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MM05/00262

Senator Bill Heffernan  
Chair  
Senate Rural and Regional Affairs  
Transport Legislation Committee  
Parliament House  
CANBERRA 2600 ACT

Dear Senator Heffernan

Thank you for your letter requesting a submission to an inquiry by the Rural and Regional Affairs Transport Legislation Committee into the administration of the *Maritime Transport Security Act 2005*.

NSW has provided input into the development of the *Maritime Security Amendment Bill 2005* through representation on the Maritime Security Identification Card (MSIC) Working Group convened by the Department of Transport and Regional Services (DOTARS).

However, you should be aware the timeframe for implementation of the MSIC scheme has been tight, limiting the opportunity for adequate consultation. In addition those stakeholders affected by the new regulatory regime have not been consulted on the details of the draft regulations as those details have not been disclosed to the State.

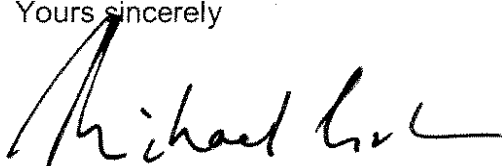
In the absence of such details NSW port operators have experienced difficulties in assessing the potential costs and administrative burden of potentially becoming a MSIC issuing body.

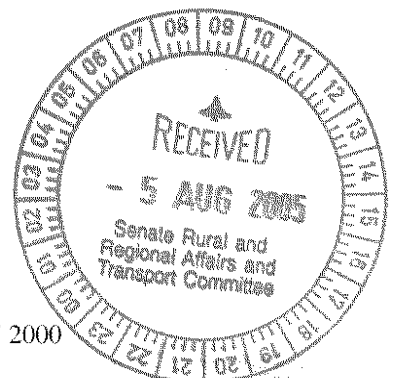
Informal suggestions from DOTARS indicate in future circumstances of elevated security, the requirement for a MSIC could be applied to the whole security regulated port area, not just declared security zones. In some instances this could involve quite a large area. NSW would therefore require clarification on whether all workers and contractors in such a large area would be required to hold an MSIC.

The following submission addresses each of the Inquiry's key issues of focus as listed in your letter.

If further information is required the appropriate contact is NSW Maritime's General Manager Shipping, Security and Environment, Mr Tony Middleton, on (02) 9563 8615.

Yours sincerely

  
MICHAEL COSTA



**NSW SUBMISSION TO THE RURAL AND REGIONAL AFFAIRS  
TRANSPORT LEGISLATION COMMITTEE INQUIRY INTO THE  
ADMINISTRATION OF THE *MARITIME TRANSPORT SECURITY ACT 2005***

- a) *Whether the regulatory framework to be implemented adequately protects privacy interests.*

A key concern of the Maritime Security Identity Card (MSIC) Working Group convened by the Department of Transport and Regional Services (DOTARS) for the purpose of developing the MSIC scheme has been the maintenance of the privacy interests of applicants. Working Group members have on several occasions raised concerns that MSIC issuing bodies (who are potentially the employers of applicants) may be privy to personal information, including the criminal history, of applicants.

In response to these concerns, it is understood DOTARS agreed to undertake a coordination and adjudication role for the MSIC roll-out period (1 Oct 05 to 30 Jun 06). However, after this nine month period this responsibility will then fall back on the issuing bodies which will potentially be privy to the criminal history of applicants.

NSW would argue the privacy of applicants will not be appropriately protected if DOTARS or another competent government agency does not remain responsible for this coordination and adjudication role for the life of the MSIC scheme.

- b) *The appropriateness of the cost recovery model in respect to such an important area of national security.*

It is noted the recent legislative amendments simply allow the bodies that will be responsible for issuing MSICs to recover the costs involved in administering the process, including background checks. It is not clear how such costs may or may not be passed on to employees who require security checks—many of whom will have worked in the maritime industry for some years.

- c) *The adequacy of law enforcement mechanisms available to enforce the regulatory scheme.*

To date, NSW law enforcement mechanisms have been adequate for the implementation of maritime security arrangements under the *Maritime Transport Security Act 2003*. Should this capability be less than what is required to meet additional port security needs as a result of the introduction of the MSIC then it is suggested extra law enforcement mechanisms should be considered. Any additional resource requirements should attract appropriate Federal Government funding.

d) *The adequacy of oversight and compliance inspection regimes.*

It is currently proposed DOTARS Maritime Security Inspectors and law enforcement officers including Commonwealth and State Police and Customs be responsible for MSIC oversight and compliance mechanisms. NSW questions the adequacy of the existing three DOTARS Maritime Security Inspectors who are responsible for multiple port locations throughout NSW, which will potentially accommodate tens of thousands of MSIC holders. NSW is not aware of any consultation between DOTARS and relevant State law enforcement agencies to determine what impact any compliance activities may have on their operations.

e) *The adequacy of existing security checks for foreign seafarers.*

The Working Group has raised concerns over the adequacy of existing checks on foreign seafarers and this appears to remain an area of weakness for the program. However, it is noted this is primarily a matter for the Federal Government to negotiate at an international level through the International Maritime Organisation.

f) *The fair operation of security checks with respect to existing employees.*

The issue of security check equity for existing employees has also been a key area of concern for the Working Group. NSW notes an equitable process has been developed to permit a level of discretion to be exercised across the program. These include clearly identified offences that will disqualify an applicant. However, there are also a range of offences that provide the ability for a competent authority to exercise some discretion as to the nature of the offence. This endorsement hinges on the premise that guidelines will be developed that provide for this discretion to be exercised in a consistent manner and that this discretion will be exercised by an appropriate government agency (DOTARS or otherwise) and not an issuing body.

g) *The adequacy of consultation mechanisms in respect to the regulatory framework.*

It is acknowledged the Working Group has been an appropriate forum for consultation. However, the speed at which the MSIC scheme has been developed has impacted on the level of input NSW has been able to provide. NSW also notes with concern the lack of State law enforcement agencies on the Working Group, particularly as they have been identified as key response and compliance agents.