



COMMONWEALTH OF AUSTRALIA

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)**

WEDNESDAY, 22 OCTOBER 2003

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JOINT COMMITTEE ON TREATIES

Wednesday, 22 October 2003

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

Senators and members in attendance: Senators Kirk, Mason, Stephens and Tchen and Mr Adams 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 Services1

GUENTHER, Ms Clare, Policy Officer, Department of Transport and Regional Services1

KILNER, Mr John Anthony, Assistant Secretary, Maritime Security, Department of Transport and Regional Services.....1

Committee met at 9.37 a.m.

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

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

KILNER, Mr John Anthony, Assistant Secretary, Maritime Security, Department of Transport and Regional Services

ACTING CHAIR (Mr Wilkie)—I declare this meeting open and welcome officers of the department. I remind participants that the proceedings of the committee are the same as proceedings in the House or the Senate and require the same consideration. The giving of false or misleading information is an offence. Would you like to make any opening statements?

Mr Kilner—I would like to make some opening remarks. Firstly, I apologise for Andrew Tongue being unavailable to appear before this committee today. As you know, the Maritime Transport Security Bill 2003 was introduced in the House of Representatives on 18 September and passed through the House of Representatives on 8 October. It was referred to a Senate committee on 9 October. I understand that the committee will be meeting next Monday, 24 October. With regard to where we are up to, the department is currently developing drafting instructions and regulations to give effect to the bill. This week a series of workshops are being conducted. Yesterday we met with state and territory officials and worked through the drafting instructions for the regulations. Today we have representatives from the port operators in town, as well as state and territory officials. Tomorrow we are meeting with port facility operators, and on Friday we are meeting with representatives of the shipping owners and shipping lines. The intention through that process is to try and truncate the consultation and agreement process and to reach consensus on the drafting instructions so that they will be available for consideration. That concludes my opening remarks.

ACTING CHAIR—Thank you. I am interested that the legislation has come before the parliament without the regulations. Why is that?

Mr Kilner—It is simply a matter of the time available. We have placed considerable emphasis on trying to get the legislation completed. Given the time available and the need to get the legislation completed, the drafting instructions for the regulations have had to wait until we have been able to get through that process.

ACTING CHAIR—When are the regulations likely to be completed, given that the drafting instructions are not regulations; they are just the framework by which the regulations can be framed? What is the time frame?

Mr Kilner—We have been given priority within the Office of Legislative Drafting, and they are working on the regulations as we speak. Our intention is that the key regulations will be completed before the rising of parliament in this session.

ACTING CHAIR—So you are hoping to have them before the parliament by December?

Mr Kilner—Yes.

ACTING CHAIR—How many regulations do you think you will be looking at?

Ms Board—We will be looking at about 10.

ACTING CHAIR—And they would then have subsections to them, I suppose.

Ms Board—Yes, there will be a number of regulations that will need to be drafted. We are focusing on those that are a priority in terms of industry being able to meet our regulatory requirements. Regulations which prescribe our requirements for things like security assessments, plans, zoning, control directions, security directions, passenger screening, and weapons and prohibited items are currently being drafted. It is our view that they are the priority regulations that industry needs to undertake to meet their regulatory requirements.

ACTING CHAIR—Originally, I think regulations were going to be introduced in October. Obviously, they will not be drafted until possibly next month. Is there going to be sufficient time for industry to comment, given that in some cases they only have 36 hours to comment on the bill itself? What sort of timeframe will they get for consultation?

Mr Kilner—We have already distributed drafting instructions to industry participants taking part in these workshops that are being run this week. The objective of this week is to try to reach consensus on those drafting instructions. From that we will then be able to circulate regulations. There will not be that much time available for them to comment on regulations. Given that they will have seen the drafting instructions, we are confident that we will not have an issue when the regulations are completed and distributed.

ACTING CHAIR—Is the Maritime Union of Australia involved in reviewing the regulations—and at what level?

Mr Kilner—I met with the General Secretary of the Maritime Union of Australia last Wednesday. I circulated to him copies of drafting instructions last Friday for those that were complete. There is another set going over this week. I extended an invitation to meet with him again towards the end of next week to work through any issues that he had with the drafting instructions.

ACTING CHAIR—Will he be involved in the workshops?

Mr Kilner—No, he is not involved in the workshops.

ACTING CHAIR—Why is that?

Mr Kilner—We felt that the bilateral discussion with the MUA was a better way to get feedback in regard to his particular issues.

ACTING CHAIR—Why is that?

Mr Kilner—It provides a one-on-one opportunity for him. We gave the same opportunity to two other key industry participants as well.

Mr ADAMS—Who were they?

Mr Kilner—We have made it to Mr John Hirst from the AAPMA and also to Mr Llew Russell from Shipping Australia.

Mr ADAMS—What about the shipowners?

Mr Kilner—We have got shipowners involved on Friday. We will be circulating regulations to them. If there is a need to meet individually with shipowners, we will do so.

Senator TCHEN—Are these shipowners Australian or international?

Mr Kilner—Shipping Australia Ltd are the international shipping lines. The shipowners are the domestic ones. I think that is what Mr Adams is referring to.

ACTING CHAIR—Early in the introduction of the legislation, when the legislation and the treaty were being reviewed with industry participants, it is my understanding that the union was not involved in any of the discussions or consultations because they were not seen as an industry participant. Is that the case?

Mr Kilner—No, we did meet with the MUA. We also received comments back from the MUA in regard to the exposure draft and we responded to the particular comments that they made.

ACTING CHAIR—We had discussions with them yesterday and I put it to them that they had been consulted, based on evidence given to this committee by Mr Tongue. On 16 June, I said to Mr Tongue:

... it would appear that there has been no consultation with unions. Is that the case?

Mr Tongue replied:

Early on in the process there was some discussion with the unions. We are currently running workshops around the country where the MUA have asked to participate and we have invited them to participate in the process.

I put that to them yesterday. They said that there had not been any consultation and that they had only received a copy of the draft legislation after they demanded to get it, because the department had not seen them as an industry participant. Instead of being invited to attend the workshops they were only allowed to attend after they insisted that they were a significant player in the process and should be involved. I am very interested to find out what the department's reaction is to that statement.

Ms Board—It is my understanding that the MUA were contacted and informed about the workshops being conducted around Australia and they were invited to send any interested parties to those meetings. I do not know the sequence in terms of who insisted, but I am pretty sure that

the MUA were seen as being part of the consultation process for the workshops. I can take it on notice to find out the precise sequence of that, but they were invited to attend the workshops.

Mr Kilner—The exposure draft was sent to the MUA on 5 August. There was a follow-up meeting with the general secretary of the MUA. Members of the MUA attended some of those workshops. I met again with the general secretary last Wednesday, 15 October, and sent him an email again on Friday. I have agreed to meet with him but no time has been set. At that meeting, I agreed to meet with him again towards the end of next week.

Mr ADAMS—Does the department accept that the Maritime Union of Australia is a union of 10,000 members and they are totally involved in this because their members have to have their identification as seafarers? Does the department accept that they are a stakeholder in the process?

Mr Kilner—Yes, we do.

ACTING CHAIR—Can you explain why they were given only 36 hours to respond when others had at least a week?

Mr Kilner—No, I cannot.

ACTING CHAIR—Can you find out why they did not receive that earlier and let the committee know?

Mr Kilner—Yes.

Ms Board—We did instigate face-to-face contact with the MUA with respect to the exposure draft. It took several days to make contact with Mr Crumlin to set up a meeting to discuss the exposure draft. I believe there was a glitch in getting the actual material to them. We had to check express post or the registered mail.

Ms Guenther—There was a little glitch in getting our response letter back to the union after their response to the exposure draft of the bill. Apparently they had not received it. When I found that out, I immediately faxed it through to them, because that included amendments.

ACTING CHAIR—We were told yesterday that the glitch—the reason they did not get it—was that they were not on the list to receive it. It was not until they had gone around to other industry participants and asked for it and were told that they were not allowed to have it that they got onto the department and said, ‘We are a significant player and we demand that we get a copy of it.’ That is a bit different from having a glitch in the system whereby they did not get it. They are telling us that they were deliberately excluded from the consultation process on the legislation until they asked for a copy of the exposure draft.

Ms Board—They were not deliberately excluded; they were on the list of stakeholders. We can go back and check precisely when they were sent a copy of the exposure draft. We had to get it out very quickly through registered post, and I understand there may have been a glitch at the front end of the process, as well as the glitch referred to by Ms Guenther, when we corresponded about what changes had been made to the bill following consultation.

ACTING CHAIR—Moving to identification measures for seafarers, I understand that, at a recent IMO meeting, the International Labor Organization suggested that there be biometric identification for seafarers, including fingerprint identification, and that Australia is one of the states that abstained from the vote on that measure. Could you explain why we abstained? Could you confirm that, and advise why it was the case?

Ms Board—As I answered at the last hearing, I think that matter is being handled by the Department of Employment and Workplace Relations. It is correct that Australia abstained on that matter, mainly because there is concern that the ILO seafarer identification document was flawed, and because Australia was going to be introducing the requirement that seafarers must have a passport which has dissimilar biometric technology. That requirement will be introduced in November.

ACTING CHAIR—They felt that would be adequate?

Ms Board—Yes.

Mr ADAMS—Has the Department of Employment and Workplace Relations passed on instructions to your department in relation to that?

Ms Board—Our portfolio has been involved in discussions with the department.

Mr ADAMS—So you are not taking any account of the ILO considerations? It is going to be the passport and the visa; it is going to be what the regulations say a seafarer needs?

Mr Kilner—I think the position is that the seafarer identity documents are more relevant to migration entry and border control integrity than to security. My understanding is that the Australian government is yet to determine its position with regard to the ILO convention and is yet to complete consultations with all the relevant parties. In the meantime, with effect from 1 November, all foreign seafarers entering Australian waters will be required to have passports.

Mr ADAMS—Will customs or immigration check that?

Mr Kilner—It will go through the immigration check, I would have thought.

Ms Board—It will be under the Migration Act.

ACTING CHAIR—What sort of identification requirements are in place now for overseas crews of aircraft when entering Australian airports?

Mr Kilner—I will take that on notice.

ACTING CHAIR—I am looking at trying to compare the two. If you have crews coming in from aircraft having one set of standards and crews of ships another I am trying to correlate the two to see what the differences are. If we could find that out, that would be appreciated.

In relation to the security of the ships, obviously they are going to have to receive a certificate and comply with a whole range of measures. You would have heard of ships of shame, where

ships are registered out of a country that does not necessarily make them comply with many of the normal requirements. We have heard that Panamanian ships are already cutting the costs of security in terms of what they are having to provide so they can compete with other carriers. We have also heard that, although they may be required to issue a certificate and state that the ship has all the measures in place, in reality they may not necessarily be complying with that at all and it could be a bit of a sham. What measures are we putting in place to ensure that, when those ships come to Australia, they do comply?

Mr Kilner—The responsibility of the Australian government is to ensure that its vessels comply with the IMO ISPS requirements, and also that our ports and port facilities comply. The contracting nations—where those ships are registered—are required to undertake their security checks, assess the plans accordingly and issue the certificates. Our job is to look at those certificates. Under the ISPS Code, we cannot ask for and review a ship's security plan, so there are limitations in that respect on the Australian government. With regard to the usual issues to do with the safety of a vessel, normal processes will apply.

ACTING CHAIR—If they have a certificate, that is good enough?

Mr Kilner—If it has been issued by a contracting government.

Ms Board—However, there is the International Maritime Organization, which develops port state control regimes, through what I think are called the Tokyo and Paris MOUs, whereby the Northern and Southern Hemisphere countries share information about which ships have been inspected and which ones have not so that there is some sharing of that risk information across various countries. I understand that it is likely that those MOUs will be expanded to include looking at how ships are actually being inspected and what knowledge and information the contracting governments have about which countries are in compliance and which ones are not, or which ones are following through the benchmark of compliance which is part of the treaty action. So we are anticipating that that information will need to be shared amongst a number of countries. We will have to work with our other Commonwealth agencies, such as Customs and AMSA, in building up a profile of ships based on information that we get from other countries.

ACTING CHAIR—I suppose the long-term question there is: with a view to what? If we have ships coming in that do not comply—purely because the government just issues them a certificate but it is worthless—what do we intend to do about that in the future?

Ms Board—We are allowed to board ships if we have information that suggests that they are not in compliance, and we are able to take further action in looking at what security is in place. As Mr Kilner said, we cannot look at their whole plan but we can look at elements of their plan. Also, if we have any suspicions, we can then contact the contracting government that issued that certificate to verify whether or not that ship has appropriate security in place and that they are in compliance.

Mr ADAMS—That is under customs law?

Ms Board—It will be under this treaty action.

Mr ADAMS—Under this bill.

Ms Board—Yes. So the obligation is on contracting governments. If they have concerns that a certificate or a vessel is not in compliance, they have to make contact with the contracting government that issued that certificate to say, ‘We have reason to believe X and Y’ and they need to tell us what arrangements are in place. If we are suspicious, we can take further action, which could be detaining or expelling that ship.

Mr ADAMS—What action would you take if a contracting government said, ‘We have certified that, and Australia ought to keep its nose out of our business.’ What is the next level that we go to?

Mr Kilner—If there are concerns from the Australian government’s perspective about a particular vessel, the secretary has powers under the bill to issue control directions. That can be the expulsion of the vessel or the setting of exclusion zones around the vessel and so on.

ACTING CHAIR—I suppose the concern is twofold: one is the security issue of allowing them to come in if they do not comply, but the other is in relation to the costs of operating the vessels. If our ships all comply, the significant cost imposed on putting those in place for each vessel makes them uncompetitive in the international environment if you are dealing with ships where the countries just do not bother complying. There needs to be some measure in place to ensure that, if they are saying they are doing it, they are actually complying. That is quite important.

In relation to the responsibility of the secretary being able to direct harbourmasters and vessel masters in a security incident or event, yesterday when we were up at Newcastle we were trying to work out how that would actually operate when the secretary may be issuing an instruction which is contrary to what the master of the vessel or even the harbourmaster, who has overall control of the port, want to do. What sort of instructions would the secretary be issuing and how would they be complied with?

Mr ADAMS—It seems to be the main concern that the statutory obligations on a harbourmaster to keep his harbour straight and his channel opened and things like that conflict with when the secretary says something and you are in a position where the harbourmaster says no, or you have conflict in that sense. Also, it comes down to the fact that there are regulations that ships cannot sail without so much water and all sorts of things. So there are issues there. I do not know how far you are into that, but I would value your comments.

ACTING CHAIR—We are curious to see where those draft directions are at and what the responsibility of the secretary will be.

Mr Kilner—This is an issue that has been raised with us previously—in discussions last week with AAPMA and again yesterday with the state and territory officials. The issue revolves around the issuing of directions under this particular piece of legislation compared with state legislation requirements to do with the safety of vessels and the safety of the harbour. The issue really revolves around the consultation that is necessary between the harbourmaster, the port security officers and the department through the secretary.

It has been recognised that there is obviously a need to consult. In fact, in the drafting instructions we have talked about inserting into the regulations something which says that the

secretary must consult with the port security officer and with the harbourmaster in regard to the issuing of the direction wherever practical or feasible. The sort of event that we are talking about that seems to be the one in people's minds is recognised—the movement of a ship from a berth or from a harbour as a result of a particular piece of intelligence and the issues associated with the safety of the crew and the safety of the vessel. The other issue that has been raised in that regard is any damages sustained as a result of the issue of a secretary's direction. We have been talking with the states and territories and with AAPMA about these particular issues.

In the event of such a direction, it is likely that national counter-terrorism measures would be in place, and the state police would probably be involved. The use of the direction by the secretary alone in these circumstances will probably be quite remote. The implementation of that direction is the subject of the consultation. In the event that it is impracticable, unfeasible or unsafe to do so, that would obviously need to be taken into account in terms of the conduct of that direction. There is a power within the act which gives a reasonable excuse when such an action is not complied with, so we have tried to provide that protection. What we are trying to do in terms of the regulation is build in a consultation mechanism so that is quite clear to all parties.

ACTING CHAIR—I suppose the ports' concern is that they do not want to see that requirement for consultation in the regulation—they want to see it in the act. It is not in the act at the moment, is it?

Mr Kilner—No, it is not.

Mr ADAMS—Total power to the secretary.

ACTING CHAIR—Do you think there is scope there for an amendment, given that it is going through the parliament at the moment?

Ms Board—We believe that in the discussions this week industry and the states will be assured that the consultation process outlined in the regulations would be sufficient because, as the act has to have a life over the next 10 or 20 years, we need to put the operational detail in the regulations, and the regulations will need to change as the system matures. So it is our view that it is best to put those operational procedural requirements in the regs so that, if they are not working properly, we can more quickly amend them.

ACTING CHAIR—I suppose their concern is that in the future, in terms of the way the system operates, consultation will still be a requirement given the legal responsibility that the harbourmaster has for the port and so they would just like to see that enshrined in the legislation so that they believe they have some coverage of that matter.

Mr ADAMS—I take it that the secretary's power cuts in at level 2 or something. Does it?

Mr Kilner—The secretary's directions can take place at level 1.

Mr ADAMS—Also at level 1. So he can order a ship to leave port, basically.

Mr Kilner—Yes, he can.

Ms Board—But, unlike aviation, we do not expect it to be something that has to happen instantly: unlike aeroplanes, there is usually a bit more time available in terms of ships coming in. Again, the secretary can only issue that direction on the basis that he has information.

Mr ADAMS—What sort of information?

Ms Board—Intelligence information.

Mr ADAMS—Yes, well, when we get to the royal commission, he just claims that he has been given intelligence information which could not be made available—we have had a fair bit of that in this country. You have other people like harbourmasters and masters of ships saying, ‘We can’t shift the ship, for certain reasons’. There is a lot of potential for conflict, which we do not seem to have been able to make much headway on.

Ms Board—The bill quite deliberately specifies that the secretary can only give those instructions on the basis that he has credible information. It is not meant to be used capriciously; that is not its intention. Its intention is to be used in the event of an emergency, as the security environment changes.

Mr ADAMS—Sure, I appreciate, understand and accept that as being the object of the bill, but there seems to be a hell of a lot of opportunity for conflict to take place, because of people’s statutory requirements. I take your point that there is an evolutionary process of a new act and a new way of doing things.

Ms Board—That is part of the reason why the bill has had to be so high level, because there is so many different jurisdictional arrangements—they vary from port to port even.

Mr ADAMS—You said that were some flaws in the ILO position of having seafarers with a document containing their details and a fingerprint. Didn’t you say that there were some flaws in the process?

Ms Board—No, it was not a flaw; it was more an issue about whether or not the ILO seafarer identification would be superior to a passport. The current thinking is that a passport, at this stage, has greater integrity than the seafarer identification document. But, again, that is something that is being developed over time.

Mr ADAMS—I understand that somebody from the industry in Australia went to Panama not long ago and bought a mate’s ticket for \$4,000, which means he could be No. 2 on a ship, and he has never been to sea in his life. It will be very interesting when we start asking contracting governments whether their documents have integrity! Thank you.

Senator MASON—I must apologise, first of all, that I am a neophyte when it comes to this issue. My questions are, really, procedural. As I understand it from what I have heard this morning, there is no real contest as to whether we should ratify those amendments to the convention—in other words, the international instrument we are examining—is there? All the questions have been relating to the domestic legislation, haven’t they?

ACTING CHAIR—Yes.

Senator MASON—Acting Chair, remind me why we are examining domestic legislation?

ACTING CHAIR—Basically, because it has been raised by others in consultation with us in relation to the treaty itself. So we are putting forward concerns that have been raised in the consultations to try to ensure that these issues are addressed.

Senator MASON—Isn't it going to be done by the Senate Rural and Regional Affairs and Transport Committee?

ACTING CHAIR—I am sure that some of the issues we raise will be referred to that committee for consideration but, given that they have been raised with us and not them, it seems important that we ask the questions.

Senator MASON—Acting Chair, as you know, and as I am sure Mr Adams will remember from our discussions on the International Criminal Court, I do not have a problem with this committee at times exercising broad jurisdiction, particularly when the executive acts pre-emptorily as it has in the past. So, Acting Chair, you have my support in that general sense, because I do not like it when the executive acts pre-emptorily and takes this committee's work for granted. But it just seems to me that, if we start to stray into domestic legislation like this, it is never ending, because the other committee will be doing exactly what we are doing. As we all agree that the amendments to the convention are appropriate, I am not quite sure why we are harking on this quite so much. Then again I am a neophyte and I have not examined this. I only raise it because I am not quite sure.

ACTING CHAIR—That is fair enough. The important part is that we are not really going into in-depth discussion about the legislation; we are just going to some of the issues that have been raised. There is a legislative requirement that we have implementing legislation in order for the treaty to come into force.

Senator MASON—I understand that.

ACTING CHAIR—So some of the issues relate to whether the treaty is workable or not if the legislation is not, so there is a broad connection.

Senator MASON—It is thin though.

ACTING CHAIR—I appreciate what you are saying, and I do not want to get bogged down in it too much. Some of these questions are important.

Senator MASON—You know what I think about these issues. I take a broad view, because I do not like it when the executive does nasty things like assumes the outcomes of this committee's work.

ACTING CHAIR—That is fair enough. Senator Mason, do you have any questions for the department?

Senator MASON—No.

Mr ADAMS—I have a question about whether the costs have been finalised about who is going to pay. I understand your estimates are something like \$300 million plus, whereas we have heard that it could be considerably more than that, and of course it is only early days. We heard yesterday at Newcastle that they have spent at least \$100,000 getting their plan up to where it is et cetera, and they seem to be well advanced in what they have achieved. I was just wondering where we are with that one. The other question relates to ships outside ports and who is going to stop ships coming in if somebody does not want them to come in. Okay, they might not have a pilot and there are all sorts of other reasons, but who is going to have the gunboats?

Mr Kilner—Dealing with the first question concerning the cost of compliance, the government has estimated that the first-year cost to operators of ports, port facilities and ships will be up to \$313 million, with subsequent ongoing costs estimated at up to \$96 million per annum. It is expected that the operators will pass those costs on to consumers but, as you may have heard the minister say in the debate in the House of Representatives, it is the government's view that that security is the cost of doing business and should be carried by the business operator.

ACTING CHAIR—This is different, though, to the United States, where I understand Congress has actually approved significant amounts of expenditure from the federal budget to actually pay for some of these security measures.

Mr Kilner—So I understand.

ACTING CHAIR—The US look like putting something like \$US600 million into domestic preparedness and security measures.

Ms Guenther—The US is also adopting part B of the ISPS Code as mandatory, and we are not. We are just basing the bill on part A, which IMO has considered as mandatory. Part B is just recommendatory, so the US model is more prescriptive than ours.

Mr Kilner—The second question concerned who stops the ship outside the ports. Is that correct?

Mr ADAMS—Yes.

Mr Kilner—As we have mentioned previously, the secretary has discretionary powers, control directions, which would be based on intelligence concerning whether or not a vessel was to enter a port. In those circumstances, one would think the national counter-terrorism measures would come into effect. Who in particular would stop the vessel? Obviously, the direction would be issued to the ship's agent to stop the vessel. If the vessel kept ploughing towards the coast, then other measures would need to be taken in that arrangement. The underlying question perhaps is whether or not you expect the port operator to do that, and the answer is no.

Mr ADAMS—So the secretary cannot give directions to close the gate, or something? We accept the fact that there is nothing in the act that says that the secretary tells the port authority to stop the ship coming into the port.

Mr Kilner—No.

Mr ADAMS—Is there nothing in the regulations to that effect?

Mr Kilner—Not that I can remember. The secretary could direct that a pilot not board the vessel, but I do not think there is any direction where we would expect the harbourmaster to act as Moses standing on the headland.

ACTING CHAIR—He would not be able to stop him, would he? I suppose that leads to an interesting point.

Mr ADAMS—It is a dangerous situation as well. Shipping is a very strange thing and very different from other industries, and I can see all sorts of issues there.

ACTING CHAIR—It is good that the department recognises that the harbourmasters are not going to be responsible for ships outside the harbour, because they were rather concerned that they might have to be involved in that sort of security arrangement. You have mentioned that some other body would have to be tasked with dealing with a ship that would not obey the secretary's instructions. I take it we are looking at one of the armed forces?

Mr Kilner—I really could not say.

ACTING CHAIR—Given that one of the SAS units boarded the *Tampa*, there must be some plan in place to deal with ships that do not comply.

Mr Kilner—There may be.

ACTING CHAIR—Has that been considered?

Ms Board—If a ship were given a direction to stop or move and did not follow that direction, there are a number of things that we can do in terms of issuing an injunction and those sorts of things. If we had intelligence to say that something of high risk was happening, the national counter-terrorism arrangements would kick in—that is, arrangements that have been developed between the Commonwealth and the states. In most cases, noncompliance could mean that they have not met the IMO ISPS requirements—that is, they do not have a preventative security regime in place. Risks of another nature which require response fall under the NCTC apparatus, because our treaty is predominantly about prevention, and the response then kicks in.

ACTING CHAIR—I want to go back to the issue of consultation. I imagine that the security issue is being addressed through the Maritime Security Working Group and that they are looking at some of the other issues generally. I imagine that is the primary vehicle for consultation. But, looking at the participants of that group, you have Commonwealth, state, Northern Territory and industry groups. It is chaired by DOTARS and includes representatives from the departments, including DOTARS, AMSA, Customs, AFP, AG's, state and maritime agencies, and industry bodies. But, in annex A, key industry stakeholders are noted in detail but there is no mention of the Maritime Union of Australia. I am just wondering whether the department—and maybe they cannot do it now—could look into anywhere where the MUA is, or has been, publicly recognised as a stakeholder in this process and whether there are any plans to recognise them in the future as a stakeholder.

Mr Kilner—I will go back and check that particular issue.

ACTING CHAIR—We received evidence yesterday in New South Wales that the New South Wales Water Police have been very active in working with the courts to ensure that they have some plan in place if in fact there is an incident on the water. Is that the case in other states?

Mr Kilner—I am not sure about that. I know that the New South Wales Water Police are particularly active in this process. I am not aware of whether or not the other police forces have the same degree of planning. I would need to check.

Ms Board—We are consulting with the state and territory police, or we have done so, on the bill and regs, so they will be involved in that process. There are ongoing discussions at the National Counter-Terrorism Committee about policing on all fronts to do with counter-terrorism.

Mr ADAMS—You say there are some issues of cost to be resolved in that area?

Ms Board—Yes.

ACTING CHAIR—We are looking at that. If the Commonwealth legislated as a result of the treaty requirement that there be some active policing on the water side of the harbour, the states would then have to comply with that. But then they would have to fund it. So I can foresee some issues being raised about funding. Has that been expressed through the consultation?

Mr Kilner—There have been issues raised with our minister by state ministers concerning costs associated with the implementation of the bill, in terms of both police and also, more broadly, the ports they are in charge of.

Ms Board—But, under the Commonwealth-state arrangements, the police are responsible at the state level.

ACTING CHAIR—I know we asked this question a few weeks ago and it was said that you were looking at some guidelines, but can you advise what templates for risk assessments in port security plans will be available to ports and when that is likely to happen?

Mr Kilner—We have prepared guidelines for the development of plans, including a better practice guide. They have been circulated or they are being circulated this week. I am not sure whether they have been circulated prior to this.

Ms Board—Yes.

Mr Kilner—I think the threat assessments and the planning guidelines have already been circulated.

Ms Board—Yes.

Mr Kilner—They have been revised following consultation with people who have been developing plans, particularly the Port of Newcastle—they have been a great help to us in terms

of developing and refining the guidelines. They are being considered in the workshops this week.

ACTING CHAIR—Has the department been to the US or anywhere else where these sorts of security plans have already been implemented, or are being implemented, to look at what their requirements are? Given that, at the end of the day, we have this international treaty in place and they are saying we must comply, have we gone over there to have a look at the sorts of measures they are putting in place so that we can base ours on some sort of workable formula that we know has been approved?

Mr Kilner—We have had consultations with other governments—I think it was towards the end of last year when we knew the IMO process was in place. We regularly speak with those other countries. But we are all pretty much in the same position—we are all trying to meet the 1 July 2004 deadline. All of us are going through exactly the same process.

Ms Board—In addition, we have been looking at the US Coast Guard model in terms of preventive maritime security and that has been built into the guidance materials that we have been developing. It is worth noting that the guidance materials can only be finalised once we have an act and then the regulations, because the guidance material has to reflect what our requirements are. So there is a sequence, if you like, or a cascading of when we have to finalise materials. But those draft guidance materials have been circulated for some months to help industry get a sense of how we are going to regulate them and what the requirements are.

ACTING CHAIR—Can I say that some of us have actually been looking at coastguard type arrangements as well! Are there any other questions?

Senator TCHEN—I think the state water police do a very good job.

Mr ADAMS—I would make the point that it is a national issue and maybe the national government should pay for water police.

Senator TCHEN—We could outsource it.

Mr ADAMS—I am interested in the hazardous goods issues of road transport and rail transport and the interfaces with ports. All that is a part of the risk assessment that the ports put together for their own situation, I take it—also, the storage of those goods et cetera. That is all a part of their risk assessment of what level a port is et cetera. We are going to list the ports in different categories, aren't we—or different parts of the ports? Are different parts of ports going to have different levels of risk?

Mr Kilner—Ports are different. Risk assessments will be influenced by the nature of the operations of the port. They will obviously be taken into account with regard to the goods that are coming into their particular security zones. The Australian Logistics Council has been looking at this issue in terms of throughlife, and security through the supply chain.

Mr ADAMS—That is good.

Ms Board—There are other codes for things like dangerous goods.

Mr ADAMS—But there needs to be coordination of how it is all coming together.

ACTING CHAIR—Just one other measure, which probably is not covered in the treaty itself, although it is referred to throughout the identification requirements for seafarers, and that is: where a seafarer does not have the appropriate documents and so may not have a passport in the future, what is likely to happen to that seafarer? Would they be confined to the ship? Have you got any idea what is happening? Is it being addressed?

Mr Kilner—I think that is being looked at, but it is an immigration question.

ACTING CHAIR—Okay.

Ms Board—Currently I understand that if seafarers do not have the right documentation they are confined to quarters. They are not allowed onshore.

ACTING CHAIR—The union raised that with us as a concern, based on the fact that they would be at sea for however long the voyage was, then basically incarcerated on the ship until they leave. Then they do not get off until they get back.

Mr ADAMS—In relation to these risks, sometimes a port may be a higher risk than others. I take it the regulations will reflect that situation?

Mr Kilner—The plan that the port develops will recognise its own threat environment and the measures will reflect the nature of the threat.

Mr ADAMS—Thank you.

ACTING CHAIR—Most of the people who put in submissions have raised cost as an issue. They believe that the estimates being put out by DOTARS are going to be well short of what it is going to cost them to implement. Has there been any consideration given to providing industry with assistance to cover the costs and then getting those costs recovered?

Mr Kilner—The government has been clear about its position in regard to cost recovery.

ACTING CHAIR—That it is the responsibility of industry?

Mr Kilner—It is the cost of doing business.

ACTING CHAIR—That is probably a fair statement. I do not want to dispute that. I suppose the concern is that if they have not got these plans in place and they have not implemented these measures by 1 July, the country suffers, not just the industry body.

Mr Kilner—Obviously in the development of their security plans they may identify the need for capital expenditure. We recognise that there is no way that all that capital expenditure is going to be completed by 1 July. Built into the plans there will need to be interim measures that provide the adequate level of security required to meet the risks that they have identified. They may identify through that process a capital expenditure program. Our task is to audit that process during the five-year life of the plan.

ACTING CHAIR—Will that be acceptable, though, in terms of the treaty process?

Mr Kilner—If there are interim measures that meet the security measures, yes.

Mr ADAMS—Okay.

ACTING CHAIR—That is cameras and things, is it?

Mr Kilner—The bill and the regulations are quite outcome focused. We are not specifically setting particular standards of cameras or heights of fences and so on. There will obviously be consultation with security experts around those particular issues, but we are trying to ensure that both the regulations and the bill, when passed, are driven by outcomes because of the different nature of threats and the different operations that occur in ports.

ACTING CHAIR—That is a very good point, but is the department itself looking at employing any specialists who can themselves provide information on ports that is consistent? If not, ports will end up with a plethora of consultants out there, all too happy to offer advice on security, and half of them do not know what they are talking about. So it is important, I think, for the department to consider having its own experts who could provide information to ports which would be consistent with what is required and meet the needs of the ports.

Mr ADAMS—The information we have received is that maybe the department has lacked expertise in this area, in the sense that it just does not have people who have been working in that area, as it is a state interface thing, and the building up of information in the department and having information or people with expertise may be a good thing—or being able to have some sort of connection like that in the future.

Mr Kilner—We recognise the need to build capability within the department, just like the ports and port operators will need to build their own capability in this particular area. With respect to the provision of advice to the maritime industry participants, we recognise that there will be a process where we will be engaging with them as we go through the review and assessment of their security plans. There are a number of highly capable security consultants available within Australia to provide assistance to port operators, port facility operators and other participants.

ACTING CHAIR—It is true, but they charge different rates and have different levels of expertise. This has been raised before in evidence—

Mr ADAMS—And they recommend different things.

ACTING CHAIR—yes—where we had someone who had a security plan generated at a cost of \$20,000 that complied, but another organisation that employed a different consultant at a cost of \$120,000 had their plan rejected.

Mr ADAMS—And recommended things like building walls around ships 30 feet high.

Mr Kilner—It cannot have been within—

Mr ADAMS—That is a capital expenditure.

Mr Kilner—Maritime Security, as we have neither approved nor rejected any plans at this time—because we had no act.

ACTING CHAIR—Okay. That is interesting. It is a bit different from what we were told.

Ms Board—Until we have the law, we are not empowered to.

Senator TCHEN—I thought we were talking hypothetically.

ACTING CHAIR—One group said they had spent a lot of money on a plan and were advised that it would not comply if the legislation were in place.

Mr ADAMS—Some ports have not spent anything, I think.

ACTING CHAIR—All right. Thank you very much for giving evidence.

Mr Kilner—Thank you.

Resolved (on motion by **Senator Kirk**):

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

Committee adjourned at 10.33 a.m.