritime Security Identification Card (MSIC). This includes port, port facility and port service workers, stevedores, transport operators (such as train and truck drivers), and seafarers on Australian regulated ships. An MSIC is a nationally consistent identification card which is issued to identify a person who has been the subject of a background check. Issue of an MSIC demonstrates that the holder has met the minimum security requirements. MSICs are valid for up to five years.

The AusCheck Division in the Attorney-General's Department conducts the background checks in support of the MSIC scheme in accordance with the Maritime Transport and Offshore Facilities Security Regulations 2003, the *AusCheck Act 2007* and the AusCheck Regulations 2007. A background check conducted by AusCheck comprises an ASIO security assessment, a criminal history check, and, in some cases, a citizenship and work rights check.

An individual can be denied an MSIC on the basis that they have, among other things, an adverse criminal record. An adverse criminal record is one that contains a maritime security relevant offence as set out in Maritime Transport and Offshore Facilities Security Regulations. Regulation 6.07C defines a “maritime security relevant offence” to include relevant offences against a law of a State or Territory or any other country or part of a country. While this definition clearly anticipates the consideration of foreign offences, there is presently no mechanism for conducting timely, reliable overseas criminal history checks as part of the background checking process. This is of significance given the Australian shipping industry, as with other Australian industries, increasingly relies on skilled foreign workers to supplement the Australian skilled maritime workforce. In addition, a large number of Australian maritime workers have spent a significant period of time residing overseas.

**4. Consider the effect of coastal shipping policy on the development of an efficient and productive freight transport system, taking into account issues such as environmental and safety impacts and competitive neutrality between coastal shipping and other modes of transport**

No comment.

**5. Consider the implications of coastal shipping policy for defence support, maritime safety and security, environmental sustainability and tourism.**

Offshore Oil and Gas

The offshore oil and gas industry is reliant on support vessels to service its production and exploration facilities around Australia. While the Attorney-General’s Department is not aware of any specific security issues relating to the operation of such vessels, oil and gas industry representatives have indicated they wish to take a “whole of supply chain” approach to security.

In taking such an approach to security, the oil and gas industry has sought greater dialogue and coordination between the Department of Infrastructure, Transport, Regional Development and Local Government, which administers the *Maritime Transport and Offshore Facilities Security Act 2003*, Border Protection Command, which undertakes patrols of the offshore oil and gas production facilities; and the Attorney-General’s Department and the Department of Resources and Energy, who share responsibility for critical infrastructure protection.

To address the issue, the creation of a separate forum is proposed through which Australian Government agencies can engage with offshore oil and gas producers on security and critical infrastructure protection issues.

Part IIIAAA of the Defence Act (Call Out)

Part IIIAAA of the *Defence Act 1903* sets out a statutory process for calling out the Australian Defence Force (ADF) to deal with domestic violence within Australia or threats to Australia. Call out of the ADF can be initiated by the Commonwealth or requested by the States and Territories. Part IIIAAA confers powers on members of the ADF when called out to provide assistance in

recapturing buildings or controlling a specific area. As the call out provisions apply to land, air and maritime environments, in the event of a maritime security incident occurring, Part IIIAAA could be used to call out the ADF to respond to the incident.

A number of principles underpin the legislation:

- the ADF should only be called out as a last resort where the resources and capabilities of the police are not adequate to deal with the situation
- the civil power (i.e. police authority) remains paramount
- ADF members remain under military command, and
- if called out, ADF members can only use force that is reasonable and necessary in the circumstances.

The Prime Minister, the Attorney-General and the Minister for Defence (the authorising Ministers) have key roles under Part IIIAAA. Before the Governor-General can make an order, all three authorising Ministers must be satisfied that a State is unable to protect itself against domestic violence and that the ADF should be called out.

The call out order must specify the powers that the ADF may use when called out.

Division 3A of Part IIIAA of the Defence Act provides the ADF with the ability to respond to a maritime security incident.

The Department works closely with the Department of Defence and the Border Protection Command in the administration of Part IIIAAA.

#### The 2005 Suppression of Unlawful Acts Protocols

The main objective of the original Protocol to the Convention for the Suppression of Unlawful Acts (SUA) against the Safety of Maritime Navigation 1988 and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf 1988 was to ensure that persons who commit unlawful acts of violence against ships or fixed platforms are either prosecuted or extradited to a State where they will stand trial. The 2005 SUA Protocol and the 2005 Fixed Platform Protocol strengthen the original instruments to provide an appropriate response to the increasing risks posed to maritime navigation by international terrorism. The 2005 Protocols complement preventative security regimes such as the International Ship and Port Facility Security Code by providing a legal basis for the arrest, detention and extradition of maritime terrorists.

Australia signed the 2005 SUA Protocols subject to ratification on 7 March 2006. The instruments are not yet in force.

The 2005 SUA Protocol requires State parties to create a series of offences regarding the use of chemical, biological, radiological and nuclear (CBRN) material or equipment for terrorist acts and the transportation of CBRN material. It also creates a regime for the boarding of vessels suspected of being involved in the commission of an offence.

The 2005 Fixed Platforms Protocol creates new offences concerning the use of fixed platforms for terrorist purposes such as the discharge of weapons of mass destruction or other hazardous substances from fixed platforms.

The Security Law Branch in the Attorney-General's Department is reviewing existing legislation to determine what legislative action is required in Australia to implement these Protocols.

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