



*THE ASSOCIATION OF AUSTRALIAN PORTS AND
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Ms Maureen Weeks
Committee Secretary
Senate Rural and Regional Affairs
and Transport Legislation Committee
SG62, Parliament House
CANBERRA ACT 2600

Dear Ms Weeks,

***Inquiry into the Administration of the Maritime Transport and Offshore Facilities
Security Amendment (Maritime Security Guards and Other Measures) Bill 2005***

We are pleased to respond to the invitation to make a submission to the Committee's inquiry into the Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005.

The Association of Australian Ports and Marine Authorities

The Association of Australian Ports and Marine Authorities (AAPMA) is the peak body representing the interests of government owned and privately owned ports as well as marine regulatory authorities in Australia. The Association provides leadership and support in areas of common interest related to ports, their interfaces and the achievement of their trade facilitation objectives. A list of our members is included at Appendix I.

Australian ports have welcomed the new maritime security environment and worked closely with DOTARS on the implementation of every aspect of the Maritime Transport and Offshore Facilities Security Act for many months prior to its introduction on 1 July 2004 and in the following months.

We received a copy of the draft Bill and provided comment on it. DOTARS responded and we noted that most of our comments had been taken into consideration when preparing the latest draft.

There is one issue that hasn't been covered in the present draft and that concerns the issue of giving maritime security guards ("MSGs") the power to search a person who has been detained under these provisions for weapons or other dangerous items which could be used to attack the guard. Some of our members have argued that this is a basic OH & S requirement and should therefore be included in the legislation. They argue that if a person were to have been detained and that person had failed to comply with a lawful demand, the MSG who has detained them may have to wait a considerable time for police attendance, especially if the incident were to have occurred at a regional port where there was no 24-hour police presence. Further a guard may be put at an increased level of risk if they were to detain a person without searching them for weapons given that they are dealing with persons who potentially pose a security risk. The search power should be included, following detention, and without subjecting the person to more force or indignity than is necessary and reasonable.

We acknowledge that we also have other members who put up an opposing argument against a search provision. Their argument also focuses on OH & S legislation noting that a guard may place him/herself at greater risk than necessary by attempting to search a detained person.

We are proposing that a power for a guard to search a person who has been detained should be available. The decision to exercise that power would then be a discretionary one for the guard, depending upon the circumstances at the time and the resources available to conduct the search safely.

Terms of Reference

1. *Whether maritime security guards should need higher training qualifications as a result of the increased powers they receive in the Bill.*

Port authorities and facilities generally employ contractors as security guards. They would be reluctant to employ their own people as MSGs for OH & S reasons. Not all of those contractors will be specifically "maritime security guards" but those who are contracted by port authorities to perform the specific role of MSGs undergo additional training. For instance, the Port of Melbourne Corporation works closely with its security guard provider, Chubb, in jointly designing the specific "Mast" ("maritime security training") curriculum. MSGs in Victoria are presently undertaking a skills upgrade.

Sydney Ports Corporation has also worked with its security providers to ensure that the current requirements for training of MSGs are complied with. The respective providers, Group 4 & Robuck Security have different programs that seek similar outcomes. Group 4 has developed an 8 module internal training program. Robuck has utilized a strategic alliance with a recognized training provider that has resulted in an 8 module program that is registered under the Australian Qualifications Framework and endorsed by DoTARS.

However, it is possible that this level of competency may not be reflected in some other ports, but we could check further on this if required by the Committee as there has been insufficient time available for us to undertake such an enquiry.

Of course, it is also arguable that higher risk facilities may require different levels of security guard capability for which higher levels of training would be required.

The quality of that training has been queried by some of our members. It is certainly nowhere near the level of that provided to law enforcement officers, yet, MSGs are expected to carry out the duties set out in the Bill. Unlike Police in a range of activities, security staff work in a one-up capacity. The ability for security staff to actually effect a detention in a stand alone capacity whilst observing appropriate use of force principles is questionable. Should the right to search be provided it is also unlikely that a single security officer would be able to observe appropriate rules of evidence and due process in exercising these powers. A single MSG is likely to have great difficulty dealing with a search and detention of an individual that does not want to be detained or searched.

Should the Government decide that additional training should be required, then AAPMA would argue that the Government should, rightfully, meet that additional cost. This argument could also be applied to the additional cost of attempting to fund safer working practices of increased contract staff. However, even if the Government were to meet the additional costs, there is also the issue of a shortage of suitably trained security staff. The imposition of a further training requirement may diminish the availability of an already scarce resource.

2. *The Regulations should clearly specify the reasons why a person with an MSIC could be denied access to a maritime security zone.*

We note that this matter refers to MSICs and not to Maritime Security Guards.

The holder of an MSIC has passed an identity test and proven that he or she is eligible to work in Australia (if they were not an Australian citizen). They have also passed the background checks by the AFP and ASIO. The fact that someone holds, what that Working Group has termed “a dumb identity card”, does not automatically provide a right of entry to any particular port or port facility.

The MSIC holder still has to prove a business or operational need to enter a maritime security zone. However, before gaining entry, it is highly likely that the MSIC holder will also have to undertake an OH & S and security induction specifically relevant to that facility.

The fact that the MSIC has been designed to be portable around Australia, does not automatically give the holder the right to enter any port or port facility. Industry and the Department realizes that this aspect will have to be highlighted and reiterated during the Communications program that is currently being designed for roll out in September.

However, some facilities will build access into their MSIC; this is undeniable, but it is a choice that will be made that particular facility. It has not been mandated under the MSCI Regulations.

3. *If a maritime security guard were working on an offshore facility in Commonwealth waters, there may be a question concerning which State or Territory licence the guard must hold.*

On this point, we defer to those industry representatives who have a greater working knowledge of offshore facilities.

4. *The details of the removal, storage and disposal of vehicles and vessels.*

Physically moving vessels is complex and will depend on the size and condition of the vessel to be moved. Furthermore, the guard would have to be qualified to take control of the boat, ie have a boat licence or demonstrable experience in being able to handle a boat, if there were a need for the boat to be boarded if, for example, the boat refused to “move on” as police assistance may not be readily available. Again the OH&S risk of this activity is an area of concern for Port Corporations.

It is unlikely that there would be a “move on” requirement for a larger vessel, eg one over 500 gross registered tonnage (“grt”). If such a direction were to be issued it would no longer be a responsibility for the MSG. The Harbour Master would assume control as there would be issues relating to the safety of the vessel, the port, tugs, pilotage, harbour movements generally, etc.

Should it be necessary for vehicles to be moved, stored or even disposed of within the security regulated port boundaries only, the details of such actions would be carefully recorded to ensure that the port authority or facility was able to recoup their costs and to provide the facility with some protection from any legal action. Further, we query whether the MSG would have the necessary licence qualifications should there be a requirement to move, for example, a truck or other large vehicle. It is more likely that a contractual arrangement with a licensed towing operator would be required to actually effect these actions and that the costs for this activity be directly billed to owner of the vehicle. These are the current arrangements in place at Sydney Kingsford Smith Airport.

5. *Clarification should be sought about the classes of person to be exempted from providing reasons for being in a maritime security zone.*

We have no dispute over the categories of people who have been given the right not to state their reasons for being in a maritime security zone, if challenged by an MSG [sub clause 163A(4)]. We note the requirements in sub clauses 163A (1) and (2) for those persons to provide identification if requested.

We note the Senate Committee's interest in these amendments to the Act. We have been advised by the Department that we, together with other industry and union representatives, would be given an opportunity to comment on the Regulations accompanying these amendments to the Act. We would welcome that opportunity and would examine the accompanying Regulations with considerable interest.

We regret that we will be unable to appear in person before the Committee on 29 August due to other commitments, but we await its Report with considerable interest.

Yours sincerely,

John Hirst
Executive Director

Appendix 1 – List of AAPMA Port Corporation Members

- Albany Port Authority
- Broome Port Authority
- Bunbury Port Authority
- Bundaberg Port Authority
- Burnie Port Corporation Pty Ltd
- Cairns Port Authority
- Darwin Port Corporation
- Esperance Port Authority
- Flinders Ports South Australia
- Fremantle Port Authority
- Geraldton Port Authority
- Gladstone Port Authority
- Hobart Ports Corporation Pty Ltd
- King Island Port Corporation Pty Ltd
- Mackay Port Authority
- Melbourne Port Corporation
- Newcastle Port Corporation
- NSW Waterways
- Port Hedland Port Authority
- Port Kembla Port Corporation
- Port of Brisbane Corporation
- Port of Devonport Corporation Pty Ltd
- Port of Launceston Pty Ltd
- Port of Portland Pty Ltd
- Ports Corporation of Queensland
- Rockhampton Port Authority
- Sydney Ports Corporation
- Toll Ports and Resources - A Division of Toll Logistics
- Townsville Port Authority