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Official Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

**Reference: Inquiry into the Convention for the Safety of Life at Sea, 1974 and the
Ship and Port Facility Security Code (ISPS)**

TUESDAY, 9 SEPTEMBER 2003

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JOINT COMMITTEE ON TREATIES

Tuesday, 9 September 2003

Members: Ms Julie Bishop (*Chair*), Mr Wilkie (*Deputy Chair*), Senators Bartlett, Kirk, Marshall, Mason, Stephens and Tchen and Mr Adams, Mr Bartlett, Mr Ciobo, Mr Martyn Evans, Mr Hunt, Mr Peter King and Mr Bruce Scott

Senators and members in attendance: Senators Marshall and Tchen and Mr Adams, Ms Julie Bishop and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

Amendments to the Annex to the International Convention for Safety of Life at Sea, 1974, including consideration and adoption of the International Ship and Port Facility Security (ISPS) Code (London, 12 December 2002).

WITNESSES

BOARD, Ms Helen, Director, Maritime Policy and Legislation, Department of Transport and Regional Services..... 1

BORTHWICK, Mr Stephen John, Acting Assistant Secretary, Maritime Security, Department of Transport and Regional Services..... 1

GUENTHER, Ms Clare, Policy Officer, Department of Transport and Regional Services..... 1

OLLERENSHAW, Ms Jann, Senior Legal Officer, Department of Transport and Regional Services..... 1

Committee met at 8.23 p.m.

BOARD, Ms Helen, Director, Maritime Policy and Legislation, Department of Transport and Regional Services

BORTHWICK, Mr Stephen John, Acting Assistant Secretary, Maritime Security, Department of Transport and Regional Services

GUENTHER, Ms Clare, Policy Officer, Department of Transport and Regional Services

OLLERENSHAW, Ms Jann, Senior Legal Officer, Department of Transport and Regional Services

CHAIR—I declare open this meeting of the Joint Standing Committee on Treaties. As part of the committee's ongoing review of Australia's international treaty obligations, the committee is looking into the 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 Code, the ISPS Code, done at London on 12 December 2002. The committee first heard evidence on this treaty at a public hearing on 16 June 2003, and we have received 13 submissions to date. Copies of these submissions have just been authorised for publication. They have been made available to the witnesses this evening and are also available from the committee's web site and the secretariat. Further, the committee visited the Fremantle Port Authority last Friday. A number of issues were raised by the port authority and other entities we met there.

Given the tight time frame that shipping nations have in front of them to comply with the amendments to SOLAS and the ISPS Code, we are grateful that officials from the Department of Transport and Regional Services could make themselves available to attend this meeting at such short notice so that the committee could raise the concerns in the submissions and from our visit to the Fremantle Port Authority as quickly as possible and get your response. I remind witnesses that this evening's proceedings are being broadcast by the Department of the Parliamentary Reporting Staff. Should that present any problem for witnesses, please raise it with me now. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. Do you have any comments to make on the capacity in which you appear?

Ms Guenther—I am a policy officer in maritime security legislation.

Ms Ollerenshaw—I am acting principal lawyer in the legal office at DOTARS.

CHAIR—Mr Borthwick, I understand that the assistant secretary is not available because he is currently overseas.

Mr Borthwick—The first assistant secretary, Mr Tongue, is overseas.

CHAIR—But you are happy to be here to give evidence on this matter?

Mr Borthwick—Yes.

CHAIR—Are there any introductory remarks you would like to make, or do you want us to proceed to questions?

Mr Borthwick—I am happy to proceed to questions.

CHAIR—During the course of consideration of this convention—SOLAS and the ISPS Code—I understand there has been a degree of consultation with relevant parties and key stakeholders. You would be aware, therefore, that a number of issues have been raised by them, particularly in relation to the time frame within which the relevant stakeholders are required to conform to the code and the convention. Could you take us through the time line of what you anticipate happening between now and 1 July 2004 in respect of legislation, regulations and other important target dates so we can get some sort of perspective.

Mr Borthwick—Ultimately, we are working towards demonstrating to the IMO that our maritime industry is compliant with the new international treaty by 1 July 2004. In order to meet that timing, we are targeting the introduction of legislation to implement the code before the end of the spring sittings. We are looking at on or before 18 September.

CHAIR—What will be introduced?

Mr Borthwick—The Maritime Transport Security Bill will be introduced. That will give the overarching heads of power to translate the ISPS Code into Australian legislation.

Mr ADAMS—When is that being introduced?

Mr Borthwick—We are working towards introduction before the end of the spring sittings, so on or before 18 September.

CHAIR—That is Thursday week.

Mr WILKIE—Can I touch briefly on a common concern of mine? Given that the committee is supposed to review any proposed treaty action and make recommendations in a submission prior to any legislation being introduced for implementation, why is the legislation scheduled to be introduced before we have any chance of actually reporting on the treaty?

Ms Ollerenshaw—To get the legislation through in these sittings, it has to be introduced as a T-status bill. That means it is in the timetable for introduction into the parliament within the first four weeks of sitting. That is the last week we can introduce the bill.

Mr WILKIE—If we are talking about implementation from 1 July next year, why does the bill have to be passed now?

Ms Ollerenshaw—We need it passed as early as possible, preferably this year, to give industry time to see the regulations and submit their plans for approval and to go through that process with the industry.

Mr WILKIE—But we have a number of sitting weeks between now and the end of the year when legislation could be passed through both houses of parliament and endorsed.

Ms Ollerenshaw—Not if we are to meet the time frame we have been given.

Mr WILKIE—Is that the time frame you have been given by government?

Ms Ollerenshaw—To meet Senate cut-offs, we have to introduce the legislation into parliament next week.

CHAIR—Can I go through the timetable?

Mr WILKIE—I am quite happy to go through the timetable, but the concern I have—and it is not just with this legislation; it is a general issue we have with this committee—is that we are continually getting legislation introduced before we have had a chance to report, and our report may influence the legislation that is being introduced. I think it is an abuse of the process. I am not blaming the department for that, but obviously the government has set up the treaties committee to review treaties and make recommendations which can be incorporated into the legislation before these things are introduced. We are continually getting legislation introduced, on almost a sessional basis, before we have had a chance to report. I am wondering what the point is of us having to review the treaty if our input is not being taken into consideration in the legislation.

CHAIR—I do not know whether that requires a response. Mr Borthwick, perhaps you could go through the key dates. We must be realistic here. These treaties were tabled in May. Could you take me through the dates, including the cut-off date for the Senate, so we can get some sort of picture as to when regulations are going to be introduced and when people are going to have to respond to the regulations and the like? The date of 18 September is when you want the legislation—and there is an exposure draft available.

Mr Borthwick—We went through an exposure draft process on the legislation. We sent that out on 31 July to a range of interested stakeholders. We gave them approximately two weeks to provide comments on the draft legislation to give us enough time to take into account—

Mr WILKIE—We were told they were given less than one week, so I would be very interested to know how long they were given.

Mr Borthwick—We sent out the exposure draft on 31 July and requested comments back by 13 August, but we were still accepting comments up to 15 August.

CHAIR—Are you able to say when the Fremantle Port Authority received its copy of the exposure draft?

Mr Borthwick—I would have to take that on notice. I am not sure of the date.

Ms Board—It would have been sent by express post on 31 July.

CHAIR—What day of the week was that?

Ms Board—It was a Thursday.

CHAIR—They would have received it on the Friday, with comments to be made by the following Wednesday week?

Mr WILKIE—Not all express post from Canberra makes it to Western Australia on time!

Ms Board—We also sent emails to those people telling them to expect the exposure draft and explaining the short timeframe.

CHAIR—Were comments received from all parties to whom the draft was sent?

Mr Borthwick—We received 40 submissions on the exposure draft.

CHAIR—How many copies did you send out?

Ms Board—About 60.

Mr WILKIE—How many of those 40 submissions made recommendations which were incorporated in the legislation?

Mr Borthwick—The submissions raised a wide variety of issues. We worked through each submission. Some of them raised issues which we picked up in revisions to the bill. A substantial number of the comments related to operational issues, which will be picked up in the drafting of the regulations.

CHAIR—If we can come back to the time line, we can then raise the issues.

Mr Borthwick—If we work off a proposed introduction of the bill by 18 September, the next stage is to proceed to the drafting of the regulations. We have indicated to the states and territories, and also to industry, that we will be consulting them intensively on the drafting of the regulations.

CHAIR—When is the cut-off date for the Senate?

Ms Ollerenshaw—It is to be introduced into the parliament by the fourth sitting week. I would have to look at the parliamentary timetable to tell you when it is going into the Senate.

Mr ADAMS—They have a cut-off time too, don't they?

Ms Ollerenshaw—Yes. It has to be introduced into the parliament—either house—by a certain date and then into the Senate by 28 October.

Senator MARSHALL—Maybe you can just send us the timing.

Mr WILKIE—Were any changes made to the legislation as a result of the submissions?

Mr Borthwick—Yes, some changes were made.

CHAIR—He said that most of the issues of an operating nature were left over to be dealt with by regulations. It has to be in the Senate by 28 October. What then happens with the drafting of regulations?

Mr Borthwick—We have started the initial process of drafting the regulations. As I said, we have indicated to the states, territories and industry that we will be consulting with them on the regulations. I expect that will happen over the next six to eight weeks—and it will commence towards the end of September or early October. We are looking at having a package of regulations towards the end of this year.

Ms Ollerenshaw—Once the bill passes through both houses of parliament, we will then ask the Governor-General to make the regulations.

CHAIR—You are anticipating that that will happen by the end of the year?

Ms Ollerenshaw—Yes.

CHAIR—That essentially gives six months for all of the ports and facilities to take on board the regulations and make the reforms and adjustments, or whatever they need to do, in order to meet the code and the convention.

Ms Ollerenshaw—That is correct.

CHAIR—In respect of the security plans which have to be developed, how long do you anticipate that that process will need? They have to be ticked off by the department, don't they?

Mr Borthwick—Yes.

CHAIR—And that cannot occur until the regulations are gazetted.

Mr Borthwick—That cannot be formally approved until the act and regulations are in place. We have encouraged industry to send us the draft material so we can be working with them on that so that they are aware of our expectations and intentions and can be working towards compliance in advance of the legislation being in place.

CHAIR—How do they work towards compliance with regulations if the regulations have not even been drafted and that is where the operating information is to be contained?

Mr Borthwick—They cannot be in final compliance until the regulations are drafted, but we will be working with them as they are drafting their security plans. The first step in the process is to complete a security assessment. The security assessment will then inform the development of the security plan. The department has been distributing guidance material to assist industry in doing their security assessments and in outlining, in general terms, the types of things we will be looking for in security plans. Some of the draft material we are seeing will help inform our considerations in the drafting of the regulations.

Mr ADAMS—Are there security plans and risk assessments based on different regions or different areas within the ports?

Mr Borthwick—Yes. The risk assessment will be specific to the port or port facility. It will take account of the geographical location, the operating characteristics of the port and the types of operations it has. The security plan would need to be tailored to the outcome of the risk assessment so that it picks up exactly the risks which that port and port facility have identified.

Mr ADAMS—Will we grade some ports? Will some ports be at a higher risk than others?

Mr Borthwick—That will be an outcome of the risk assessment. Some ports, because of the nature of the traffic they receive, will be higher risk than others.

Mr ADAMS—Will some areas of ports be painted yellow and others painted red or blue?

Mr Borthwick—That will not be a requirement.

Mr ADAMS—With the areas which have to be sorted out—things like ships which are outside the port's jurisdiction—are they still the responsibility of the Commonwealth? They are ships which are in our waters but they are certainly not under the control of a port authority or a state. Is there anything in the bill to cover that?

Mr Borthwick—The bill covers what we term security regulated ships. We break that up into two categories. One is Australian regulated ships and the other is foreign regulated ships. Australian regulated ships will be required to have ship security plans, security officers and that sort of thing. Foreign regulated ships will be required by their own flag states to have security plans and security officers. Our role in that case is a question of verifying that they have what is called an international ship security certificate.

Mr ADAMS—Will this be a number? Will a number be attached to every ship?

Ms Board—An IMO number? Yes, on international ships.

Mr ADAMS—Will they have a certificate saying, 'This ship complies. This is a certified ship complying with the international standards of the International Ship and Port Facility Security Code'?

Ms Board—Yes.

Mr ADAMS—Will we then have security officers that are port security officers?

Ms Board—Yes, and port facility security officers and ship security officers.

Mr ADAMS—Will they go aboard a ship and say, 'Give us a look at your certificate'?

Ms Board—No. That will happen through Commonwealth agencies. We will have maritime security inspectors who will do that checking. Foreign ships, as well as Australian ships, will have to provide pre-arrival information through to Customs. Part of that information will include answering the question: have you got a certificate and what security level are you operating at?

Mr ADAMS—I understand that the Americans now say they want a list of everybody who is on board the ship, they want to know their names and their history of training as a maritime worker. Do we have that in this legislation?

Ms Board—No, it is not in our legislation, it is in the Migration Act in terms of what pre-arrival information immigration requires.

Mr ADAMS—That is a passport, isn't it?

Ms Board—A passport plus pre-arrival information—crew lists and passenger lists. That is coming in, I think, in November of this year.

Mr ADAMS—That is in November, is it?

Ms Board—I believe so.

Mr ADAMS—That is in the Migration Act, is it?

Ms Board—I would need to check whether or not it is that act, but certainly DIMIA have proposed this as a new arrangement and the shipping industry have been aware of this for some months.

Mr ADAMS—So are we going to accept a maritime worker from another part of the world if he produces his passport? That is all we require as a country, is it?

Ms Board—We also require that the ship has a valid ISSC.

Mr WILKIE—And hopefully it has internationally recognised identification for the crew—I cannot think of the name of the actual pass but—

Ms Board—Seafarer identity.

Mr WILKIE—Yes, a seafarer identity document.

Ms Board—In the case of Australia, foreign seafarers will have to have a passport.

Mr ADAMS—And not one of those—

Ms Board—As well as other documentation.

Mr ADAMS—As well as the other documentation?

Ms Board—I believe so, yes.

Mr ADAMS—But we do not know that for sure?

Ms Board—I would need to check that.

Mr ADAMS—Could you take that on notice and let us know?

Ms Board—Sure.

Mr ADAMS—The other issue was that I understand that an overseas ship that is doing coastal work may be under state jurisdiction. How are we dealing with that issue?

Ms Board—In the bill, foreign flagged vessels that are regulated ships for the purposes of our bill will have to have a valid ISSC in order to ply the Australian coast, irrespective of whether they are on an interstate, intrastate or international voyage. That issue was raised by Queensland and we have addressed that.

Mr ADAMS—So they will be under the same regulations. I understand there is a legal issue—which must be a constitutional issue, in the sense of whether it is state law or Commonwealth law—about whether these ships, when they go into another port, are under state jurisdiction.

Ms Board—In terms of the Constitution, if an Australian regulated ship is over a certain tonnage—for example, 500 gross tonnes—and they are on a particular voyage, they come under the Commonwealth jurisdiction. That includes ships that are on international and interstate voyages. Those that are on intrastate voyages that are Australian flag vessels come under state legislation. Foreign vessels come under our jurisdiction if they are on international voyages.

Ms Ollerenshaw—We can extend coverage of the bill to foreign ships under a number of heads of power: the external affairs power, the foreign corporations power—sorry, off the top of my head I cannot recall the other one. We can extend coverage of the bill to those ships.

Mr WILKIE—What about vessels like the *Spirit of Tasmania*, that is going between Tasmania and Victoria?

Ms Ollerenshaw—It is undertaking interstate travel.

Mr WILKIE—So it is covered?

Ms Ollerenshaw—It is covered.

CHAIR—Are you saying that the issues raised by the Queensland government in relation to jurisdiction have been taken into account?

Ms Board—With respect to foreign flag vessels, yes.

CHAIR—In a submission to this committee—and you have a copy of that—the Queensland government says:

... the application of the proposed Code over (and the primary security jurisdiction for) SOLAS vessels operating on intrastate and interstate voyages remains uncertain.

It then refers to paragraph 23 of the national interest analysis, which it says:

... distinguishes between Australian and foreign flag vessels and the nature of the voyage which the vessel is on. This differentiation raises issues of coverage and jurisdiction. Importantly it raises matters of responsibility and ensuring the application of a consistent risk based approach which is necessary to ensure the optimal security outcomes.

They go on to refer to the increasing use of foreign flag vessels in the Australian coastal trades and refer to the example of a recent voyage of the passenger vessel *Superstar Virgo* from Fremantle to northern Western Australia. Are you saying that the concern that they have raised has been—

Ms Board—Yes. A foreign flag vessel, irrespective of what voyage it is on around Australia, has to have a valid international ship security certificate. It also means that we can exercise control measures on a foreign vessel if for any reason we have some concern that it is noncompliant.

CHAIR—If a foreign flag vessel is operating in the Australian coastal trade under a single or continuous voyage permit does the Commonwealth have coverage over it?

Ms Board—Yes.

Mr ADAMS—Those are the ships that the Americans will not allow on their coastal operations, are they not? No foreign vessels are allowed to trade on the American coasts—on either side?

Ms Board—I am not sure about that.

Mr ADAMS—Does anybody know about that?

Mr Borthwick—I am not aware of that.

Mr ADAMS—Could you let me know about that?

Ms Board—I am fairly sure that they allow foreign vessels to ply their coast too.

CHAIR—Is that a matter that you can readily ascertain the answer to?

Mr Borthwick—We will take it on notice and follow it up.

Senator MARSHALL—Is the Department of Transport and Regional Services responsible for the NIA?

Ms Board—Yes.

Senator MARSHALL—You explained to me about the consultation with the states. I understand the NIA says that there are no outstanding issues from state governments in relation to this.

Ms Board—The Commonwealth has been consulting with the states through the Australian Maritime Group which reports to the Australian Transport Ministers Council. The Australian Maritime Group has representatives from each of the states and the Northern Territory. For 18 months we have been working closely with them, in particular developing our position to take to the IMO. Since the diplomatic conference we have been trying to get the bill together. We have also been working directly with another group called the AMG ad hoc group on security. It is pretty much the same group of people. There have been ongoing discussions with the AMG and the Australian Transport Council on the coverage of our bill because the IMO ISPS Code refers to ships on international voyages only. We took the matter to the ATC and said that we would include coverage of Australian vessels on interstate voyages—to pick up the *Spirit of Tasmania*—and that was agreed to by the ATC.

Senator MARSHALL—I just want to take you through it because the issue of consultation is important. If the NIA said that there has been consultation with the states and there are no outstanding issues, generally the committee would take that at face value, but it would appear that that is disputed. I have some concerns. Either there are no outstanding issues or there are and how people could misunderstand that is beyond me. The Queensland government submission says:

However, on issues where there was disagreement with state/territory officials or representatives of stakeholder groups the commonwealth at times appeared reluctant to take on board concerns. The national interest analysis (NIA) for the treaty action does not accurately reflect the outcome of consultation undertaken by the Commonwealth. Paragraphs 23 and 27 of the NIA infer that there are no outstanding issues from State Government perspectives. At the Australian Transport Council meeting held on 23 May 2003 it was noted and recorded that there are issues on the margin of the overall implementation of the ISPS Code that are still to be resolved.

Can you explain to me how we can get a difference of positions on whether there are or are not outstanding issues?

Ms Board—The ATC at, I think, their May meeting this year agreed to the national maritime security framework which the Commonwealth put to the ATC about how we would proceed with the bill. There was a comment, I think from Queensland, that there were some minor issues that could be dealt with outside of that meeting. We believe that we have addressed those outstanding issues in the bill. So there was agreement in terms of the general framework for the regime.

CHAIR—I think that has pretty well come through the submissions, that the governments and the different groups you have referred to recognise the need for these changes and understand the approach, but there seems to be some dispute that essentially seems to come out of the lack of regulations at this point which is concerning people. I think that is fair. So while the Queensland government talks about disputes on the margin, it seems from my reading of it that it is mainly operational, but it is causing angst or concern that they are not going to understand what is required of them. Then the looming date of 1 July 2004 has some pretty draconian consequences, it would seem, if you are not compliant.

Ms Board—That is right.

Mr WILKIE—The terminology was also expressed as a real issue and, as has already been said, not being aware of what is going on and lack of consultation.

Ms Board—If I could just add: that is why we sent out an exposure draft, because we know this is such a greenfields area of activity and we are moving so quickly. The minister was very keen that we get it out to stakeholders as quickly as possible. We regretted the short time frame but we had no control over that. The exposure draft gave us a good feel for what those concerns were. We believe we have adequately addressed them—noting, however, that the bill is very high level and it does not cover off the kind of operational detail that would give industry comfort, and that is why we are committed to developing the regulations as quickly as possible and involving them in that process. So that undertaking has been made at the AMG meeting and the standing committee on transport and we have also told the peak industry bodies that we will be doing that.

I think how this departs from the usual IMO treaties is that industry is used to the Australian Maritime Safety Authority developing marine orders by basically lifting what is in an IMO treaty into a marine order, so they are used to that transfer from the treaty into a regulation. Where there is a bit more complex is that it has effects on other bills. We are trying to say that our bill is about prevention but there are consequences in terms of response that we need to be aware of.

CHAIR—Could we come to the proposed legislation—and we have not seen the exposure draft so I am only reiterating what has been put to the committee. A number of submissions expressed strong concerns—and I guess this is a point you are referring to—that the ISPS Code was not being adhered to, in the sense that there was an expectation that the legislation would reflect the code and in their view it does not. Can you take us through that point? Specifically, it has been put to us that the Maritime Transport Security Bill is similar to aviation security legislation; in fact they say that some of the terminology is just not applicable to a maritime circumstance and must have been lifted from an aviation context and is therefore unsuitable for a maritime context. There have also been concerns raised about terminology—I recall one was the use of the word ‘terminal’ as opposed to ‘facility’—and then there were the jurisdiction issues and the like. Can you explain to us why the ISPS Code has not been adhered to, or whether it has, and comment on that? Also, could you comment on this issue about the lifting of the legislation from an aviation context into a maritime context and whether or not that is a valid criticism?

Mr Borthwick—I might tackle those two issues first, and then the others can jump in. A lot of the concern around the terminology issue was that in the exposure draft there was not a reference to ‘port facility’. We tried to break down the concept of port facility between port, terminal and maritime service provider. We did that for a specific reason. The definition of ‘port facility’ in ISPS relates to a location where a certain activity takes place. We cannot regulate locations; we need to identify an entity that controls that location in order to effectively regulate the entity. In the Australian maritime context, we thought that the way to do that was as a specific role for the port operator. There are other facilities that operate within that port. We classed those as terminals because we thought that the word ‘terminal’ more appropriately fitted that description. There was a range of other associated facilities that we caught by the term ‘maritime service provider’.

In response to the comments received from industry we have changed the word ‘terminal’ to reflect ‘port facility’. Our informal feedback from industry was that they were pleased that we had made that change because it was a demonstration that it was more consistent with the ISPS Code. The way we have approached it is that we are covering the facilities that are mentioned in

the ISPS Code, so that the coverage of the legislation is consistent with what is intended to be covered by the ISPS Code. By our using the term 'port facility', people can more readily identify with that now.

CHAIR—That was just one example. Clearly, this is meant to be an international context, so I would suggest that to put it in an Australian context would cause difficulty for communication between international ships and local authorities, and vice versa. Should not the maritime terminology, if you like, adopted by the ISPS Code be adopted to avoid any confusion?

Mr WILKIE—Probably the question in that context, too, is: was this legislation drafted from scratch or was it an adoption of an aviation code or legislation made to fit the maritime industry? That is basically what was put.

Mr Borthwick—In terms of the drafting of the IMO code, for example, the IMO code had regard to the international aviation security regime, which was developed by ICAO. So IMO itself used aviation security as a starting point. When we sat down with the drafter to start drafting the maritime security legislation, there was an existing model that related to aviation security, because aviation security has been in place in this country for 50 or 60 years.

CHAIR—It has been in focus.

Mr Borthwick—The way we look at it is that we are talking about security concepts here. These security concepts apply to aviation, maritime, land and other industries as well. What we are trying to do is overlay security concepts onto the maritime industry. These security concepts are transferable. Where they differ is in their application in practice. The application of the security framework in maritime will be different from its application in aviation. They may look the same on the surface because they may use similar terms, but in practice they will be different because the port environment is different from the aviation environment. The port environment has a wide variety of disparate players; it is not like aviation, where you have a self-contained border—you have a fence around an airport and you can control everything.

CHAIR—You do not have pleasure craft cruising through airports.

Mr Borthwick—No. The port is different. What we have tried to do in drafting the bill is incorporate a range of different approaches. We have tried to introduce flexibility.

Mr WILKIE—So it is trying to deal with it mainly through regulation and just having an overall framework in the legislation.

Mr Borthwick—Yes. Each port will want to approach it slightly differently, and we believe that we have the flexibility in the legislation to accommodate that.

Mr ADAMS—I see that you have an ISPS Code book there. Can we get one of those? It is a nice, glossy copy of the code. That would be handy to have.

Ms Board—At vast expense—their price is in pounds!

Mr Borthwick—They are available on the IMO web site.

CHAIR—And the exposure draft of the legislation?

Mr ADAMS—That has changed now, though, hasn't it?

Ms Board—Yes.

Mr WILKIE—There have obviously been changes to the legislation. Have you sent it back out to industry for further comment, so that they know that you have incorporated the changes?

Mr Borthwick—No. What we intend to do is circulate a summary of the issues that were raised in the 40 submissions that we received, and circulate a document that outlines how we have addressed that issue and whether or not we have picked it up in the bill or whether or not we believe it will be addressed through the regulations.

Mr ADAMS—I do not know whether this is in the bill or how this will operate but who is going to have security over ships coming into harbours? There are many ports where there is no Commonwealth presence at all. Does the act say that the Commonwealth has responsibility for a ship that is in Australian waters? How do we tackle that issue? Does it say in the act that that is a responsibility of the Commonwealth or the port authority?

Ms Board—The responsibility for setting up the preventative security measures—because this is essentially about prevention and not response, so that is what our bill is reflecting—is a responsibility of the ports, port facilities and ships that fall under this bill. The Commonwealth's responsibilities relate to verifying foreign ships. We have various types of officials who will be allowed to go on board a vessel, check whether or not they have a certificate and do other forms of checking. Our other role will be to audit Australian ships, ports and port facilities. We think there will be around 300 port facilities, 70 ports and about 70 Australian vessels.

Mr ADAMS—We do that now in the port safety offices and—

Ms Board—Through AMSA.

Mr ADAMS—I am just concerned about the ports where there is no Commonwealth presence.

Ms Board—At most of our 70 ports there is a Customs presence and/or AMSA.

Mr ADAMS—I do not know whether they have availability of ships. I take your point that this is about prevention, but I just think there are some other issues that are not being dealt with at this stage, and that is one of them. The other issue is the long-term situation—the X-raying of cargo boxes and the new technology to achieve that. Has that been discussed or is that still down the track?

Mr Borthwick—I think that is a question more appropriately directed to Customs, who have the primary responsibility.

CHAIR—It is not part of this convention.

Mr Borthwick—It is not part of our security bill or part of the ISPS Code, but it is picked up as a broader supply-chain security issue.

Mr WILKIE—I just want to go back to the security plans that people were looking at with the risk assessments. One of the issues that were raised with us in Fremantle was that, although they have to conduct these risk assessments, they have received no templates for what is required in that assessment—they have not been made available. When are those risk assessment templates likely to be made available to ports so that they can proceed with those risk assessments?

Mr Borthwick—The department has provided guidance material to ports that outlines basically how to undertake a risk assessment. What we have indicated to ports is that in the first instance they should be using AS/NZS4360, which is an accepted risk management standard.

Mr WILKIE—What they are saying to us is that the criteria for approval or rejection of security plans is difficult to ascertain and that, even though there is some general broad framework that they have been provided with, they cannot actually come up with a specific assessment based on anything they have been given that they believe will hold any water. These concerns are raised in various submissions, not just from Fremantle. Are you aware of the concerns and, if so, how are you going about addressing that?

Mr Borthwick—We are aware of concerns in relation to risk assessments and we have tried to address that through our issuing of guidance material. We have also indicated quite clearly to the ports that if they have concerns in relation to the risk assessment we are happy to comment on draft risk assessments which they have prepared and provide them with guidance on where we think it can be improved.

Mr WILKIE—What they are saying is: ‘We do not know whether to get a consultant that may charge \$20,000 as opposed to a consultant that may charge \$120,000, because even if we go for the more expensive option, we still do not know if that’s going to fit what the department requires and may not in fact meet the guidelines.’ What they are saying is: ‘What we’ve been provided with is in no way, shape or form adequate for us to come up with a decent risk assessment.’ They want clear guidelines and procedures that they can put into place when they are doing the risk assessment so that they can come up with something that actually meets the requirements. They say they are not being given that. What I am wanting is to know that that is being heard and that there is more being done than just providing them with some basic guidelines that they can go with.

Mr Borthwick—We are aware of the concerns and ultimately the specific requirements will be set out in regulations which we will be drafting in conjunction with industry. When we come to draft the regulations around risk assessment, we will obviously have regard to the prevailing Australia-New Zealand standard. That is the reason we went out with guidance material based on the Australia-New Zealand standard to begin with. We are conscious that some sectors of industry want additional guidance. We are working through that at the moment and we will be providing additional guidance.

CHAIR—Have you had any draft security plans submitted?

Mr Borthwick—We have received some draft security plans, yes.

CHAIR—Have they been accepted or are they in need of amendment?

Mr Borthwick—We are not in a position to indicate acceptance because we do not have a formal process for doing that.

CHAIR—No names, no pack drill, but if a port authority has put in a draft plan—I assume that is the case, that some have?

Mr Borthwick—Yes, some have provided draft plans to us. There would be less than five.

CHAIR—So they have provided a draft plan. Have you then got back to them with suggested amendments, even though the regulations and the legislation have not been confirmed?

Mr Borthwick—Not specific suggested amendments. We have gone back in the sense that, because we develop draft port security plans and draft ship security plans as models which we circulated, we have been looking at the draft plans to see whether they are consistent with that draft model that we have—

Mr ADAMS—Can we get a copy of that?

Mr Borthwick—Yes, certainly, it is publicly available.

Mr WILKIE—I can understand their frustration. What they are saying is: ‘We have been asked to give something up based on very little, which may or may not be accepted. What do we do? Do we go for an option that may cost us \$20,000 or do we go for an option that may cost \$130,000? Either way, whichever we adopt may not actually fit what the requirement of the department is because we just don’t know what the department wants. They are just giving us some very rough guidelines which mean nothing.’ I can understand their frustration, and I am hoping the department can understand their frustration, because if I was running an organisation like a port I would want to know exactly what I am required to do to fulfil the requirements under the legislation.

Ms Board—The whole shipping and ports community is experiencing the same problems because of the timing.

CHAIR—Worldwide?

Ms Board—Yes, and we are all trying to learn from each other. IMO does not normally regulate ports; this is brand new business. Western Australia, I think Fremantle, were involved in helping us develop the guidance materials. We have had a very iterative process. There is a lot of learning that is going on at the moment with ourselves. We did not call for ports to submit their plans, because we did not have the regs developed, but with those ports that were proactive—for example, Newcastle—it was a really good way for us to test whether or not the guidance material that we are going to submit is going to be useful for the 300 diverse port facilities that we have to regulate.

Mr WILKIE—That is fair enough, but what we have been informed, without naming any port, is that some people that have actually gone out and spent an enormous amount of money coming up with plans that they thought were adequate have had those plans rejected, and they do not know why.

CHAIR—Does that sound right?

Ms Board—No, it does not sound right. We did not call for a process because we do not have the regulations; we do not have the law.

CHAIR—So you would not have rejected any plan?

Ms Board—No. We have been conducting workshops around the country to basically explain to the maritime sector that this is happening—that this is some of the draft guidance material that we are developing, that this is where we think we are heading with the regs, that we think it reflects what is in the IMO ISPS Code. We would say, ‘By all means start the process, particularly the process of learning how you do risk assessment.’ We would say that a risk assessment process is similar to what they would do for other business risks.

CHAIR—So they ought to be doing their risk assessments now but the security plans ought to be finalised after the regs have been finalised?

Ms Board—Yes, so they know precisely what our requirements are to get them over the line.

CHAIR—Then, presumably, relevant training will have to take place.

Ms Board—Yes.

Mr WILKIE—Is the discretionary power that has been given to the departmental secretary to approve or reject the plans the same sort of discretionary power that is being given to other departments in other nations where these plans are being put forward? Apparently there is some discretion about whether the plans get implemented or not.

Ms Board—No, that is not correct. We have not formally sought plans. We have said, ‘If it would be helpful to submit plans to get a feel for how we are thinking.’ I think the AAPMA made the suggestion that we should use it almost like a pilot whereby we as the regulator learn from that process—as well as the industry being regulated.

CHAIR—So the process of lodging an acceptance and/or rejection has not occurred yet?

Ms Board—No.

Mr WILKIE—Who, then, determines whether a plan is compliant with the ISPS Code?

Mr Borthwick—Picking up on your question, under the exposure draft, and subsequently the bill, the power lies with the secretary of the department to approve or not approve a plan.

Mr WILKIE—Yes, that is where I am coming from.

Mr Borthwick—He has to do that, obviously, in accordance with the matters set out in the act, so that automatically narrows the scope.

Mr ADAMS—Does he give reasons if he rejects?

Mr Borthwick—Yes, that was a comment we picked up in relation to the exposure draft, and we have inserted the requirement for the secretary to give reasons for a refusal.

CHAIR—I think Mr Wilkie's question is this: where other similar countries are also implementing legislation, where does the power reside in each case?

Mr Borthwick—My understanding is that the New Zealand government, for example, recently introduced legislation to give effect to the ISPS Code. I would need to double-check this but my recollection of reading it was that the power to approve plans lies with the CEO of the relevant department, which would be our secretary equivalent.

CHAIR—Have we taken account of the New Zealand legislation?

Mr Borthwick—No, because it is—

Ms Board—It arrived three days ago. There are similarities.

CHAIR—Yes, I understand.

Mr ADAMS—The regulations, I must confess, sound a bit like nursing home regulations—the Commonwealth imposes regulations; then there is a paper trail, and auditors come in. I can see in a few years time getting the same representation from the port authority—that the Commonwealth paper war is enormous, that they are spending a third of the port's costs on paper to comply with something. Have you given consideration to the cost of compliance and the simplicity of it?

Mr Borthwick—We have, and we will be taking that up in the process we adopt for drafting the regulations. What we intend to do is keep the regulations outcomes based. What we are trying to do is give the port operator or port facility ownership over the ship security plan process so that they design measures that are commensurate with their risks. Provided that they are meeting the outcome we specify, which may be controlling access or whatever, they should be able to get approval under the plan. In some areas we will prescribe national standards. For example, with passenger screening of cruise ships it makes sense to have one standard that applies nationally. In other areas there will be broad flexibility. Interestingly, that approach has received a range of comments from industry, ranging from those who are very supportive of an outcomes based regime to those who say, 'No; just tell me where to put my fence and how many security guards I need.' So we have to try to balance a range of concerns in that as well.

Mr ADAMS—It is an old industry with certain levels right through it. I turn to who pays the bills and compliance costs. I think I read \$1.4 billion; is that the figure that we are looking at around the country?

CHAIR—The figure that comes to my mind is \$313 million.

Mr Borthwick—It is hard to come up with precise figures, mainly because it is so heavily reliant on the existing security systems that are in place. Last year we had a consultant do an exercise, and that came up with a figure of around \$370 million. I am certainly not aware of the \$1.4 billion figure. Ultimately—and this is consistent with the arrangements that apply to infrastructure generally—the costs of security are met by the owner and operator of the infrastructure provider. Separately, we have our own costs in exercising our regulatory function and we have been given budget funding to cover those. But the majority of the implementation and compliance costs will be met by industry; yes.

Mr ADAMS—And the states as well.

Mr Borthwick—And the states as the major owners of the infrastructure.

Mr ADAMS—Do we have a figure on that as yet?

Mr Borthwick—No. The best guesstimate we have is the \$370 million figure.

Mr ADAMS—Of course, that will be passed on to the users of the ports and, therefore, to the consumer.

Mr Borthwick—Ultimately, yes. You would expect those costs to be passed on by other countries in their regimes as well, so the competitive nature of the industry internationally should not be affected by the implementation.

Mr ADAMS—It is quite ironic for me because it is only about 15 years ago that we took watchmen off the ships. Every ship that went into a port used to have a watchman on the steps up to the ship. We took them off as a saving of money for the country. It is ironic that now we need to put them back on, basically.

Ms Board—I will just correct that figure: it is \$300 million for ports and port facilities in set-up costs, and \$13 million for our ships.

CHAIR—So that is where I got the \$313 million from.

Mr ADAMS—What about the costs for the Commonwealth to meet its obligations?

Mr Borthwick—We have been given funding of \$15.6 million over the next two years to meet our regulatory function.

CHAIR—I turn to an issue that came home to us quite starkly because of our visit to Fremantle port: which ships the ISPS requirements will apply to. Fremantle port was probably a very good example because it has the one channel through it and it is used by passenger cruise ships, the Rottneest ferries, the Australian Navy, the US Navy, and cargo and pleasure craft. So it has the lot. Can you explain to me which ships the ISPS requirements—the code and the convention that we are looking at—apply to and which it does not apply to? How does one then get a secure, uniform, coordinated regime to apply? For example, the Navy is exempted, yet in Fremantle they demonstrated how they pull up next door to commercial ships. So, if you are looking at the terrorist or security risk of a particular ship, you have a regime applying to a

commercial ship here, but there is a US or Australian Navy vessel sitting over there to which it does not apply.

Mr WILKIE—You also have the situation—Julie has touched on it—where you have decent security arrangements as soon as you step onto dry land but on the water side of it there is nothing, and it is not really covered in the legislation.

CHAIR—That water interface. Can you comment on that general issue?

Mr ADAMS—Is that dealt with in the code?

Mr WILKIE—It is not really.

Ms Board—Who is in and who is out is dealt with in the code.

CHAIR—I understand who is in and who is out is dealt with in the code—that is why I am saying Navy is not in.

Ms Board—That is right.

Mr ADAMS—The interface is—

CHAIR—Can you explain how that is likely to work—not only the ship interface but the waterfront-land interface?

Ms Board—That is why the whole issue of the port facility definition was problematic for us in an Australian context because we needed to have an entity that was also responsible for the waterside. In that case it is mainly the state departments of transport or their port authorities, so the people who are responsible for traffic management are either employed as harbourmasters by the state department or by the harbourmaster. We had to give a role to an entity who could take responsibility for that waterside at a port. Our expectation is that, in their risk assessment, they need to work out how they would deal with the different types of ships and risks that come with those ships in terms of their plan.

CHAIR—So they have to do a risk assessment of what it means to have the US Navy in port?

Ms Board—Yes, they do, but equally that might mean that they make a decision that the US vessel might need to go somewhere else, or that might mean that they have to talk with the Australian Defence Force liaison officer about whether or not they are going to have open days anymore.

Mr WILKIE—Is that covered in the treaty?

Ms Board—The treaty does not cover defence vessels, only trading vessels.

Mr WILKIE—How can we require the states to comply with the security risk assessment that includes that if it is not covered in the treaty? How does the Commonwealth have any right to demand that of states?

Mr Borthwick—What we are—

Mr WILKIE—I appreciate the reasoning behind it—I have no problem with that—but how can we require states to comply with something which has in fact no relevance to the treaty which gives legitimacy for them to act?

Mr Borthwick—The way we envisage it being covered is that a port or a port facility needs to undertake a risk assessment that identifies all its risks. As part of that we cannot say, ‘Please exclude this risk because it’s not covered by the treaty.’

Mr WILKIE—And you cannot require them to include it.

Mr Borthwick—We cannot require them to include it, so they may choose to say, ‘One of my biggest risks is a Navy vessel or a US defence vessel pulling up next to my port.’ The next step is what measures are available to mitigate that risk, and in short there might not be any because they do not have the mitigation within their control. So in their security plan they have identified a risk but if they cannot effectively treat that risk we cannot—

CHAIR—There is a gap.

Mr Borthwick—We cannot hold them to something that they cannot practically do. What it highlights, though, is the need for more bilateral arrangements with Defence to address the issue directly rather than try to cover it indirectly through this bill.

Mr WILKIE—And you could not require that they do that?

Mr Borthwick—No, we cannot require them.

Mr ADAMS—But, if you have a nuclear ship, the issues of a nuclear evacuation plan, how close the hospital is and how many suits you have are pretty significant.

CHAIR—All that is covered already, isn’t it?

Ms Board—It is already covered, yes.

Mr ADAMS—Those sorts of issues are going to come up when the port starts to make a risk assessment. Where the fuel is stored, where the explosives are, where the Navy has its ordnance, where it loads its ordnance and how much ordnance is on Navy ships—all those sorts of issues are going to arise. As the chair has said, Fremantle is a prime example of that. I do not think we take explosives through but on the ferries to Tasmania the camper vans have gas bottles with certain turn-off taps and whatever. All those things have started to change and will change in the future. So this is not a small thing, is it? This will be a very big change around some ports. Would you say that?

Ms Board—There are other arrangements for nuclear ships. Our bill is about implementing the ISPS Code.

Mr WILKIE—Can you explain why naval and defence vessels are exempt?

Ms Board—I think it is an IMO tradition to always exempt those vessels.

Mr WILKIE—But in relation to targets, wouldn't they be key targets that you would be trying to protect?

Ms Board—That is dealt with by other acts.

Ms Ollerenshaw—The SOLAS convention itself does not deal with that.

Mr WILKIE—I know. I am not having a go at the department.

CHAIR—We are dealing with a code that is enhancing maritime security. The regulation impact statement says:

The objective of the 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.

That sounds fine, but the trouble is that the maritime sector intersects the navy, cruise ships, passenger ferries and everything else.

Mr WILKIE—Yes, but you are leaving the key people out of it. Has that been raised as a general issue by other jurisdictions?

Mr Borthwick—It has.

Mr WILKIE—As an example, in Fremantle you get an American naval ship coming and security is very tight, as one would expect, because they believe they are targets and they look after their ships. An Australian naval vessel with a similar capability comes into the same port and has absolutely no security arrangements whatsoever—none.

CHAIR—Perhaps they are covert.

Mr WILKIE—But maybe they are not. There is no requirement here to actually provide for that risk. In fact, there is no requirement federally to ensure that that risk is even assessed. Although you would expect them to cover it in the risk assessment, you cannot compel them to.

Ms Board—This whole issue of preventive security is raising a lot of issues around cultural change with a number of agencies. What the IMO ISPS Code is creating is a lot more dialogue bilaterally and multilaterally with a whole range of Commonwealth agencies. The other thing that we have been encouraging, whilst not putting it in the bill, because we do not want to regulate or prescribe relationships, is the establishment of port security committees—Fremantle has had one for a long time—where you start having a discussion amongst all those stakeholders. Fremantle port and others make commercial decisions about whether or not they have defence vessels.

CHAIR—Sure.

Mr WILKIE—Yes, that is right.

Ms Board—So, the Australian Defence Force through other fora have been having bilateral discussions on dealing with how commercial ports deal with the risk. As Stephen said, we want them to think about it in their risk assessment, knowing that there are some things that are out of their control. In Darwin port, for example, they have decided that they are opening up another berth for defence vessels, because there are problems regarding tourism. Those sorts of decisions are starting to be made, but the risk assessment is going to be critical in terms of how the port and port facilities and their committees and other stakeholders deal with those risks.

CHAIR—These issues have obviously existed in the past—

Ms Board—For a long time.

CHAIR—and it is only post 2001 that they have become so critical, with people starting to make decisions, commercial or otherwise, to recognise these risks.

Ms Board—Part of the reason the bill has had to be so high level is that we are dealing with so many complexities that we cannot solve all the problems within the bill. So there is a lot of flexibility in it.

CHAIR—The bill is the framework.

Ms Board—The bill is the framework, because who has responsibility for what in the maritime sector, as you would be aware, is just incredibly complex.

Mr WILKIE—I understand that and I not trying to have a go at the department on this. I suppose my concern is that we will end up with ships coming into Australia carrying dog food that are the most protected ships in the world and yet we will have ships carrying explosives of a military nature that do not have to meet any of the requirements. You have got to think: what are we doing here; are we wasting our time or are we doing something that is really effective? You do have to start somewhere.

Ms Board—The Australian Defence Council meets regularly with the port sector. John Hirst has been making representations to them for probably three or four years. The IMO ISPS Code is bringing this issue more sharply into focus and will continue to do so.

Mr ADAMS—Will we be moving internationally, do you think, on ships of shame and things like this? Do you think a different regime could start up in the world where the registration of ships might improve?

Ms Board—The evidence is that this is the one IMO treaty that is actually going to make a difference to flags of convenience, mainly because of the zero tolerance that will be exercised by the United States and the costs, and because of other border protection measures. People sense that there is going to be a bit of a shake-up of the whole of global shipping—

CHAIR—Because of the zero tolerance approach to be adopted from 1 July?

Ms Board—Yes.

Mr WILKIE—I have one question about zero tolerance and then I will hand over to Senator Marshall, who wants to talk about consultation. Has Foreign Affairs gone back to the United States and explained that, realistically, 1 July may not be a feasible option? Has anybody bothered going back to them and discussing that?

CHAIR—It is not negotiable.

Mr WILKIE—Everywhere we go they tend to say, 'It's not negotiable.' I do not believe in 'not negotiable'. I think that if something is unrealistic you go back to someone and say, 'You're barking up the wrong tree here, people; we need to be flexible; we want to comply but it's probably not possible to put something in place in such a quick timeframe that's actually going to work.'

CHAIR—Why would they take their foot off the accelerator; why would they do that?

Mr WILKIE—Has anyone bothered talking to them?

CHAIR—Because they want everybody to comply by 1 July.

Mr WILKIE—Has anyone bothered actually having a chat with them? What appears to be coming forward from the negotiations we have had is that, although 1 July is the date that everyone is working to—

CHAIR—Who are you having negotiations with?

Mr WILKIE—Look what happened in Fremantle; I think it is a joke.

CHAIR—Negotiations.

Mr WILKIE—The reality is that, although we could aim for the greatest things in the world, if we are not going to reach them as a realistic target, are we going to go back to the people concerned and say, 'How flexible is this?'

Mr ADAMS—Not flexible enough, seeing there is no flexibility.

Ms Board—The whole reason the IMO deliberations happened so fast was to get this in place as quickly as possible. I think it would be fair to say that the fact that you had someone from the UK chairing the meetings was to try to get that balance between what the United States wants and what the rest of the world could deliver on. Given the time the international community had to come up with a treaty that was in some way sensible and was going to contribute to deterring and preventing unlawful acts, this was the best bet. We have had no indication that any country is saying, 'We can't make it.' Andrew Tongue, our first assistant secretary, is in Manila this week at an APEC security meeting, and everyone is looking at everyone's pieces of legislation and learning how we can do it.

CHAIR—So your expectation is that Australia will be compliant?

Ms Board—Absolutely; we have to be.

CHAIR—Following on from Kim’s point, does it seem to be the view of the international community that they will comply?

Ms Board—We started consulting with the industry as soon as this hit the streets in March 2002. They have known for a long time this was happening; it is just that now it is crunch time—and, yes, it is going to cost money. We believe that we have come up with a bill that tries to be flexible and realistic but will get us over the line in meeting that deadline. The key to it is the risk assessment process.

Mr ADAMS—That gives us six months—

Ms Board—If we get the law through; if we do not get the law through, we are in trouble.

CHAIR—So it is six months from 31 December to bed it down?

Ms Board—Yes. We have said that they have to do the work. We then have to look at what they have come up with and approve and vary their plans. In the case of ships, we then have to go out and verify their plans before we can issue a certificate. I think everyone realises that it is in everyone’s interest that we move quickly. I will pre-empt a discussion about consultation by saying that we have consulted and consulted.

Senator MARSHALL—I was not satisfied with the responses I heard earlier and did not have a chance to continue and finish what I was asking, so let me now ask: did the NIA accurately reflect the outcome of consultation undertaken by the Commonwealth with the states?

Ms Board—We believed that it did, in general terms; yes.

Senator MARSHALL—Not in general terms; either it did or it did not.

CHAIR—In general terms it did.

Senator MARSHALL—So, when the Queensland government says that it did not—

CHAIR—It did not say that; it said, ‘on the margin’.

Senator MARSHALL—I read out what it said.

CHAIR—Exactly: it said, ‘on the margin’.

Senator MARSHALL—I am happy to read it out again, so I might as well:

However on issues where there was disagreement with state/territory officials or representatives of stakeholder groups the commonwealth at times appeared reluctant to take on board concerns. The national interest analysis (NIA) for the treaty action does not accurately reflect the outcome of consultation undertaken by the Commonwealth. Paragraphs 23 and 27 of the NIA infer that there are no outstanding issues from State Government perspectives. At the Australian Transport Council meeting held on 23 May 2003 it was noted and recorded that there are issues on the margin of the overall implementation of the ISPS code that are still to be resolved.

Mr WILKIE—‘On the margin’.

Senator MARSHALL—Whether it is on the margin or not, we have the NIA saying that there are no issues, while the state of Queensland clearly says that that is not the case. I do not care whether there are issues or not; what I am interested in is the veracity of the NIA. If every time a treaty—

CHAIR—Have you read paragraphs 23 and 27 in the NIA? Have you read what they say?

Senator MARSHALL—No, I have not.

CHAIR—I suggest that it would be helpful if you did. Witnesses, I am sorry to answer your question for you, but paragraph 27 says:

DOTARS has been consulting extensively with representatives from the maritime industry, and relevant Commonwealth, State and Northern Territory authorities ... The security measures have been supported at these meetings.

Senator MARSHALL—Then the answer to my question may well be that what Queensland says about this paragraph in their submission to this committee is wrong. If that is the answer, I accept that. I will check that out with Queensland. But that is the question I am asking, and I am asking the witnesses.

CHAIR—Senator Marshall is referring to a meeting on 23 May. Has there been a subsequent meeting?

Ms Board—There have been subsequent meetings with the Australian Maritime Group.

Senator MARSHALL—That is not my question; my question goes to the NIA—

CHAIR—Does the Queensland government have a representative on that?

Ms Board—Yes, they do.

Senator MARSHALL—If the NIA was written with the anticipation that you would fix up all those outstanding issues, that is another thing again. You might have told Queensland at the time. They were, obviously, basing it on the NIA that they had in their possession. So, again, it just goes to the veracity of what is being said.

Ms Board—As I said, in broad terms, the ATC—of which Queensland is a member—agreed to the Commonwealth’s approach. There are some issues at the margins that have been dealt with and will be reflected in the bill.

Senator MARSHALL—So that would be subsequent to the NIA.

Ms Board—Minor matters; yes.

CHAIR—Paragraphs 23 and 27 just do not bear out the submission of the Queensland government, so—

Senator MARSHALL—That is the question I asked. I asked: is Queensland wrong when they say that? Is that the answer?

CHAIR—In fairness we should put the NIA before Ms Board or whoever is answering this question so that they can have a look at what the NIA said, which does not say what the Queensland government just said it said, and then—

Senator MARSHALL—That is why I asked earlier whether it was DOTARS who were responsible for the NIA, and they confirmed that they were.

CHAIR—I am not suggesting that she is not, but it would just be fair to bring those two paragraphs to her attention—paragraphs 23 and 27.

Senator MARSHALL—I am happy for all those things to occur. I was not seeking to stop that.

Ms Board—So, in terms of the national interest analysis, it was basically covering off the general approach to the treaty. The issues that Queensland raised were with respect to the extension of the treaty's application. At the May ATC meeting basically all the states agreed to the general framework and approach.

Senator MARSHALL—So I can assume from that that—

Ms Board—I think we have covered their concerns. Of course, the states are concerned about how much this is going to cost.

CHAIR—That is not the issue.

Senator MARSHALL—I am not going to labour it, but that is not the issue; the issue really is the veracity of the NIA.

Mr ADAMS—Which we as a committee have lots of problems with, from many departments.

CHAIR—But you are satisfied with the terminology as expressed in the NIA?

Ms Board—Yes.

Mr Borthwick—I think that related to the consultations over the treaty. There is a separate consultation process on the details of the legislation where the Queensland government has identified some concerns with the way we have translated the ISPS Code into Australian legislation, as opposed to with the ISPS Code per se.

CHAIR—Those are all the issues we canvassed earlier.

Mr Borthwick—Yes.

Mr ADAMS—Chair, I want to raise the significance of how many of your party and coalition partners have attended this meeting tonight.

CHAIR—It is quality, not quantity, that counts. Mr Borthwick, you have taken a couple of matters on notice and are going to respond to the secretariat. You now have access to the submissions that were authorised for publication this evening. If the secretariat or the members come across any matters in consideration of those submissions, we may get back to you for further response. In the meantime, I thank you very much for attending this evening. As I said earlier, we appreciate you coming on a Tuesday night at such short notice. Given the time frame you are working to—which is also the time frame we will be working to—we understand the constraints upon your time and we do appreciate you being here.

Mr WILKIE—I echo those sentiments. Thank you for making yourselves available at such short notice. It was much appreciated.

Resolved (on motion by **Mr Wilkie**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 9.42 p.m.