

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.4

Question No. 28

Senator Ludwig asked the following question at the hearing on 14 February 2006:

- a) What was the outcome of the delegation to the International Maritime Organisation Committee?
- b) What happened with the propositions to develop criminal offences to prohibit the transport of terrorists, as well as prohibited weapons including chemical, biological and other weapons of mass-destruction?
- c) How are these being progressed?
- d) Is there a timeframe for the implementation of these propositions?
- e) Regarding the provisions that will allow the boarding of vessels suspected of committing one of the prescribed offences –where this is at?

The answer to the honourable senator's question is as follows:

- a) On 14 October 2005, a Diplomatic Conference of the International Maritime Organisation (IMO) adopted a protocol to each of the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988* (SUA Convention) and its *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf 1988* (Fixed Platforms Protocol). The protocols adopted by the Diplomatic Conference were consistent with Australia's negotiating position.
- b) The protocol to the SUA Convention (2005 SUA Protocol) requires States Parties to have offences concerning the use of vessels to transport weapons of mass destruction or related material. These offences include the transportation in certain circumstances of biological, chemical and nuclear weapons, as defined in the protocol. The 2005 SUA Protocol also requires a new offence concerning the use of vessels to transport a person who is known to have committed certain offences against the amended SUA Convention, or an offence against a treaty listed in the Annex to the amended Convention. Currently there are nine treaties listed in the Annex.

A number of existing Commonwealth criminal offences apply to the conduct of transporting weapons of mass destruction or related material where those items were related to a terrorist act. For example, the offences in sections 101.4 and 101.6 of the *Criminal Code Act 1995* (Criminal Code) prohibit the possession of things connected with terrorist acts and doing acts in preparation for, or planning, a terrorist act, respectively. Similarly, a person who transports a person who has committed an offence against the listed treaties might be prosecuted for existing Criminal Code offences such as providing support to a terrorist organisation (section 102.7) and associating with a terrorist organisation (section 102.8). The Attorney-General's Department is examining whether an additional offence is required.

- c) The Attorney-General signed both protocols for Australia subject to ratification at IMO headquarters in London on 7 March 2006. Prior to Australian ratification of the protocols, domestic

treaty making procedures will need to be complied with, including the passage of any required additional legislation.

d) The protocols will be implemented as a priority commencing this year.

e) The 2005 SUA Protocol creates a regime for boarding vessels suspected of being involved in the commission of an offence under the amended Convention. The protocol provides for procedures and safeguards to be followed where a State Party suspects that a ship flying the flag of another State Party or person on board that ship has been, is or is about to be involved in the commission of an offence, and desires to board that ship.

There are existing powers where offences such as those mentioned in (b) are suspected. Any gaps will be addressed as a priority commencing this year.