

Chapter 1

The Committee's Inquiry

Conduct of the Inquiry

1.1 On 16 June the Senate referred to the Rural and Regional Affairs and Transport Legislation Committee the regulatory framework to be implemented and enforced by DOTARS under the *Maritime Transport Security Amendment Act 2005* for inquiry and report.¹ Specifically, having regard to:

- a) whether the regulatory framework to be implemented adequately protects privacy interests;
- b) the appropriateness of the cost recovery model in respect to such an important area of national security;
- c) the adequacy of law enforcement mechanisms available to enforce the regulatory scheme;
- d) the adequacy of oversight and compliance inspection mechanisms;
- e) the adequacy of existing security checks for foreign seafarers;
- f) the fair operation of security checks with respect to existing employees; and
- g) the adequacy of consultation mechanisms in respect to the regulatory framework.

1.2 The committee advertised the inquiry in *The Australian* on 22 June and 6 July 2005, and wrote to a number of organisations inviting submissions. The committee received 13 submissions (see Appendix 1) and held a public hearing on Tuesday 12 July 2005 (see Appendix 2).

1.3 The committee acknowledges and thanks submitters and witnesses for their contribution. Submissions and the *Hansard* transcript of the committee hearing is available on the Parliament's webpage at <http://www.aph.gov.au>.

Purpose of the Amending Act

1.4 The first part of the *Maritime Transport Security Amendment Act 2005* (MTSA Act) extends the *Maritime Transport Security Act 2003* (the principal Act) to apply to Australia's offshore oil and gas facilities. These facilities are located within the defined areas of Australia's territorial sea, exclusive economic zone and continental shelf. The main purpose of the Act is to regulate the offshore oil and gas industry's security arrangements. This includes the requirement of industry

1 *Journals of the Senate*, 16 June 2005, p. 708

participants to develop and comply with security plans specifically tailored to each facility based on security assessments.²

1.5 The second part of the MTSA Act amends the principal Act to allow for the introduction of the Maritime Security Identification Card (MSIC). It is this part of the MTSA Act that was the focus of the committee's inquiry. Personnel working unmonitored in the Maritime Security Zones (MSZ)³ and offshore security zones⁴ will be required to hold and display MSICs. Applicants for the MSIC will undergo a background, including criminal, check. An applicant's criminal check must meet certain requirements to enable them to receive the MSIC. The scheme is provided for in the MTSA Act, and is established by regulations.

The Maritime Security Identification Card (MSIC)

1.6 The Explanatory Memorandum (EM) to the MTSA Act outlines that there is currently no requirement to 'confirm the character and identity of those entering a [MSZ]'.⁵ This limits the knowledge of who accesses sensitive port and ship areas. It also increases the risk of terrorist activities on maritime infrastructure via legitimate access to the MSZs. The government contends that imposing the MSIC regime will have a 'significant deterrent effect' on terrorist organisations that might seek to attack maritime targets of convenience.

1.7 The MSIC will serve as an identity card only and will not provide access to secure areas within the zones. It will however allow personnel working in MSZs and offshore security zones to be identified at any given time. A representative of the Association of Ports and Marine Authorities Inc. (AAPMA) clarified this in evidence given during the committee hearing:

There will be a separate access card, and that certainly is getting more sophisticated as we go on... [The MSIC] is a photographic ID. It is not an access card. You can build access into the back of the card. There is a substrate that will take access... The identity card will not be a swipe card like an access card, unless it has access provisions built into it. [The MSIC] is an ID card only. It just says that the person has had a certain level of security checks run on them and that they are who the card says they are.⁶

1.8 The Department of Transport and Regional Services (DOTARS) confirmed this in its submission:

2 Explanatory Memorandum, p. 2

3 The MSZ is comprised of ports, ships, and on board security zones as declared under subsections 102(1), 106(1) and 110(1) of the MTSA Act respectively.

4 Offshore facilities are defined in the MTSA Act under s113A(1) as areas declared by the Secretary, within and around an offshore facility.

5 Explanatory Memorandum, p. 24

6 Ms Blackwell (AAPMA), *Hansard*, 12 July 2005, p. 30

The MSIC will not be an access control card. Existing access arrangements as approved in Maritime Security Plans will continue to operate. However, if a Maritime Industry Participant wishes to, they may incorporate an access control onto the MSIC. The incorporated access control features will not be regulated.⁷

The Regulations

1.9 Two sets of regulations are proposed under the amending Act. The Maritime Transport Security Amendment Regulations 2005, which relates to the extension of the MTSA 2003 to offshore oil and gas facilities; and the Maritime Transport Offshore Security Amendment Regulations 2005 draft which relates to the administration of the Maritime Security Identification Card (MSIC).

1.10 The committee's inquiry examined how the regulations pertaining to the MSIC protect privacy interests and the cost recovery measures for the card. The committee also investigated how the card will be issued and displayed and how the regulations related to the MSIC will be enforced. In addition, the security checks for foreign seafarers were examined.

1.11 The inquiry is based around Division 6.1A of the regulations which provide for the issue of the MSIC to identify a person who has been the subject of a background check. A maritime industry participant (MIP) will not allow a person access to a maritime security zone unless he or she displays a valid MSIC or is escorted by a MSIC holder. Division 6.1A includes requirements about the display, issue, expiration and cancellation of the MSIC. Further, it addresses the criteria of Issuing Bodies (IBs) of the MSICs.⁸

1.12 Some of the provisions of the regulations addressed during the committee's inquiry are as follows;

- Table 6.07C, *Maritime-security-relevant offences* in Division 6.1A outlines disqualifying and exclusion offences that are used to assess the criminal background of a MSIC applicant.⁹
- Regulation 6.08C(2) states that from 1 October 2005 to 30 June 2006 the Secretary of the Department of Transport and Regional Services (DOTARS) will decide whether the criminal record check shows that a MSIC applicant

7 Submission No. 13, *Department of Transport and Regional Services*, p. 3

8 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 4

9 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 6

has an adverse criminal record. Following this period, Issuing Bodies (IBs) will make the decision.¹⁰

- Subdivision 6.1A.2, *Display of MSICS*, outlines the penalties applied if a MSIC holder does not properly display their card in a maritime security zone. It also outlines the requirements to escort a visitor to a maritime security zone, and the penalties issued if the requirements as an escort are not fulfilled.¹¹
- Regulation 6.07M allows for a person to be exempted from the requirement to hold, carry or display an MSIC.¹²
- Regulation 607J2(b) and 6.07N which allow for members of the Defence Force and ambulance, rescue or fire service officers to enter a maritime security zone without displaying an MSIC.¹³
- Regulation 6.07G provides for maritime industry participants, a body representing participants, a body representing employees of participants and Commonwealth authorities to be authorised as Issuing Bodies.¹⁴
- Subdivision 6.1A.6, *Record Keeping*, outlines how an IB must keep a register of MSICs and how IBs must retain the record of issue of all MSICs for 7 years.¹⁵
- Subdivision 6.1A.8, Regulation 6.09A, *Cost Recovery*, states that an IB may recover the reasonable costs of the issue of the MSIC from the applicant for an MSIC.¹⁶

1.13 The above regulations are examined in greater detail in Chapter 2, *Implementation* and Chapter 3, *Administration*.

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- 10 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 23
- 11 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, pp. 11-4
- 12 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 13
- 13 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, pp. 11 and 14
- 14 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 14
- 15 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, pp.34-5
- 16 Draft Maritime Transport and Offshore Security Amendment Regulations 2005, 7 July 2005, p. 38