

**Rural and Regional Affairs and
Transport Senate Committee Inquiry:**

**Maritime Transport and Offshore
Facilities Security Amendment
(Maritime Security Guards and Other
Measures) Bill 2005**

Submission of the

Transport

Workers'

Union of Australia

Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005.

According to material prepared by the Department of Transport and Regional Services ("DOTARS") this Bill is designed to:

deter and deal with unauthorised incursions into maritime security zones when law enforcement agencies are not immediately available.

Section 163C gives power to maritime security guards to remove unauthorised persons from maritime security zones if they fail to comply with a request to leave.

Section 163D gives power to maritime security guards to remove, or cause to be removed, vehicles from maritime security zones if the guard reasonably suspects that the vehicle is in the zone without proper authorisation.

It is these sections with which the Transport Workers' Union ("the TWU") takes issue.

Background

Prior to the amendment Bill the Maritime Transport and Offshore Facilities Security ACT gave power to maritime security guards to physically restrain and/or detain a person if the guard reasonably believes that it was necessary to do so, until the person could be dealt with by a law enforcement officer (see section 163).

DOTARS officers advise the TWU that the policy behind the Bill was developed as a result of the review of maritime security conducted by the Secretaries' Committee on National Security. Following this review the Prime Minister announced on 20 July 2004, that the Government would provide:

Additional limited "move on" powers for privately engaged maritime security guards to enable them to respond with appropriate authority to any deliberate breaches of maritime security zones within and near ports.

DOTARS official's have further advised the TWU that the need to enhance the powers of maritime security guards was raised by maritime industry participants ("MIPS") in order to address a situation where a guard may have detained / restrained a person suspected of committing or who has committed an offence, and a law enforcement officer is not readily available to remove that person.

General

Section 163D gives power to maritime security industry guards to remove or "cause to be removed, vehicles from maritime security zones..." If it is proposed that the guard remove the vehicle himself or herself, then that guard would clearly need to be trained to do so and clearly there are associated cost implications for an industry already preparing to absorb the significant costs associated with the Maritime Industry Security Cards. However, If it is proposed that the guard needs to arrange some other person to remove the vehicle then it would seem that the purpose of this part of the Bill is defeated - that is, the guard

is still in a situation where he or she is holding the vehicle and potentially the driver until another party has arrived.

Consultation

Consultation with stakeholders in the transport industry was poor, in fact it did not occur at all. Neither the TWU, nor the Australian Trucking Association, nor the Australian Road Forum were consulted about this Bill. These stakeholders did not receive any discussion paper to comment on nor did they receive the exposure draft. This was a significant omission given the Bill has a specific focus on the potential removal of drivers and their trucks.

Conclusion

At a recent Maritime Industry Security Consultative forum meeting, MIPs voice their concern over potential training requirements and the associated costs consequent upon the Bill. The MIPs also discussed strategies they might to minimise the use of a maritime security guard (within the meaning of Act). In fact two different MIP representatives asked whether it is a requirement to have any at all. In light of these comments the suggestion that the Bill is in response to concerns raised by MIPs seems unsustainable.

It is evident to the TWU that the policy development process that preceded this Bill was inadequate. It is not evident that the powers this Bill gives to Maritime Industry Guards to remove vehicles and their drivers was needed or indeed

called for (in any significant way). If MIPs are, as suggested at the Maritime Security Industry Forum, looking to avoid using these guards with expanded powers, the suggestion that the expanded powers are needed is called into question. Further, the introduction of the legislation may indeed be counterproductive, leading to an unintended reduction in the numbers of Maritime Industry Guards.

Transport Workers' Union of Australia

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