



Queensland  
Government

Premier of Queensland  
and Minister for Trade

Please quote: /DM11/Policy Systems

24 JUN 2003

Ms Julie Bishop MP  
Committee Chair  
Joint Standing Committee on Treaties  
Parliament House  
CANBERRA ACT 2600

RECEIVED  
26 JUN 2003

BY: Gillian Gould

Dear Ms Bishop

Thank you for your letter of 15 May 2003 to the Premier concerning the treaties being reviewed by the Joint Standing Committee on Treaties (JSCOT) that were tabled in Parliament on 14 May 2003.

While the Queensland Government supports binding action being taken on these treaties, there are some unresolved issues associated with the implementation and operation of the *Convention for the Safety of Life at Sea (SOLAS Convention)* and the *International Ship and Port Facility Security (ISPS) Code* that I would like to draw to your attention. The unresolved issues relate to fundamental questions of jurisdictional responsibility between the Commonwealth and State Governments, involving the Commonwealth's legislative coverage and responsibility for all Australian and foreign flag vessels on international, inter-state and intra-state voyages. Detailed comments are provided in an attachment. I am concerned that these implementation issues have not been adequately addressed in the national interest analysis and regulation impact statement for the proposed treaty action and need to be satisfactorily resolved prior to binding action being taken.

The proposed denunciation of the *International Labour Organization Conventions* (Nos. 83, 85 and 86) present no issues for Queensland as they relate to Commonwealth and Norfolk Island law and practice alone.

*Agreement with Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields*

The unitisation of the Greater Sunrise gas field which straddles jurisdictional boundaries reflects the needs of those involved in the commercial development of the resources. Commercialisation of the Greater Sunrise gas field has the potential to impact on energy markets in Queensland. However, there are many uncertainties with regards to the development options that the Sunrise Joint Venturers may elect to pursue.

If the Greater Sunrise gas projects prove to be commercially viable and it is elected that gas

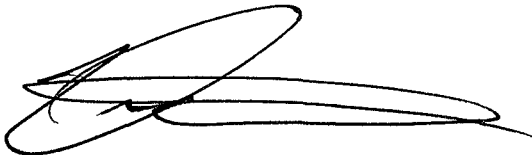
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will be brought onshore for southern markets including Queensland, the projects would be expected to provide further significant upstream competition and broader development benefits to the Queensland gas market. The Queensland Government remains committed to securing competitively priced gas for Queensland and, through its Energy Policy, is providing broad commercial encouragement for new gas supply options which include the Greater Sunrise gas projects.

The Department of Family and Community Services consulted the Queensland Government on the *Social Security Agreements* with Slovenia, Chile and Belgium prior to Parliamentary tabling. My Government has no issues to raise in relation to them. Similarly, the *Agreement with Sri Lanka for the Promotion and Protection of Investments* raises no concerns for the Queensland Government.

Thank you for providing an opportunity to consider, and comment on, the proposed treaty actions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Terry Mackenroth', with a long horizontal flourish extending to the right.

**TERRY MACKENROTH  
ACTING PREMIER AND  
MINISTER FOR TRADE**

**QUEENSLAND GOVERNMENT SUBMISSION  
TO  
JOINT STANDING COMMITTEE ON TREATIES**

**Amendments to the International Convention for the Safety of Life at Sea (SOLAS)  
and International Ship and Port Security (ISPS) Code.**

**Overview**

The Queensland Government has a clear commitment to working with the Commonwealth Government and other stakeholders on the planning and implementation of enhanced security measures. Queensland has been a strong supporter of the proposed port and shipping security measures and endorses both the spirit and intent of the proposed amendments to the SOLAS Convention. However there are a number of concerns relating to the practical implementation of the security provisions in terms of Commonwealth policy, legislation and strategic implementation issues.

The development of these proposals was unusual in that discussion was being conducted concurrently on the high level policy matters under consideration at the International Maritime Organization (IMO); the form, scope and application of the proposed commonwealth legislation applying the IMO requirements in Australia; and practical implementation issues. Given the uncertainty in this environment (particularly in terms of legislation) it is difficult to provide a robust assessment of impacts of the proposals on the State's strategic interests.

**Consultation**

The Commonwealth's consultative approach has been constructive generally and has included actively seeking the advice of both government and key industry stakeholders. Given the speed with which the IMO discussed, and agreed upon, the provisions the time lines for comment were short. However most stakeholders understood the urgency underpinning the progress of the proposals through the IMO.

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.

**Jurisdictional issues**

*Amendments to Chapter V and Chapter XI-1*

The application of the provisions of Chapter V and Chapter XI-1 of SOLAS relating to improved ship identification measures will be primarily the responsibility of the Commonwealth Government as it normally regulates the class of vessels to which these provisions will apply.

However depending on proposed application strategies there may be a small number of vessels under state control which will be impacted by these requirements.

### *ISPS Code*

The ISPS Code, adopted under Chapter XI-2, will be implemented under Commonwealth legislation. The ports to which the Code applies are State owned assets. The ports operate within the provisions of the *Government Owned Corporations Act 1993* on commercial and accountability matters. Transport operations, port services and infrastructure issues are managed within the range of legislative provisions including those administered by Queensland Transport and its agencies.

The Queensland Government supports the proposed lead agency role of the port authority in managing and facilitating the port wide security framework. The port authorities also recognise their critical role in this area and accept the security management function as a core business activity. In undertaking their security role the ports will work closely with MSQ in ensuring a comprehensive assessment of both land based and water based security issues.

However it appears that the application of the proposed Code over (and the primary security jurisdiction for) SOLAS vessels operating on intrastate and interstate voyages remains uncertain. Paragraph 23 of the NIA 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.

There is an increasing usage of foreign flag vessels in the Australian coastal trades carrying Australian domestic cargo on both interstate and intrastate voyages. The recent voyage of the passenger vessel *Superstar Virgo* from Fremantle to northern Western Australian ports then return to Fremantle indicates that intrastate shipping movements by both Australian and foreign flag vessels is becoming a common industry practice. Queensland ports encounter substantial intrastate voyages by foreign flag vessels, particularly between central and north Queensland ports. Other states also have examples of intrastate trading by foreign flag vessels including vessels in the high-risk category such as petroleum carriers.

There is no question that a foreign flag SOLAS vessel on multi-port calls will be covered by the ISPS code and fall under the proposed Commonwealth legislation given the nature of its continuing international voyage (eg. a P&O container ship on a voyage calling at Fremantle, Melbourne and Sydney then to overseas destinations). However if a foreign flag vessel is operating in the Australian coastal trade under a single or continuous voyage permit issued under the Commonwealth's Navigation Act then it appears that the Commonwealth will not have coverage. In addition SOLAS vessels, both foreign flag and Australian flag, operating on an intrastate voyage also appear to fall outside the coverage of the Commonwealth. *Table 1* provides a summary of how jurisdiction coverage applies based on the summary in paragraph 23 of the NIA.

**Table 1 – National Interest Analysis**

	<b>International Voyage</b>	<b>Interstate Voyage</b>	<b>Intrastate Voyage</b>
Foreign Flag <i>SOLAS</i> vessel	Commonwealth	State	State
Australian Flag <i>SOLAS</i> vessel	Commonwealth	Commonwealth	State

Table 2 provides an outline of how the Queensland Government believes the system should operate to ensure that the nation achieves the necessary consistency and security outcomes based on a pragmatic risk based approach.

**Table 2 – Risk management model**

	<b>International Voyage</b>	<b>Interstate Voyage</b>	<b>Intrastate Voyage</b>
Foreign Flag <i>SOLAS</i> vessel	Commonwealth	Commonwealth	Commonwealth
Australian Flag <i>SOLAS</i> vessel	Commonwealth	Commonwealth	Commonwealth

The Queensland Government does not agree with the jurisdictional coverage for shipping as indicated in paragraph 23 of the National Interest Analysis. To continue to allocate jurisdictional responsibility based on "voyages" merely provides the opportunity for the development of a myriad of confusing possibilities. In addition it provides the potential for slips in security for what should be a comprehensive and effective security framework.

In practice, the subset of SOLAS vessels which will fall outside of the proposed Commonwealth coverage is small compared to the total number of Australian and foreign vessels to which the ISPS Code will apply through the Commonwealth legislation. It is unreasonable to expect State Governments to accept operational and legislative responsibility for these vessels when the Commonwealth already has the resources, competence and expertise to accept coverage and manage the security risk. The optimal security outcomes will be achieved through the Commonwealth accepting primary security responsibility for all SOLAS vessels in all Australian waters. Without this, the Commonwealth risks the emergence of a scenario similar to the uncertainties raised with regional airport security in the aviation sector.

### **Costs**

#### *Amendments to chapters V and XI-1*

The technical requirement for the carriage of automatic identification systems (AIS) will have tangible outcomes for safety and marine environmental protection as well as enhancing security arrangements. It may also assist in marine traffic surveillance and traffic management programs within the Great Barrier Reef and Torres Strait waters as well in the approaches to, and in, the

waters of the State's ports. In planning for the implementation of AIS, MSQ estimates that it will incur capital costs of around \$1.5 million to fully capture the advantages of AIS in the port environment. Whilst AIS implementation was already being planned, the new IMO requirements are accelerating the implementation timetable.

#### *ISPS Code*

Queensland government agencies and corporations are already incurring costs in addressing security issues raised through the application of the ISPS Code. These costs will increase as the State implements the Critical Infrastructure Program agreed as part of the Council of Australian Governments' undertakings on enhanced security measures.

Port Authorities and port facility operators will need to recover their capital and operational costs associated with the application of the security requirements of the ISPS Code. Whilst some costs may be able to be absorbed it is likely that the majority of the costs will need to be recovered from port users through increased charges. It is important that the Commonwealth's proposed legislation provides an appropriate head of power to Port Authorities to recover security costs from stakeholders and to port facility operators for passing on their charges to the users of their services and facilities.

The Regulation Impact Statement (RIS), tabled with the SOLAS amendments, suggests that the "final cost impact on consumers of goods carried by sea is expected to be very small", because of the ability to spread costs over a large volume of activity. However, the RIS does not discuss the cost implications for passenger ships which may not be able to defray additional charges as easily as the cargo shipping industry. The Queensland Government is actively promoting cruise shipping as part of its *Growing Tourism* strategy and is implementing a Queensland Cruise Shipping Plan to maximize the potential benefits from the growth in the world cruise market. Any new cost disincentives imposed on this industry are of concern to the Queensland Government.

The actual costs of implementing the requirements will not be determined until the exact requirements of the Commonwealth legislation are fully known, the security risk assessment for each port is undertaken and the security measures appropriate to the assessed level of risk have been determined. In addition to considerable capital costs, ports will also need to consider training, audit and continuing operational expenses. The port facility security risk assessments will be fundamental to the final costs and therefore must be consistently applied and be rigorous in demonstrating the extent and likelihood of risks.

#### **Enforcement**

##### *ISPS Code*

There is little doubt that the Australian port industry and the Australian flag shipping industry appreciate the importance of security and the need for it to be managed within a business and risk based environment. However there is a concern that some overseas administrations will see this as no more than another paper exercise with little if any commitment to the spirit and intent of the security proposals. Apart from the real security issues which arise there is also a concern that these provisions will be another commercial burden on the Australian maritime sector. This will be especially critical in the shipping sector where the Commonwealth government has already eased restrictions on the operation of foreign ships that operate in competition with Australian flag vessels on the Australian coast.

It is imperative that the Commonwealth has in place audit, inspection and enforcement systems to ensure that the Australian industry is not challenged by low cost flag of convenience operators who have no commitment to Australia's objectives of a secure and safe society.

**Legislation**

Until the Commonwealth provides a draft of its maritime security legislation for consultation, it is not possible to determine the need for, or impact upon, state legislation from the implementation of the ISPS Code. It is possible that the State may need to implement port specific security regulations using an existing head of power in the *Transport Infrastructure Act 1994*. Consequently, ratification of these amendments should be delayed until the outstanding jurisdictional responsibility issues are resolved.