

**INQUIRY INTO THE ADMINISTRATION OF THE
MARITIME TRANSPORT SECURITY ACT 2005**

of the

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

Submission

-

Transport Workers' Union of Australia

Introduction

Like the many other workers represented by other trade unions, the workers represented by the Transport Workers' Union of Australia ("the TWU"), are the eyes and ears on Australia's wharves, port facilities and ships. Their contribution to the process adopted to facilitate the introduction of the Maritime Security Industry Card ("MSIC") has proved to be an invaluable resource.

The TWU and other unions have committed to working with the Government to ensure that this legislative change will provide a safe and secure workplace for our members and secure ports for Australia.

Central focus

The primary submission to be made regarding the scope of this Act and the accompanying regulations is that the policy behind these instruments should remain the central focus. That is, these instruments have been designed to mitigate terrorist threats to Australia's ports.

The Committee should not be swept up in the hysteria manufactured recently by the media and sadly, perpetuated by some politicians. It is of critical importance in considering the Regulations and indeed any submission made to this Inquiry

that the distinction between potential terrorist activity and general criminal behavior is borne in mind.

DOTARS Working Group

In an attempt to improve on the poor consultation process adopted by the Government when the Airline Security Identification Card (the "ASCI") was introduced, the Department of Transport and Regional Services ("DOTARS") established a working group ("the WG") of industry participants, including some trade unions. This group has given valuable advice to DOTARS officials on almost every aspect concerning the introduction of the MSIC and for the most part the WG reached a consensus position.

It was of great disappointment that this was not the case as far as the off shore oil and gas industry is concerned. The consultation with stakeholders involved in this industry was poor, with some parties only being contacted in the last six weeks.

Despite the stated success of the WG in reaching consensus on most of the contentious issues, there remain a number of issues that cause the TWU concern and it is apparent that these concerns are shared across the industry.

Need for a central agency

The application process for the MSIC for the roll out period (1 September 2005 – 1 July 2006) is as follows:

1. A 100 point identity check is completed and the completed MSIC application form is forwarded to DOTARS;
2. DOTARS forward the application to the Australian Security and Intelligence Organisation (“ASIO”), the Australian Federal Police (“the AFP”) and the Department of Immigration and Multicultural and Indigenous Affairs (“DMIA”) where necessary.
3. ASIO and the AFP perform background checks against the list of crimes as they appear in regulation in table 6.07C.
4. These agencies advise DOTARS of the results of these background checks in one of the follow ways:
 - (a) Red: no card issued - disqualify offence found (see reg 6.07C Items 1-2 For list of disqualify offence);
 - (b) Amber: more information required to make a decision – exclusionary offence found (see reg 6.07C Items 3-8 for list of exclusionary offences);
 - (c) Green: card issued.

The post roll out application process currently removes DOTARS from the process. Instead, the issuing body directly receives the results of the background checks and it is this aspect of the process that the joint unions take issue with.

The TWU objects to this post roll out process due to the inevitable encroachment on privacy. Grave concerns are held that any information received by the federal

agencies could influence employment decisions as it is clear that employers may act as issuing bodies. Even where the employer appoints an agent to act as issuing body, the relationship between these two parties may be such that the employer still has lawful access to any information the issuing body holds.

We are not a lone voice as far as this issue is concerned. The Maritime Industry Participants (“MIPs”) have been adamant from the commencement of the consultation process that they have no interest in the results of the background checks. Therefore, it is the consensus position that the Government must retain their central agency role post roll out.

Another issue the TWU has with this process is the lack of clarity of the process where an application might attract an amber light. DOTARS officials have advised us that where an amber light is given discretion may be used to determine whether a demonstrable link can be made between the convictions recorded and potential terrorist activity. However, the regulations do not prescribe the manner in which discretion may be applied nor the factors that may be taken into account.

Further Profiling or Testing

Recent media reports over international drug smuggling arrests and subsequent convictions involving Australian citizens led to what could only be described as a fit of pique over security arrangements at Australia’s airports. This was unhelpful

for several reasons. Firstly, those vocal in the media consistently confused issues of general criminality with steps the government should take to reduce risks of terrorism. Secondly the “debate” regarding airport security spilled over onto the wharves. Suddenly politicians were falling over themselves to attempt to describe the type of criminal conviction that could disqualify an applicant from receiving an ASIC or a MSIC. Thirdly came the advent of two spurious terms – “fit and proper person” and “pattern of criminality”.

Throughout this frenzy scant regard was paid to the exhaustive and careful deliberations of the WG in producing a package of practical, fair and considered measures that would achieve the Government's primary objective. During the MSIC consultation process the TWU and other unions worked hard with the Government and Industry to ensure that people who pose a genuine security risk will be excluded from ports whilst ensuring that those who do not pose such a threat are not.

Further, little regard was paid to the principles of one having “paid their debt to society” or “rehabilitation”. The former Deputy Prime Minister merely announced that Australians now require a higher standard – the only Australians calling for such a standard were politicians and journalists!

It was also unhelpful that some then sought to articulate the nature of any convictions that may or may not disqualify an applicant from receiving a MSIC.

According to Minister Ruddock, apparently a person convicted for using a personal amount of marijuana as university student may not disqualify an applicant however convictions for other drug offences could.

This type of ill-informed discussion was unhelpful because the main object of the legislation – preventing terrorist attacks on our ports, was forgotten. The point needs to be made that even a conviction for a serious criminal offence such as murder or assault does not necessarily indicate a propensity for terrorist activity. This is precisely the reason why the WG settle on a category of exclusionary offences where discretion may be applied (presumably taking into account the circumstances of each individual case - although, as stated earlier it is not known what may be taken into account when applying discretion).

The TWU warns those flirting with an unnecessarily broad and sweeping approach to background checking, that such an approach will have the effect of condemning many workers to life on the welfare scrapheap, long term unemployment and potentially further poverty induced criminal activity. Such drastic steps should only be taken where there is a demonstrated link between the criminal activity and potential terrorist activity.

Provision to allow non MSIC card holders access to secure areas

Any provision to allow the non MSIC card holder access to secure areas has the potential to be abused and has proved to be the root of a significant security risk

in the airline industry. In that industry, a person who has an operational need to be in a secure area must have a ASIC or be **supervised** by an ASIC holder. TWU members have reported that frequently no such supervision occurs and those persons, who do not hold a card and who have not received the appropriate security clearance, are left to wander the secure areas at their leisure.

We have been advised that it is possible to rush AFP and ASIO checks and have them completed within 24hrs. In this context there should be no need (with the exclusion of an emergency requiring the assistance of persons described in reg 6.07W) to issue “temporary cards”, “day passes”, “short term” or “extended visitor passes” to persons who have not received the necessary security clearances.

DOTARS have also recently agreed to allow persons in secure areas who are not MSIC holders to work without be accompanied or directly supervised by a MSIC holder. DOTARS is proposing to allow such persons to be supervised by CCTV. Such an arrangement is yet another step further removed from the basic requirement that persons in a secure area must hold a MSIC.

Further, if the airline industry can be trusted as a legitimate predictor, the security function will almost certainly be contracted out - but contracted out and then contracted out again – it could be described as a pyramid arrangement. As the situation currently exists at Sydney airport for example, the security guards that

screen bags or check ASIC's are employed by a contractor who have a contract with another contractor who have a contract with Sydney Airport Corporation Limited. This is the first problem – a very diluted chain of command.

The second problem is that it is the experience in the airline industry that these types of jobs suffer a very high turnover and (due to the long delays in between applying for as ASIC and receiving it), security personnel are often holders of short term or extended visitor passes themselves. Therefore, potentially the person “monitoring” the non-MSIC holder and even the MSIC holders, may not hold a MSIC himself or herself.

Issuing bodies

We congratulate the Government on recognising the settled view amongst the WG that an issuing body need not be a Maritime Industry Participant (“MIP”) or appointed agent by a MIP. The Government quite rightly recognised that insisting that a person applying to become an issuing body must be appointed agent was not a commonsense or workable solution.

Unlike most ASIC holders or most traditional maritime workers, truck drivers who potentially require a MSIC are not direct employees of MIPs. In fact such transport workers may not be direct employees of transport operators, but contractors or sub-contractors servicing a number of MIPs. Therefore, the most

appropriate person to issue a MSIC to transport workers may well not be a MIP or have any involvement in the maritime industry at all. Under the previous drafts of the regulations, if a person from the trucking industry desired issuing body status, it would have been quite possible that he or she may have need to be appointed agent by a number of MIPs or all MIPs. This becomes problematic if some MIPs are prepared to do that and others are not. Some MIPs may have decided that they had an arrangement with an issuing body to issue MSICs exclusively to a particular MIP. Both of these examples could lead to a situation where a truck driver would have been required to apply for and **pay for** a number of MSICs from a number of issuing bodies for entry into a number of MIPs security zones.

It appears that the root of this problem is that this part of the regulations as previously drafted, were not tailored for **employees** of **a** MIP employed at a single location. The regulations did not contemplate or adequately accommodate contractors servicing a number or all MIPs or issuing bodies that might issue MSICs to such contractors.

Further, there was no apparent operational need for an issuing body to have a relationship with a MIP or be "**the most appropriate** person to act as an issuing body". It must be the case that provided that a prospective issuing body meets the regulatory requirements, its relationship with the maritime industry and its participants is irrelevant.

Transport Workers' Union of Australia