

SOLAS Convention amendments

- 2.1 As stated in the introduction to this report, the proposed treaty action under review comprises three amendments to the Safety of Life at Sea (SOLAS) Convention, namely to Chapter V, Chapter XI-I and Chapter XI-2, including the International Ship and Port Facility Security (ISPS) Code.

Amendments to Chapter V and XI-I

- 2.2 The first two amendments, in Chapter V and Chapter XI-I, relating to improved safety measures are not considered controversial by the Committee, which understands that amendments to maritime safety provisions are made regularly by the IMO and implemented in Australia through Marine Orders under the *Navigation Act 1912*. According to the National Interest Analysis (NIA), this is the standard procedure for the introduction of ship safety measures under the SOLAS Convention into Australian law.¹
- 2.3 Amendments to Chapter V (Regulation 19) advance the date required for certain types of ships to be fitted out with an automatic identification system.²
- 2.4 Amendments to Chapter XI-I (Regulation 3) require certain types of ships to have a ship identification number permanently marked in a visible place on board the ship.³

1 NIA, para. 21.

2 NIA, para. 10.

- 2.5 Amendments to Chapter XI-I (Regulation 5) require certain types of ships to carry a continuous synopsis record on board. This is issued by its flag state, and provides a continuous record of ownership and registration details.⁴
- 2.6 The Committee understands that the Australian Maritime Safety Authority (AMSA) will integrate the requirements of these amendments into existing systems and is not expected to incur additional administrative costs for these activities.⁵
- 2.7 The NIA states that the Office of Regulation Review has determined that a Regulation Impact Statement (RIS) is not required for the amendments pertaining to maritime safety issues, as these changes are minor and machinery in nature.⁶

Amendments to Chapter XI-2 and the ISPS Code

The international maritime security framework

- 2.8 According to the NIA and the RIS, the terrorist attacks of 11 September 2001, the attack on the French tanker *Limburg* and the Bali bombing have forced a reappraisal of preventive security measures by industry, including the maritime industry.⁷ The proposed amendments to the Convention, increasing IMO security measures by the introduction of the ISPS Code are designed 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.⁸
- 2.9 The Committee was advised that
- in the post September 11 environment the US has principally worked through many international fora to advance international security type obligations—world customs

3 NIA, para. 11.

4 NIA, para. 12.

5 NIA, para. 24.

6 NIA, para. 30.

7 NIA, para. 9 and Regulation Impact Statement (RIS), p. 2.

8 RIS, p. 2.

organisations, international civil aviation organisations and international maritime organisations ... the IMO was the only appropriate vehicle that had the reach and structured process in place.⁹

- 2.10 Unlike the perfunctory safety measures outlined in the amendments to Chapters V and XI-I, which attracted little comment in submissions or evidence, the Committee's focus in its inquiry on the introduction of the ISPS Code was warranted, given the continuing level of debate on how it will be effectively and fairly implemented nationally.
- 2.11 The Committee does not consider it necessary to describe in detail the terms of a Code implemented by legislation which passed into law prior to the tabling of this report. Some brief comments will be made however about the obligations and purpose of the Code, before the changes it proposes are briefly analysed.¹⁰
- 2.12 In brief, Part A of the ISPS Code sets out mandatory requirements, including responsibilities of Contracting Governments and maritime industry participants, designation of security officers, verification of ship security, issuing of International Ship Safety Certificates (ISSCs) to verified ships, cooperative arrangements, record keeping, training requirements, efficient collection of security related information (such as through a Declaration of Security), and a methodology for security assessments and the development of security plans.
- 2.13 Part B of the ISPS Code has recommendations which refine and further clarify Chapter XI-2 and Part A of the Code. It is important to note that Part B of the Code is optional and Australia will not implement it. This has implications for a comparison of costs of and funding for the implementation of the amendments, which are discussed in Chapter 3.

Development of Australian legislation

- 2.14 The Committee heard that

in large part the [ISPS] code has been informed by a [US] coast guard style model, which in its implementation poses a

9 Mr Andrew Tongue, *Transcript of Evidence*, 16 June 2003, p. 39.

10 Further detailed information (including copies of the tabled documents and submissions for review) are available from the Committee's website at www.aph.gov.au/house/committee/jsct/solas/tor.htm.

few issues for us because our port sector is basically the responsibility of state government.¹¹

- 2.15 The Committee recognises that the legislative responsibilities of state, territory and federal governments in Australia are very different from those in the US in terms of port management. The Committee understands that 'generally, the US does not allow non-US flagged vessels to carry cargo on domestic voyages along its coastlines',¹² whereas Australia allows foreign-flagged ships to ply coastal trade. The legislation has therefore been developed to suit the Australian context.
- 2.16 The Committee was informed by Mr Andrew Tongue, from DOTARS, that the Australian legislation is 'outcomes-based', that is
- based on a risk assessment process, and we are trying to differentiate, in our application of the code, between those parts of ports that we consider to be higher risk than low-risk areas.¹³
- 2.17 Mr Jim Wolfe, also from DOTARS, stated that
- I think we recognise that there needs to be a focus on outcomes based requirements rather than overly prescriptive requirements which, from various parts, may not get us the results we want.¹⁴
- 2.18 The DOTARS website states that an outcomes-based preventive security framework enables the maritime industry to develop individual security plans that are relevant to their particular circumstances and the specific risks that they face.¹⁵
- 2.19 Submissions provided to the Committee during the first stages of this inquiry expressed substantial concern about the Code and the legislation. The Committee notes however that clarification of some elements of both the Code and the legislation, and the drafting of regulations associated with the legislation, has served to reduce levels of anxiety among stakeholders who were initially unsure of the

11 Mr Andrew Tongue, *Transcript of Evidence*, 16 June 2003, p. 33.

12 DOTARS, *Submission 14.1*.

13 Mr Andrew Tongue, *Transcript of Evidence*, 16 June 2003, p. 33.

14 Mr Jim Wolfe, *Transcript of Evidence*, 16 June 2003, p. 33.

15 See www.dotars.gov.au/transsec/index.aspx#maritime, viewed 17 October 2003.

ramifications of their compliance or compliance by their environment with the security measures.

- 2.20 While submissions were generally supportive of the amendments, some dissatisfaction was expressed over the lack of consultation, the tight timeframe for compliance and the lack of information initially available. The Committee understands that some of the issues have been resolved through further communication and consultation between the Department and the stakeholders.

Coverage of vessels under ISPS Code and legislation

- 2.21 The Committee notes that the Code and the legislation do not apply to certain categories of vessels, including naval vessels and vessels of particular specifications. The Committee became aware during its inspections of Newcastle and Fremantle of the practical implications this might have for SOLAS and non-SOLAS vessels sharing neighbouring berthing facilities, but recognises that these issues are to be taken into consideration by the port authorities during the development of their risk assessment and security plans.

Role of Department of Transport and Regional Services in implementation

- 2.22 The Committee understands that the Department, under the ISPS Code and the legislation, will become the national transport security regulator, which includes responsibility for maritime issues and the implementation of the ISPS Code in Australia.¹⁶ According to the DOTARS website, the Department will also be responsible for providing guidance to industry to assist operators to complete security assessments and develop security plans.¹⁷
- 2.23 The website further states when Australia's implementation of the ISPS Code is operational, the Department will undertake, among other roles, system-based compliance checks and monitoring throughout the sector.

16 See www.DOTARS.gov.au/transsec/index.aspx#maritime, viewed 17 October 2003.

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