



Australian Government

Department of Infrastructure and Transport

Acting Secretary

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Mr Graham Perrett MP  
Chair  
Standing Committee on Social Policy and Legal Affairs  
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Dear Mr Perrett

### **Inquiry into the Arrangements Surrounding Crimes Committed at Sea**

Thank you for the opportunity for the Department of Infrastructure and Transport (the Department) to provide a 'for information' submission to the Standing Committee on Social Policy and Legal Affairs regarding the Terms of Reference for the Inquiry into the Arrangements Surrounding Crimes Committed at Sea (the Inquiry). While the matters being examined by the Inquiry do not directly fall within the Department's portfolio responsibilities, the Department's roles and responsibilities in relation to preventive maritime transport security as outlined below may provide the Committee with some useful background information.

On behalf of the Minister for Infrastructure and Transport, the Department and the Australian Maritime Safety Authority administer a range of maritime legislation relating to the safety, security and marine environmental regulation of vessels and other maritime critical infrastructure. As such, the Department has an ongoing interest in the effective enforcement and administration of criminal law at sea and the arrangements surrounding crimes committed at sea.

The Office of Transport Security (OTS) situated within the Department provides the Australian Government with policy advice on transport security matters and has responsibility for aviation, maritime, offshore oil and gas security regulation, as well as transport security-focused programmes and services. The OTS works with maritime industry participants, such as Australian and foreign flagged ship operators, port operators, stevedores and offshore oil and gas operators to ensure their compliance with the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA) and associated regulations. The MTOFSA establishes a preventive security regulatory framework to safeguard against terrorism and other acts of unlawful interference with maritime transport or offshore facilities.

Under the MTOFSA, industry participants for such ships, other maritime transport operations, and offshore oil and gas facilities, must conduct security assessments to identify risks and vulnerabilities, and develop security plans outlining and implementing security measures to address those risks and vulnerabilities. These plans are subject to regulatory approval by the Department and ongoing enforcement, and are supported by legislative measures such as control of zones, powers of officials and private security personnel, reporting obligations, and criminal offence provisions.

As the terms of reference of the Inquiry relate to offences, Committee members may wish to note that the MTOFSA defines “unlawful interference with maritime transport or offshore facilities” in section 11 to include a range of matters that put the safety of ships and those on them at risk. This could include doing anything on board a ship that is being used for maritime transport that puts the safety of the ship, or any person or property on board or off the ship, at risk. While this is not an offence provision itself, the matters in section 11 generally correspond with the criminal offences contained in Part 2 and Part 3 of the *Crimes (Ships and Fixed Platforms) Act 1992*, as well as criminal offences under the *Criminal Code Act 1995*, and may also constitute offences under other Commonwealth, State and Territory law.

The MTOFSA and associated regulations include specific offence provisions which primarily relate to operating without, or failing to comply with, a maritime, ship, or offshore security plan approved by the Department, and unauthorised access to security zones at ports or on or around security regulated ships and offshore facilities. Relevantly, a “security regulated ship” under the MTOFSA includes a passenger ship, cargo ship of 500 gross tonnage or mobile offshore drilling unit, if that ship is used for overseas or inter-State voyages.

The preventive security regulatory framework established by the MTOFSA implements Australia’s commitments to the International Maritime Organization to implement special measures to enhance maritime security found within the *Safety of Life at Sea (SOLAS) Convention* Chapter XI-2 and the annexed *International Ship and Port Facility Security (ISPS) Code*. These instruments build on the existing international legal framework for maritime security, found for example in the 1982 *United Nations Convention on the Law of the Sea (UNCLOS)* and the 1988 *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention)* and related Protocols.

In closing, I should also mention that the Department would be particularly interested in any recommendations arising from the Inquiry regarding the reporting, investigation and prosecution of alleged crimes committed at sea.

If you require any further information concerning the Department’s role in preventive maritime transport security, please do not hesitate to contact Mr Christopher Swain, Director, Strategic Policy and Legislation, on (02) 6274 7285 or [Christopher.Swain@infrastructure.gov.au](mailto:Christopher.Swain@infrastructure.gov.au).

I trust that this information will assist the Committee in its Inquiry.

Yours sincerely

Andrew Wilson

9 January 2013