

Outstanding issues and concluding observations

- 4.1 As mentioned in the introduction to the report, many of the issues that arose during the Committee's review were satisfactorily resolved by the time the legislation was passed. The Committee trusts that some of the issues that were raised earlier on in the public hearing process contributed to the debates which were held between stakeholders and other interested parties as to the way in which operational issues of the legislation and regulations were implemented.
- 4.2 The Committee believes that, by coordinating port inspections with public hearings, it provided an additional conduit for consultation between port authorities, port facilities operators, maritime unions and the Department of Transport and Regional Services; given the tight timeframe imposed by the IMO in the implementation of the increased security measures in the ISPS Code, the Committee trusts that this role may have been of some benefit to ensuring that stakeholders' views were taken into account, by including them in the public record and hence the public debate.
- 4.3 Some of the concerns have been outlined in preceding chapters, and while several have been resolved, there remain some which are of continuing interest to the Committee, the progress of which it believes should be monitored.

Impact of treaty on 'flags of convenience' registries

- 4.4 The Committee heard several opinions regarding a possible incidental effect of the treaty, namely, an improvement in the regime of ship registration

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.¹

- 4.5 In relation to the Committee's deliberations on the issuing of International Ship Security Certificates (ISSCs), the Committee had concerns about the possibility of flag of convenience states cutting the costs of security in the interests of competition, and issuing certificates that might not comply with international standards. Mr John Kilner, from DOTARS, advised the Committee that

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.²

- 4.6 Ms Board however informed the Committee that provisions exist in the IMO for port state control regimes which permit the sharing of some risk information on which ships have been inspected. The Committee was pleased to note that Australia is

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... 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.³

Post-implementation review

- 4.7 In the third reading speech notifying the acceptance of government amendments to the MTSB on 1 December 2003, the Shadow Minister
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1 Ms Helen Board, *Transcript of Evidence*, Tuesday 9 September 2003, p. 23.

2 Mr John Kilner, *Transcript of Evidence*, Wednesday 22 October 2003, p. 6.

3 Ms Helen Board, *Transcript of Evidence*, Wednesday 22 October 2003, p. 6.

for Transport asked the government to agree to conduct a post-implementation review of the legislation after its first 12 months of existence. The Committee considers that this would be a useful measure at that time, in order that any outstanding concerns with regard to the implementation of the ISPS Code and the operations of the regulations might be raised by stakeholders.

- 4.8 A review should include coverage of issues such as the effectiveness and practicability of consultation between DOTARS, state and territory authorities and harbour masters, and the efficiency of the allocation of roles within a security environment. The review would also be well placed to compare the experiences of a selection of ports and how they perceive the changes, if any, in their operations prior to the introduction of the IMO amendments. The Committee considers that a budgetary analysis (including a summary of costs borne by each port in installing or upgrading and maintaining security equipment required under the SOLAS amendments) would be valuable in the post-implementation review process.

Recommendation 1

The Committee recommends that a review of the Maritime Transport Security Act 2003 be conducted 12 months after its implementation, so that any operational concerns with regard to the Act or its regulations can be raised by interested parties, with a view to improving the legislative provisions.

Continuing consultations with stakeholders

- 4.9 The Committee notes that a valuable element of its review included several opportunities which existed for free and frank communication on matters such as the drafting of legislative regulations and the beneficial effects of information sharing between interested parties. The Committee acknowledges the extent and depth of expertise among maritime employees at the ports of Newcastle and Fremantle, and expects that similar levels of experience and knowledge exist in other ports where employees have in-depth and extensive experience of maritime issues and the maritime industry.
- 4.10 The Committee recommends that DOTARS continue to consult closely with harbour masters and other employees in Australian ports to ensure that the benefit of this knowledge is maximised, especially

given that DOTARS is also striving to improve its own corporate knowledge. Mr John Hirst, of the AAPMA, noted that

it seems to us that DOTARS has run down its maritime expertise over recent years such that I doubt whether there would be a qualified mariner in the department now, and so we have a number of very well-meaning bureaucrats trying to come to grips with understanding a fairly complex industry—that is, the maritime industry.⁴

4.11 The Committee was pleased that DOTARS recognised

the need to build capability within the department, just like the port and port authorities will need to build their own capability in this particular area.⁵

4.12 The Committee will maintain a watching brief in the future about the way in which existing knowledge is maintained and developed by the Department in the new maritime security environment.

Recommendation 2

The Committee recommends that a briefing be provided to it by representatives of the Department of Transport and Regional Services after 1 July 2004 on the possible effects to the Australian maritime industry, including a status report on the amendments to the SOLAS Convention and the ISPS Code.

Dr Andrew Southcott
Chair

4 Mr John Hirst, *Senate Rural and Regional Affairs and Transport Committee Transcript of Evidence*, Monday 27 October 2003, p. 12.

5 Mr John Kilner, *Transcript of Evidence*, Wednesday 22 October 2003, p. 16.