



Australian Government

Department of Transport and Regional Services

File Reference: 02005/0798

Ms Maureen Weeks
Secretary
Senate Rural and Regional Affairs and Transport Legislation Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

Dear Ms Weeks

Please find enclosed the Department's submission to the Committee's Inquiry into the Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005.

The Department looks forward to answering any questions the Committee might have at the Committee's hearing on Monday 29 August.

Yours sincerely

[signed]

John Kilner
Executive Director (A/g)
Office of Transport Security

25 August 2005



Australian Government

Department of Transport and Regional Services

SUBMISSION

to the

**Senate Rural and Regional Affairs and Transport
Legislation Committee**

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

SECURITY CLASSIFICATION

Introduction

The Department of Transport and Regional Services (DOTARS) welcomes the opportunity to contribute to the Inquiry.

This submission outlines the rationale for the Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005 (the Bill), focusing on the proposed extension of the powers of maritime security guards. The submission explains the process by which the Bill was developed, and the process by which it is proposed to be implemented.

The Maritime Transport and Offshore Facilities Security Act 2003 (the Act)

The Act imposes certain obligations on certain operators of maritime transport infrastructure and offshore petroleum facilities. These operators are described as *Maritime Industry Participants* (MIPs). The Act requires these MIPs to undertake security risk assessments in relation to their operations, and implement approved security plans which address identified risks. The content of these plans will vary from operation to operation depending on the nature of the operation, the location, and the risk context.

Australia's maritime security regime can therefore be described as *risk-based* and *outcomes-focused* – because the security measures implemented in any particular instance are implemented in response to risk, and are focussed on achieving a security outcome rather than meeting a prescribed standard.

The Act provides MIPs with a number of mechanisms to assist in developing security plans which are effective in addressing identified risks. One such mechanism is the provision for the creation of maritime security zones, for which access must be controlled, and for which unauthorised access is an offence. Another mechanism is the provision for certain persons to exercise special powers to ensure compliance with the Act. Maritime security guards, as defined by section 162 of the Act, are one class of persons provided with special powers under the Act. These powers assist MIPs to effectively implement their plans.

The Bill proposes to extend the powers of maritime security guards to provide MIPs who choose to employ maritime security guards with further options for managing their security arrangements and implementing their plans.

Current Powers of Maritime Security Guards under the Act

Division 5 of Part 8 of the Act defines a *maritime security guard* (section 162) and sets out the power of a maritime security guard to physically restrain and detain persons (section 163). For ease of reference, these sections are included below:

162 Maritime security guards

- (1) A *maritime security guard* is a person who:
 - (a) satisfies the training and qualification requirements and any other requirements prescribed in the regulations for maritime security guards; and
 - (b) is on duty at a security regulated port or on a security regulated ship; and

S E C U R I T Y C L A S S I F I C A T I O N

- (c) is not a law enforcement officer.
- (2) The regulations must prescribe the following for maritime security guards:
 - (a) training and qualification requirements;
 - (b) requirements in relation to the form, issue and use of identity cards.
- (3) The regulations may prescribe the following for maritime security guards:
 - (a) requirements in relation to uniforms;
 - (b) any other requirements.

163 Maritime security guards' power to physically restrain persons

- (1) A maritime security guard may physically restrain a person if:
 - (a) the maritime security guard reasonably suspects that the person is committing, or has committed, an offence against this Act; and
 - (b) the maritime security guard reasonably believes it is necessary to do so in order to:
 - (i) ensure that a person who is not cleared is not in a cleared area; or
 - (ii) maintain the integrity of a maritime security zone.
- (2) If a person is restrained under subsection (1), the maritime security guard may detain the person until the person can be dealt with by a law enforcement officer.
- (3) In exercising a power under subsection (1) or (2), a maritime security guard must not use more force, or subject a person to greater indignity, than is necessary and reasonable.

The decision to employ persons who are qualified as maritime security guards, and the decision to deploy these guards to undertake a particular function, will depend on the MIP, and the requirement's of the MIP's security plan,

For example, a MIP's security plan might provide for a maritime security guard to patrol a maritime security zone. A maritime security zone is an area of a security regulated port, ship or facility which, because of its security sensitivity, requires a high level of protection. Maritime security zones might be established on land (landside security zones), on board a ship (on-board security zones) or on the water (waterside security zones). MIPs are required to monitor and control access to maritime security zones, and unauthorised access to a maritime security zone is an offence against the Act.

In the course of patrolling a maritime security zone, a maritime security guard might detect a person who has entered that zone unlawfully. The guard currently has the power to restrain that person, and detain them until a law enforcement officer arrives. This would normally be an officer of the state or territory police force.

This arrangement is satisfactory for dealing with intrusions to landside security zones, in locations where law enforcement officers are readily available. However the practical difficulties with restraining and detaining someone who has intruded into a waterside security zone, together with the lack of on-water law enforcement capacity in some locations, points towards a gap in the capacity of MIPs to effectively deal with incursions into maritime security zones.

Strengthening the capacity of MIPs to deal with intruders

As part of its review of Australia's maritime security policy settings conducted in 2004, the Secretaries' Committee on National Security (SCNS) considered options for strengthening the capacity of MIPs to deal effectively with intruders, particularly where law enforcement officers are not immediately available.

Following its consideration of the SCNS review, the Government decided to extend the powers of maritime security guards, providing them with a limited power to request intruders to remove themselves from maritime security zones, and if necessary to maintain the security of the zone, physically remove the intruders. This option empowers MIPs to respond with appropriate authority to breaches of maritime security zones. (See Prime Minister's media release of 20 July 2004.) This option will also allow MIPs to deal appropriately with nuisance incursions into zones. Extending the powers of maritime security guards requires an amendment to the Act.

In announcing its maritime security initiatives, the Government noted the important role of state and territory police forces in providing first response capabilities at and near to ports within their respective jurisdictions. Providing maritime security guards with move-on powers will not relieve the states and territories of their responsibility for providing policing services within ports. Rather, extending the powers of maritime security guards will ensure that persons with intent to commit unlawful acts are not able to take advantage of the possible gaps in law enforcement capacity, particularly on-water law enforcement capacity, in some locations.

Consultation on the proposal to extend the powers of maritime security guards

Initial consultations on the proposal were conducted by SCNS as part of its maritime security review. More detailed consultations commenced following the 2004 general election.

DOTARS, as the responsible agency, developed a discussion paper which put the concept of move-on powers for maritime security guards in an operational context. This paper was released in December 2004 to maritime industry representatives, and subsequently to state and territory police forces. DOTARS received a number of comments on the discussion paper, which informed the development of the drafting instructions for the new measures.

DOTARS worked with the Office of Parliamentary Counsel to develop an exposure draft of the Amendment Bill, to facilitate consultation. The exposure draft contained three main provisions:

- a power to remove people from zones;
- a power to remove vehicles from zones; and
- a power to remove vessels from zones.

The exposure draft was released in May 2005 to:

- maritime industry participants;
- peak maritime industry organisations;
- private security companies;
- State and Territory police;

S E C U R I T Y C L A S S I F I C A T I O N

- maritime unions; and
- Australian Government agencies with interests in ports and shipping.

Thirty-four organisations were invited to comment on the exposure draft. One further organisation, the Rail, Tram and Bus Union, identified itself as being interested in the consultation process, and was provided with a copy of the exposure draft. A list of the organisations from which input was sought is attached at Attachment A. Twenty-two of these organisations provided submissions.

A number of these submissions suggested ways in which the Bill might be improved. In particular, it was suggested that the Bill should include:

- a power for a maritime security guard to request a person in a zone to produce identification, and a related offence for failing to comply with the request;
- a power for a maritime security guard to request a person to state reason for being in a zone, and a related offence for failing to comply with the request;
- an exemption for certain officials from being requested to state reason for being in a zone;
- an exemption from move-on powers for security regulated ships;
- procedures for notifying the owner of a vehicle or vessel that the vehicle or vessel is to be moved; and
- procedures for the sale of unclaimed vehicles or vessels;

These proposals were all adopted.

Safeguard provisions

A number of additional safeguard provisions were incorporated into the Bill following the inclusion of the suggestions noted above. For example, when requesting a person to produce their identification, the maritime security guard will be required to identify him or herself, advise the person of his or her authority to request information, and tell the person that non-compliance is an offence under the Act. The same provisions apply to the request to state reason for being in a zone, and the request to leave a zone. These safeguards are intended to provide a balance between the coercive nature of the move-on powers and the rights of individuals.

Regulations under the Amendment Bill

The Bill provides a number of Regulation making powers:

- Paragraph 163A(4)(vi) provides that a person of a kind prescribed in the regulations is exempt from being required to state reason for being in zone;
- Paragraphs 163D(4)(b) and 163E(4)(b), provide that a maritime security guard must make reasonable efforts to notify persons of a kind (if any) prescribed in the regulations if a vehicle or vessel is to be removed;
- Subclauses 163D(6) and 163E(6) provide that the regulations may make provision for:
 - (a) the disposal, through sale or otherwise, of unclaimed vehicles and vessels; and
 - (b) the manner in which the proceeds of any sale are to be distributed.

There are also existing Regulation making powers under the Act, which are relevant to the Bill:

- Paragraph 162(1)(a) provides that a maritime security guard is a person who satisfies the training and qualifications and any other requirements prescribed in the regulations for maritime security guards;
- Subsection 162(2) provides that the regulations must prescribe the following for maritime security guards:
 - (a) training and qualification requirements;
 - (b) requirements in relation to the form, issue and use of identity cards;
- Subsection 162(3) provides that the regulations may prescribe the following for maritime security guards:
 - (a) requirements in relation to uniforms;
 - (b) any other requirements.

DOTARS is seeking to establish a working group to progress development of the Regulations provided for by the Bill. DOTARS initially sought expressions of interest to participate in this group on 3 June 2005, however only one expression was received. This possibly reflects the considerable commitment being made by industry and union representatives at the time in contributing to the development of regulations for the Maritime Security Identification Card. DOTARS reiterated its intention to form a working group at the 19 August meeting of the Maritime Industry Security Consultative Forum, and a number of industry and union representatives indicated their interest in participating in the group. It is expected the group will commence work shortly.

Regulations relating to the training and qualifications of maritime security guards

Regulation 8.50 of the *Maritime Transport and Offshore Facilities Security Regulations 2003* sets out the training and qualification requirements for maritime security guards.

Given the Bill proposes to extend the powers of maritime security guards, it is appropriate to review their training and qualification requirements. This matter will be considered by the working group noted above.

Regulations relating to persons exempt from being required to state reason for being in a zone

Subclause 163A(4) provides that a maritime security guard may request a person in a maritime zone to state his or her reason for being in the zone. Paragraph 163A(4)(b) of the Bill sets out various persons that will be exempt from the requirement to state a reason for being in a zone. Sub paragraph 163(4)(b)(vi) enables the making of regulations to exempt other persons. In considering whether to develop any Regulations under this power, and in consultation with the working group, DOTARS will consider what other persons, if any, should be exempt from this requirement.

Regulations relating to the removal of vehicles and vessels

Clauses 163D and 163E provide that if a maritime security guard reasonably suspects that a vehicle or vessel is in a maritime security zone without proper authorisation, the maritime security guard may remove that vehicle or vessel to a convenient place. The regulations will provide details of the procedures that will need to be followed by a maritime security guard in these circumstances.

The Regulations will include matters such as

- procedures for notifying the owner of the vehicle or vessel, and other interested parties, that it has been moved;
- procedures for reimbursement of costs of moving and storing the vehicle or vessel;
- procedures for sale or disposal of a vehicle or vessel which has been moved and has not been claimed;
- procedures for managing the proceeds of sale of an unclaimed vehicle or vessel;
- procedures for compensating the owner of a vehicle or vessel which has been sold.

Communications strategy for the proposed amendments to the Act

DOTARS is developing a communications strategy to increase the maritime industry's understanding of the amendments to the MTOFSA, and how industry will be affected by these changes.

DOTARS has consulted extensively with industry in developing the communications strategy, both through the various ongoing working groups and industry consultative fora, and through individual meetings with key MIPs, industry associations, and unions.

Among other things, the communications strategy will provide for the production of a suite of plain English guides to the legislation and regulations structured in such a way that the different information needs of each maritime audience are met, and brochures and other materials explaining the changes to the Act as they relate to maritime workers, contractors and agents; service providers; truck and train drivers; labour hire firms and related maritime audiences.

DOTARS will be undertaking user concept testing of the draft designs for the communications materials in Melbourne on 29 August.

Issues noted for consideration by the Senate Selection of Bills Committee

The Senate Selection of Bills Committee noted five issues for consideration in referring the Bill to the Committee. DOTARS provides the following brief responses to each of these five issues in turn:

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

The training and qualifications required for maritime security guards to exercise the powers set out in the Bill will be set out in the Regulations. The Regulations are currently being developed in consultation with industry and unions, and will be finalised before the Bill is proclaimed.

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

The Maritime Security Identification Card (MSIC) will be a nationally consistent identification card that identifies the holder as having met the background checking requirements to be in a maritime security zone. All persons requiring unmonitored access to a maritime security zone will require an MSIC. However the MSIC will not be an access control card. Possession of an MSIC will not confer a right of access to any maritime security zone.

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

DOTARS is advised that there are currently no maritime security guards working on Australian offshore facilities, and that the operators of these facilities do not intend to employ maritime security guards on these facilities at this time. However, the Regulations will be developed to provide for the possibility that maritime security guards may be employed on these facilities sometime in the future. The licencing arrangements appropriate for maritime security guards working offshore will be addressed in the Regulations.

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

The Regulations will deal with matters relating to notification of removal of vehicles and vessels and storage and disposal of vehicles and vessels.

5. clarification should be sought that the classes of persons to be exempt from providing reasons for being in a maritime security zone

Paragraph 163A(4)(b) of the amendment Bill sets out various persons that are exempt from the requirement to provide reasons for being in a zone. The regulations may provide that other persons may be exempted from stating their reasons for being in a zone.

Conclusion

Extending the powers of maritime security guards, as set out in the Bill, will provide Australia's ports, port facilities, and other maritime industry participants with an additional mechanism to ensure their security plans are able to effectively address identified risks. This mechanism will be of particular benefit in locations where law enforcement, particularly on-water law enforcement, may not be immediately available.

DOTARS thanks Australia's maritime industry participants, industry organisations, unions, police forces, and other agencies for their thoughtful suggestions for improving the process by which the move-on powers might be exercised. In particular, the explicit power to request identification and reason for being in a zone is a valuable addition to this process.

Some of the more detailed arrangements associated with the exercise of the powers set out in the Bill remain to be resolved. DOTARS looks forward to continuing its cooperative relationship with the maritime industry, unions, and police forces in developing the Regulations and contributing to implementation arrangements.