

Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006

Introduction

1.1 The Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006 (the bill) was introduced into the House of Representatives on 29 March 2006. On 11 May 2006, the bill was referred to the Rural and Regional Affairs and Transport Legislation Committee (the committee) on the recommendation of the Senate Selection of Bills Committee.

1.2 The Selection of Bills Committee noted as issues for consideration the effectiveness and impact of the bill to:

- (1) enhance security against terrorism,
- (2) operate fairly on Australian workers and industry *and*
- (3) provide a better forum for community/industry feedback.¹

Conduct of the inquiry

1.3 The inquiry was advertised in *The Australian* on 16 and 24 May 2006. The committee also wrote directly to a number of peak bodies seeking their comments on the provisions of the bill. The committee received two submissions (see Appendix 1).

1.4 The committee held a public hearing in Canberra on 26 May 2006 and heard evidence from officers of the Department of Transport and Regional Services (see Appendix 2).

1.5 All the evidence presented to the committee is available on the committee's web site at http://www.aph.gov.au/Senate/committee/rrat_ctte/index.htm

Acknowledgments

1.6 The committee appreciates the time and effort of those who provided oral and written submissions to the inquiry. Their work has assisted the committee considerably in its inquiry.

Purpose of the Bill

1.7 The purpose of the bill is to:

1 Selection of Bills Committee, Report No. 4 of 2006, 11 May 2006, Appendix 3

- amend the Maritime Transport and Offshore Facilities Security Act 2003 (the Act):
 - to simplify the procedures for making changes to maritime, ship and offshore facilities security plans;
 - to clarify measures relating to the plan approval process;
 - to make a number of technical amendments to clarify the intent of the Act;
- to make amendments to various Acts consequential to the enactment of the Legislative Instruments Act 2003; and
- to make a technical amendment to the *Customs Act 1901*.²

1.8 The *Maritime Transport and Offshore Facilities Security Act 2003*:

- implements a preventative security regime to enhance security at posted, terminals, offshore facilities and on board ships – giving effect to Australia's international obligations under the International Maritime Organisations' International Ship and Port Facility Security (ISPS) Code; and
- establishes a regulatory framework to safeguard against unlawful interference with maritime transport or offshore facilities by developing security plans for ships, other maritime transport operations and offshore facilities.³

Provisions of the bill

1.9 Maritime, ship and offshore security plans play an integral role in terms of maritime security. The bill introduces measures in relation to the submission and approval of security plans and aims to streamline the plan approval process and make it easier to submit changes to security plans.

Schedule 1

1.10 Schedule 1 of the Bill amends the Act, to simplify the plan approval process and procedures for the establishment of security zones, shorten the time for plan approvals, change the contact details for security officers and clarify when the plan approval period commences.

1.11 Schedule 1 contains the following provisions:

2 Explanatory Memorandum, *Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006*, p. 1

3 Explanatory Memorandum, *Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006*, p. 1 and Second Reading Speech, *Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006*, p. 1

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- A maritime, ship or offshore security plan for a maritime industry participant must designate by name or reference to a position, all security officers responsible for implementing or maintaining security plans;
 - A maritime industry participant may submit a variation to a maritime, ship or offshore security plan that is currently in force;
 - Merely giving a copy of a security plan to the Secretary does not constitute giving a revised plan. A maritime industry participant may, by written notice to the Secretary, request the Secretary approve another security plan (the revised plan);
 - The Secretary may request further information from the maritime industry participant before the security plan is approved;
 - The consideration period for the Secretary to approve a maritime, ship or offshore security plan is 60 days commencing on the day the Secretary receives the security plan, extendable by up to 45 days to accommodate the receipt of further information that may be requested;
 - Where a port or offshore security zone has not yet been established by the Secretary, a maritime security plan must be accompanied by a map, and an offshore security plan must be accompanied by information that shows each zone that the participant proposes;
 - Where the Secretary has given a notice to a maritime industry participant approving a maritime or offshore security plan, and that security plan is accompanied by a map or information showing the security zones proposed to be established, the Secretary is taken to have given the participant a notice establishing the maritime or offshore security zones as proposed in the plans; and
 - A person appointed by the Secretary who is engaged by a recognised security organisation for a security regulated Australian ship or an Australian ship regulated as an offshore facility, has a responsibility to report maritime transport or offshore facility incidents to the Department.⁴

Schedule 2

1.12 Schedule 2 of the bill contains technical amendments to a number of Acts administered by the Transport and Regional Services portfolio (relating to legislative instruments) as a consequence of the enactment of the *Legislative Instruments Act 2003*.

4 Explanatory Memorandum, *Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006*, p. 2

1.13 These amendments are included in the bill to reduce the size of the *Legislative Instruments (Technical Amendments) Bill 2005*.

Schedule 3

1.14 Schedule 3 of the bill contains an amendment to the *Customs Act 1901*.

1.15 The reference to the *Maritime Transport Security Act 2003* in paragraphs 15(1A)(a) and (b) were not updated when the short title of the Act changed in 2005. Item 1, Schedule 3, provides an update to those references so that the relevant paragraphs refer to the '*Maritime Transport and Offshore Facilities Act 2003*'.⁵

Consideration by the Senate Scrutiny of Bills Committee

1.16 The Senate Standing Committee for the Scrutiny of Bills has a standing brief to consider all bills as to whether they trespass unduly on personal rights and related matters, and draw attention to any bill which seeks to have retrospective impact.

Examination of the Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006

1.17 In its examination of the Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006, the Scrutiny Committee identified the following area of possible concern in relation to the bill:

Retrospective commencement –Schedule 2, items 31 and 32, Schedule 3

Items 31 and 32 of Schedule 2 propose amendments to *Interstate Road Transport Act 1985*. Item 31 amends section 34 to clarify that the Minister's declaration of a federal road safety standard is a legislative instrument and item 32 amends section 35 to remove references to sections of the *Acts Interpretation Act 1901* and to the *Statutory Rules Publication Act 1903*. By virtue of item 4 in the table to subclause 2(1) of this bill, these amendments would commence retrospectively immediately after the commencement of sections 34 and 35 of the *Interstate Road Transport Act 1985*.

While the explanatory memorandum does not provide a reason for this retrospectivity, it does include an explanation of the technical nature of the amendments on page 22. The amendments are intended to ensure that the 1985 Act is expressed in a way that is consistent with the *Legislative Instruments Act 2003* and make no change to the substantive law.

Similarly, item 6 in the table to subclause 2(1) of this bill provides that the amendment to the *Customs Act 1901* proposed in Schedule 3 would commence retrospectively on 27 June 2005, immediately after the commencement of item 2 of Schedule 1 to the *Maritime Transport Security*

5 Explanatory Memorandum, *Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006*, p. 2 and Second Reading Speech, *Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006*, p. 2

Amendment Act 2005. In this case, the explanatory memorandum states, on page 32, that the amendment is technical and merely updates a cross-reference but makes no change to the substantive law.⁶

1.18 Having raised those issues, the Scrutiny Committee noted that it would make 'no further comment on this provision'.⁷

Issues raised at the hearing

1.19 At its public hearing, the committee sought clarification from the department on the mechanisms in the bill to enhance security in the face of the transient workforce on wharves at major ports and on how the provisions of the bill would be enforced. The department's response was that the regulations flowing from the bill would be specific enough to deal with those issues.

1.20 The committee also expressed concern about the need to make absolutely sure of the security of emails communicating the change of contact details of designated port security officers to the department.

Recommendation

The committee recommends that the bill be passed without amendment.

Senator the Hon. Bill Heffernan
Chair

6 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 4 of 2006*, 10 May 2006, pp. 39-40

7 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 4 of 2006*, 10 May 2006, p. 40

