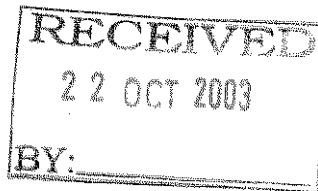




Honourable Steve Bredhauer MLA  
Member for Cook



Queensland  
Government

Minister for Transport  
Minister for Main Roads

Our ref: RPF E9537

20 OCT 2003

Senator Bill Heffernan  
Chair  
Rural and Regional Affairs and Transport Legislation Committee  
Department of Senate  
Suite SG.62  
Parliament House  
Canberra ACT 2600

Dear Senator Heffernan

This submission focuses on the concerns of the Queensland Government with aspects of the *Maritime Transport Security Bill 2003* (the Bill).

The Queensland Government and the state's eight port authorities are committed to working with the Australian Government on the development and implementation of enhanced port and shipping security arrangements.

This submission has been drafted with input from and consultation with the Department of the Premier and the Cabinet, the Queensland Police Service, Maritime Safety Queensland and Queensland's eight port authorities. These eight port authorities are responsible for the administration of 14 ports. On an annual basis the ports have over 12,000 piloted vessel movements and handle over 185 million tonnes of cargo worth in excess of \$21 billion. The port authorities are well versed in port management and operations. Their views on how the security system should work are critically important and very relevant to the security outcomes being sought.

A number of policy and strategic implementation issues are raised in the submission. These points have been previously raised directly with the Department of Transport and Regional Services (DOTARS) but I wish to take this opportunity to restate the Queensland Government's concerns.

There is an understanding of the urgency with which the Bill is being managed through Parliament. However it is important that the Bill achieves the necessary balance between security, trade facilitation and the preservation of our basic rights and freedoms. There are real concerns that the Bill will not achieve that balanced outcome.

Both industry and government stakeholders share an understandable concern that the Bill is too tightly focussed on the aviation model for its basic security framework and management approach. The Queensland Government shares that disquiet and fears that if the maritime transport environment is not fully reflected in the Bill then the security arrangements will not achieve the optimal security and trade facilitation outcomes. DOTARS has received sufficient feedback from early exposure drafts of the Bill for it to know what changes are needed to more fully reflect the marine industry environment.

#### Subordinate legislation

The Bill provides the overarching head of power. However, the detailed implementation and operation of the security system will be through regulations which have yet to be provided. It is critical that stakeholders are provided with the proposed detail of the regulations as soon as possible. In many areas the government is unable to provide comprehensive comment on the Bill as the detail of the regulation will be central as to how the security systems will work. It is important that the regulations be developed with input from the key stakeholders.

There is also a concern that the system relies too heavily on the use of regulations to implement the security arrangements. Changes to the legislative framework, which may be required given operational experience or changed circumstances, will need to be enacted through amended regulations. Consideration could be given to a system of "orders" that already operates successfully in sections of the maritime and aviation industry. The orders provide an effective and efficient regulatory framework which can be readily amended to reflect changed circumstances whilst maintaining the necessary accountability to government and the Parliament.

#### The intent of the Code

Port environments are operationally and culturally different from airport environments. The maritime security approach cannot be imposed through an Act and subordinate regulation which simply reflects the aviation model. The security legislative framework for the port and shipping sectors needs to take account of its unique operational and contextual environment. It is not obvious that the current Bill reflects the maritime environment and suggests an "aviation" bias which may impact on the overall success of the security initiative.

However, the aviation approach does recognise the critical safety issues associated with the industry. The Bill should explicitly state that operational and environmental safety of people, assets and systems are critical elements to be recognised and safeguarded when implementing the security measures.

The terminology in the Bill and regulations should mirror that used in the ISPS Code. The Bill introduces concepts which are at variance with the ISPS Code and were not flagged during consultation.

The ISPS Code also infers the operation of a hierarchy of plans. These plans provide the various layers of protection on which the overall security outcomes depend. The approach outlined in the Bill provides a mechanistic approach. There is little indication in the Bill as to how the plans interact and how the necessary interrelationship and interdependency between the plans arises.

#### Jurisdiction on intra-state vessels

The Queensland Government notes the comments in the Reading Guide and the Bill as to jurisdictional coverage. On the basis of our current understanding, we are of the view that the Australian Government's decision to extend coverage to foreign flagged ships on intra-state voyages is a positive move. To have attempted to quarantine this class of vessel and coastal movement from the application of the Bill would have resulted in the potential development of substantial gaps in the security coverage.

However, there remain significant policy and administrative weaknesses with a system based on voyages. A system based on tonnages may prove to provide more certainty and prove to be more effective.

#### Role of port operators

The consultations prior to the drafting of the Bill had a central theme of a formal security management role for the port operator (port authority). The Bill does provide for a limited port authority role in the operation of aspects of the whole-of-port security arrangements. However it is considerably less than the role envisaged by many in the industry.

The maritime security arrangements will be implemented and will operate in a more complex multi-user and multi-jurisdictional situation than the environment in which the aviation industry operates. There are strong and convincing arguments that the ports need an explicit overarching management and facilitation role in the port-wide security system. This will then ensure that the port authorities have the ability to assist in the development and management of the port-wide security framework. This will help in achieving the whole-of-port security system which is effective and produces the necessary security framework. In its current form, the Bill may not achieve the needed security outcomes.

In all ports there is a critical balance between the commercial and operational imperatives of the port authority and the safety and environmental responsibilities of the harbour master in relation to shipping movements. The harbour master may be an authority employee or may belong to an independent agency. The safety aspects of a port's operations need to be carefully factored into the proposed security framework. This provides even further support for a system which can be locally but closely managed through the Port Security Committee to achieve the port's specific security outcomes.

#### Coverage of naval vessels and other defence facilities / operations

In a number of ports, the risk profile is significantly raised by the visit of naval vessels and other defence assets. In particular the visit of US naval units presents the port authorities and other agencies with major security planning and response management issues. The Bill does not cover these naval vessels or other defence facilities / operations and provides little guidance as to how the port operator is to manage this situation.

When undertaking the port security assessment, the risk posed by the US and other naval vessels must be taken into consideration. Realistically it needs to be a factor in developing the port security plan. In most cases the US vessels are using the same waterways and utilising adjoining wharf facilities / terminals to the Australian and foreign flag merchant vessels which fall within the provisions of the Bill.

The Queensland Government recognises the complex jurisdictional, legal and inter-governmental issues involved. However, to achieve the optimal maritime security arrangements there is a need to formally acknowledge and address the interface issues between the civilian security arrangements under the Bill and the security arrangements of the naval vessels and defence authorities.

At the end of the day the solution may possibly be through binding administrative and cooperative arrangements agreed between the key civilian and defence stakeholders identified within the port security plan. However, the need for the strategic management of the interface between the civilian and defence users of the same port environment should be mentioned within the legislative package. If not explicitly raised, the matter could lead to a situation where the perception is given that there are no formal arrangements in place to manage the interface issues.

### Cost recovery

There is a general acceptance that port industry specific security / counter-terrorism management is now an accepted business risk and needs to be managed and funded within a business environment. The Bill should specifically give all marine industry participants the explicit ability to recover the costs of the implementation and management of the necessary security measures that address the port and shipping industries' specific requirements. The cost recovery mechanisms for national interest security issues and responses will need to be discussed in more detail.

It is our understanding that a number of the nation's port authorities have existing state legislative backing for the recovery of security related port industry specific costs. However to ensure a consistent and transparent approach across the whole industry, it is recommended that the Bill be amended to provide all participants with the ability to charge for and recover their port industry specific costs. This would then also allow for the development of an accountable and objective cost recovery approach.

### Security directions

Part 2 Division 4 of the Bill provides the Secretary with the ability to require additional security measures. There is a reasonableness test applied to the circumstances surrounding the making of the direction. However there is no test of reasonableness applied to the actual details of the direction. There is a concern that some industry participants may, in a practical situation, be unable to comply with the intent and requirement of some directions.

The aviation environment is associated with a domain of operations which is normally limited to well defined and controlled airport boundaries or specific aircraft. However the marine industry is characterised by many players with diverse business and operational interfaces, multi-user waterways covering wide geographic areas with numerous state and Australian Government agencies claiming varying degrees of jurisdiction.

Within this context it is quite possible that the Secretary could issue a direction with which the port operator or other participant could not reasonably comply. In addition, there is a concern that any reasonable attempt to comply may see stakeholders having to incur expenses for which there may be insufficient funds or reserves to cover the expense. In this circumstance to actually incur the expense could be a breach of accepted commercial practice and corporation's law.

An example could be a security direction to a small / medium sized port operator to provide land and on-water patrols and heightened access restrictions of an extensive port and ship security zone. It is unlikely that the port would have these resources and an outside security contractor and equipment (including vessels) would need to be engaged. In a general sense it is unlikely that the state police would see it as their role to provide these additional directed but non-response security measures.

There is little doubt that the provision for additional security measures is necessary. However such a direction would normally be as a result of a heightened national alert. There is a need to tie the issue and content of a security direction to existing national response arrangements so that all available resources can be considered as a means of addressing the particular security risk being addressed.

#### Control of regulated foreign ships

There appears to be a lack of effective enforcement over security regulated foreign ships. For security regulated Australian ships there is a suite of enforcement and penalty provisions applying to both the ship operator and master. However, there appear to be limited and potentially ineffective intervention powers over foreign ships. Apart from the competitive disadvantage to Australian shipping, the lack of effective control raises the spectre of security compliance and enforcement failures.

This matter is even more important when considered within the context of the increased use of foreign flag vessels on Australian domestic voyages under single and continuous voyage permits. Once on domestic voyages, these vessels nominally fall outside the customs / immigration surveillance control and often use facilities dedicated to the Australian trade where there is minimal surveillance and monitoring of activities. With many of these foreign flag vessels being flagged in open registry countries, there is the real possibility of security compliance issues arising and, more seriously, breaches of the nation's security net.

The foreign ship detention rate for basic safety and environmental breaches is over 5%. It is obvious that some vessel operators and flag state administrations pay little attention to basic safety issues. It is reasonable to assume that those same stakeholders will simply see the security Code as just another paper exercise with no commitment to either the spirit or intent of the security legislation. It is difficult to understand how Australia could reasonably accept on face value and cursory examination the ship security documentation from nations such as Liberia, Cambodia, Panama, Belize and Honduras.

#### Non-maritime needs of seafarers

In paragraphs 9 and 10 of its Preamble, the ISPS Code specifically acknowledges the role of the seafarer religious / welfare agencies and their representatives in meeting the needs of seafarers. Their ability to continue to service the spiritual, emotional and physical needs of the seafarers on the ships visiting Australia should be explicitly recognised and protected in the Bill. The current minor reference in section 5 of the Bill is insufficient. There are already stories of some terminal operators limiting access to seafarer representatives on the grounds of "security". Such actions are totally unjustified and unwarranted.

### Public rights vs. public protection

There is a fear that the provisions of the Bill will be used to unjustly limit and curtail public protest and demonstrations aimed at particular vessels, trades or government and industry programs. The aim of the Bill is to protect Australia and its maritime trade from terrorist attack. It is not the aim of the Bill to remove long-standing rights from Australian citizens. Indeed, if those rights are unreasonably removed, then the terrorists will have achieved one of their aims which are focussed on the fragmentation of our society, values and freedoms.

In its current form, the application of the Bill could be used against those groups who have a proven record of well organised, safe and non-violent water based protest. It would be intolerable if the provisions of the Bill were used to curtail reasonable public protest or provide unrealistic restrictions on the form and extent of water based or shore based protest action. The right of reasonable, non-violent maritime protest by individuals and groups needs to be enshrined in the Bill.

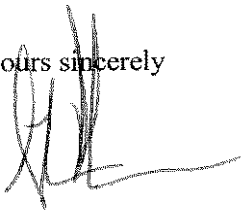
### Summary

In its current form the Bill may not achieve, on a sustainable, effectiveness or efficiency basis, the security outcomes that all stakeholders are expecting from the application of the ISPS Code. In some areas the Bill strays from the anticipated and expected application of the ISPS Code and introduces new terminology which has added confusion and uncertainty. The fact that the regulations are unavailable and the detail cannot be defined only adds to the concern.

The Bill does not recognise the organic nature of the port and shipping industry and seems to reflect an "aviation" approach. A practical application of this approach may not be successful. The Bill imposes potential obligations on stakeholders which they may not be able to meet. The Bill represents an attempt by the Australian Government to transfer to the states national interest security risk issues. These national interest issues are perhaps best managed and resourced by the Australian Government through the National Counter-Terrorism Committee framework arrangements.

Again it is necessary to highlight that there has been limited time within which to fully assess the Bill and that the regulations have not been available for review and comment.

Yours sincerely



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