Convention for the Safety of Life at Sea.
Submission No: 6.1

AAPMA

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BY: Gillian Gould

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

29 August 2003

Dear Ms Gould

Safety of Life at Sea Convention.

This Association whose members comprise State Government and many privately owned ports together with a number of State marine regulatory agencies, supports the adoption of the International Ship and Port facilities Security (ISPS) Code and related amendments to the annex to the International Convention for the Safety of Life at Sea 1974. It is a Code that, whilst developed within a most unusually short period of time, is basically well structured and able to be implemented with varying degrees of ease by maritime nations.

We have been fortunate that the Australian designated authority, the Department of Transport and Regional Services has adopted a consultative approach in the development of guidance documents, model plans etc which are required under this Code. This has encouraged ports to press forward in view of the exceptionally tight deadline to develop the essential risk assessments in relation to port facilities as well as the outcome based security plans. Unfortunately, this level of consultation has not applied in relation to the exposure draft of the Bill which introduced many concepts that were new to us and which do not reflect a proper understanding of international maritime shipping arrangements nor a range of operational issues relating to the implementation of the Code and the legislation in Australia, all of which become of considerable importance with the introduction of criminal penalties in the draft Bill.

The time given to industry and States to consider this most important Bill has been too short, given the lack of advice on a number of important implementation and operational issues, and we are concerned that it is being sent to the House in such a short time frame and without any accompanying Regulations.

In particular, we would wish to make the following comments:

1. Terminology. The draft Bill very deliberately moves away from using terminology adopted in the ISPS Code covering the fundamental ship and port interfaces. Shipping is an international industry and those ships traveling to Australia are foreign flagged with foreign owners, non-Australian masters, many of whom have a poor command of English, and non-Australian crew, all of whom in the course of a voyage to Australia will be visiting many different ports and will be using, and will expect to use, the common terminology covering the reporting and relationship requirements of the ISPS Code. In particular, the Code provides definitions for the term 'port facility', company (for the owner of a ship), and these terms are used in relation to security plans and security officers – in fact throughout the Code. We have not been given an adequate explanation as to why DOTARS believe this unilateral change is essential in the Australian situation.

   The results of such a unilateral change will be even more difficult communication with masters, crew and between them and land based and some sea based facilities, as well as the potential for challenging whether Australia is actually implementing the ISPS Code that they will be familiar with as a result of the visits to other ports. Furthermore, shipping company's head offices are developing appropriate plans for their ships in accordance with the Code and its terminology which will include operational instructions.

2. The draft Bill is very open ended as far as protection of the water side of a port. No guidance is given at all as to what will be expected standards at security levels 1 and especially 2. Port operators and port facilities have been simply asked to set out their views in their security plans. Given that all security plans have to be approved by DOTARS prior to 1 July 2004, this particular approach poses a great many uncertainties on the ability of the port and the facility to have confidence in maintaining their ongoing trade from 1 July 2004. If DOTARS are not satisfied with the port and facility plans in regard to water side protection it will not be easy to make new arrangements that may meet the newly advised requirements.

   In this regard, all ports are unique and the issue of water side protection can pose enormous difficulties in some of the more remote but high volume ports as there are simply not the resources available in many ports. Furthermore, the geography of ports varies widely – some ports have very extensive shorelines, some of more than 40km in length with the different port facilities at varying intervals along the shoreline, others have very lengthy channels, some of over 40km in length. These channels are critical infrastructure in regard to access to and from ports.

There is also the issue of the effectiveness of water side protection and the relationship of the cost of providing detection, deterrence and perhaps prevention measures.

3. The Bill is largely based on the Aviation Security Bill and does not, in many cases, reflect an understanding of how the maritime sector operates as distinct from the aviation sector. In particular, it is not recognized in the Bill, that the harbour master in each port is given considerable statutory and regulatory powers under State Legislation in relation to safety of vessels and crew and the efficient operations of ports. The harbour master is an expert and whereas the Bill, in many cases, sets out consultation processes, it does not specifically acknowledge the role and responsibility of harbour masters, nor the need to consult with them. In fact, the powers given to the Secretary of DOTARS could be seen to override the powers of the harbour master which, whilst possibly acceptable in certain circumstances, could in actual situations create less than efficient responses to particular situations. This blurring of accountability could distort port control responsibility, increase the risk of accidents and have financial, legal and insurance consequences.

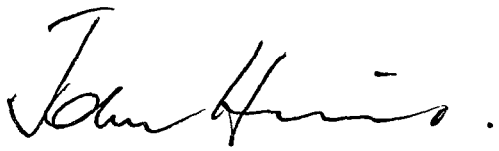
4. Defence vessels are exempted under this Bill. As the Defence Department has very few of its own facilities in the ports that it regularly visits in Australia, there has to be a recognition that Defence operations have to be linked in closely with those of ports and that the responses to potential threats, increases in security levels etc will apply equally to Defence vessels as it will to commercial operations in the port. For example, it is often the case that commercial vessels berth in very close proximity to RAN and foreign naval vessels in our commercial ports and as naval vessels will always be seen to pose a greater threat than perhaps commercial vessels, certainly in terms of a potential target, it may be necessary for a higher security response to be appropriate to commercial vessels if and when naval vessels are in port at the same time. The Bill is silent on the interface in a port between commercial and naval vessels and this is an important omission. It is recognized that perhaps this interface can be dealt with by other means, but the failure to recognize this in the Bill and in our consultations to date is of concern.

5. There are many operational issues resulting from the application of criminal penalties in the draft Bill that give us cause for concern as the relevant wording is ambiguous or uncertain in several instances.

6. Regulations are still to be developed. Whilst many of our expressed concerns may be addressed in the Regulations, it is our understanding that a draft of the Regulations will not be available until first half October. This may not give time to industry to properly consider the Regulations possibly prior to the Bill being considered in the Senate.

This Association is available to discuss these and other issues further with your members if that is required.

Yours sincerely,



John Hirst
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The Association of Australian Ports and Marine Authorities