

ADDITIONAL COMMENTS BY LABOR SENATORS

Summary

Labor Senators support the implementation of a Maritime Security Identity Card (MSIC) regime.

Labor Senators strongly endorse the recommendation that the Department of Transport and Regional Services review the draft Maritime Transport and Offshore Security Amendment Regulations 2005 (the draft regulations) to positively address the many concerns expressed by this committee.

Comments

Labor Senators draw particular attention to the following issues:

Inspector of Transport Security

Labor Senators note that the Inspector of Transport Security has played no role in the development of the draft regulations despite the previous Minister for Transport and Regional Services claiming the appointee would examine “systemic transport security weaknesses to ensure security vulnerabilities are identified and addressed.”

It is clear to Labor Senators that the absence of a maritime identification card regime constitutes a transport security weakness.

The Inspector of Transport Security should have been involved in the task of developing the MSIC regime.

Mr Bill Ellis, the “acting” Inspector of Transport Security describes his appointment as follows:

My understanding is that I am appointed to a sort of panel position, where the inspector is the head of the office and other people would be appointed to a panel—of experts, or whatever—should the need arise to handle particular investigations.¹

It is clear from Mr Ellis description that he does not consider himself to be acting in the position of Inspector of Transport Security.

In our view, it is disingenuous of the Department of Transport and Regional Services to describe him as such.

1 *Hansard*, 12 July 2005 p.1

Timing

Labor Senators regret the government's decision to delay the release of 'final' draft regulations to members of the industry working group and the committee until 8 July 2005 which gave witnesses and committee members just one working day to consider the amendment draft regulations before the hearing.

As noted in the report, the manner in which the amended 'final' draft regulations were circulated to working group casts doubt over the adequacy of the consultative process.

The announced gazettal timetable (21 July 2005) reveals an unhealthy disregard for the role of the Senate and this committee in particular.

Working group

Subject to the willing participation of working group members, Labor Senators believe the life of the working group should be extended through the roll-out phase to 1 July 2006.

Criminality

The report notes the evidence that draft table 6.07C in the draft regulations does not reflect the working group agreement on the level of criminality that would constitute the disqualification of an MSIC application. It also notes the government decided to amend earlier draft regulations so the final draft did not reflect the working group consensus. Labor Senators consider this decision regrettable.

While reassured that Part IIA of the *Crimes Act 1914* does not fall within the meaning of Part II contained in draft table 6.07C in the draft regulations, Labor Senators are concerned about the inclusion of the whole Part II, particularly sections 28 and 29.

Labor Senators are not satisfied that provisions related to interfering with political liberty and property offences necessarily constitute maritime security related offences.

This matter was raised during the hearing:

[Senator O'BRIEN](#)— ... What is the relevance of section 28 to maritime security? Can you explain that to me, please?

Ms Liubescic—It was because there were a number of other categories in that part. That is why the whole part appears in the crimes list.

[Senator O'BRIEN](#)—If the regulation had said 'part II, except sections 28 and 29', for example, that would equally cover what you intended to cover?

Ms Liubescic—That is right.

[Senator O'BRIEN](#)—So it could be a drafting error.

Ms Liubescic—Yes.

[Senator O'BRIEN](#)—What about 29? Why is that in there?

Ms Liubescic—Again, it is the same sort of issue where the part was relevant to what we were trying to do, so we just included the entire part.²

Labor Senators remain dissatisfied with the department's response and urge the government to reconsider the inclusion of these offences in draft table 6.07C for reasons of convenience or, worse, drafting error.

We draw the government's attention to the intended lax operation of draft regulation 6.07K which would, on the face of it, permit persons convicted of disqualifying offences, including supplying in weapons of mass destruction, access to maritime security zones when engaged in a "recreational activity".

Labor Senators are not satisfied by the government's assurance that such persons would need to be escorted to gain access. Such persons should not have access to maritime security zones under any circumstances.

Post roll-out phase

Labor Senators share the concerns expressed by witnesses that the planned devolution of critical responsibilities, including assessment, to issuing bodies post-1 July 2006 has the potential to compromise the privacy of MSIC applicants and the overall integrity of the MSIC regime.

We urge the government to put national security interests ahead of narrow budgetary concerns and reconsider its decision to devolve critical responsibilities to issuing bodies from 1 July next year.

Cost recovery

Labor Senators are not satisfied the government has adequately addressed concerns about cost recovery.

The committee heard varying cost estimates and suggestions in relation to where the cost burden associated with obtaining a MSIC might fall.

Labor Senators believe the matter of cost recovery should be referred to the working group for further discussion.

Temporary access

2 *Hansard*, 12 July 2005 p.55

Labor Senators are deeply concerned by the government's intention to permit access to maritime security zones by non-MSIC-holders subject to little more than closed circuit television surveillance.

While welcoming the committee's recommended strengthening of the access regime through a 'sign in' system and one to one surveillance, Labor Senators believe no cogent argument has been presented for the proposed open access to maritime security zones.

We believe that access by non-MSIC-holders has the potential to degrade security and undermine the integrity of the strengthened maritime security regime.

Labor Senators urge the government not to replicate in a maritime context the airside access regime currently in place at airports and under external review due to identified deficiencies.

We urge the government to strengthen the proposed access regime by developing new regulations in consultation with members of the working group.

Foreign seafarers

Labor Senators note that foreign seafarers are not required to obtain a MSIC.

Nor does the proposed regime enhance security checks on foreign seafarers.

The joint unions' submission identifies poor screening of foreign seafarers as a weakness in Australia's maritime security.

It is a matter of regret the government has failed to address improved screening of foreign seafarers alongside the improved screening of Australian seafarers and other maritime and transport workers.

Labor Senators urged the government to address this anomaly in consultation with members of the working group.

Coastal permit system

Labor Senators are concerned about the integrity of the coastal permit system and the potential impact on maritime security arising from its abuse.

We note that an audit of the coastal permit system has identified manifest inadequacies in its administration.

Labor Senators urge the government to release the audit report and provide the committee with details of changes to procedures already implemented and proposed to be implemented through revised regulations governing coastal trading.

Abuse of maritime security

Labor Senators note evidence to the inquiry that some ships masters have abused the maritime security regime to achieve industrial objectives.

We urge the government to take action against maritime industry members who exploit security measures to achieve non-security-related objectives.

Container inspections and transport of high consequence dangerous goods

Labor Senators note the finding of the report that concerns over inadequate screening of containers transhipped through Australian ports and the carriage of high consequence dangerous goods by flag of convenience ships warrant government consideration.

We believe such glaring deficiencies in Australia's maritime security – identified in submissions to this inquiry – must be addressed as a matter of priority.

Senator Anne McEwen (ALP, South Australia)

Senator Glenn Sterle (ALP, Western Australia)

Senator Kerry O'Brien (ALP, Tasmania)

Senator Ruth Webber (ALP, Western Australia)

