Maritime Transport Security Amendment Regulations 2004 (No. 1) 2004 No. 34

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 34

Issued by Authority of the Minister for Transport and Regional Services

Subject: *Maritime Transport Security Act 2003*

Maritime Transport Security Amendment Regulations 2004 (No. 1)

Subsection 209 (1) of the *Maritime Transport Security Act 2003* (the Act) provides that the Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act gives effect in Australian law to a new international maritime security regime, which comes into force on 1 July 2004. The new regime is set out in the new Chapter XI-2 of the International Convention for the Safety of Life at Sea (SOLAS) and the International Ship and Port Facility Security (ISPS) Code.

The purpose of the Regulations is to establish additional key requirements for Australian maritime industry participants (MIPs) and operators of foreign regulated ships, as well as to correct some minor errors and clarify some provisions in the *Maritime Transport Security Regulations 2003* (the Principal Regulations).

The enforcement provisions of the Act are due to commence on 1 July 2004, to coincide with the deadline for compliance with the new international maritime security regime. The provisions of the Regulations would assist Australian MIPs to complete their maritime security plans in time to comply with the new regime.

In summary, the amendments to the Principal Regulations specify:

- pre-arrival information for regulated foreign ships and pre-entry information for regulated Australian ships;

- the matters to be covered by ship security records for regulated Australian and foreign ships;

- the form and content of an application for an International Ship Security Certificate and who is entitled to view such Certificates;

- the form of an identity card for a maritime security inspector;

- training and qualification for maritime security guards and screening officers;

- the form, issue and use of identity cards for maritime security guards and screening officers;

- time limits for keeping information current, and penalties for breaches;

- notices to be displayed at screening points;

- methods for the identification of water-side restricted zones;

- methods for the communication of maritime security levels, security directions and control directions;

- who are port service providers; and

- exemptions for certain types of ships.

Details are set out in the Attachment.

The amendments to the Regulations commence in two stages. The first stage commenced on the date of gazettal and comprises regulations 1 to 3 and Schedule 1. These provisions assist maritime industry participants with the development of their maritime and ship security plans to achieve compliance with the Act by 1 July 2004. All other proposed amendments to the Principal Regulations will commence on the commencement of Part 2 of the Act. Part 2 of the Act is to commence on a date to be fixed by Proclamation. The Proclamation has been made to fix 1 July 2004 as the date on which Part 2 of the Act commences. This date is consistent with the deadline for compliance with the international maritime security regime.

ATTACHMENT

Details of the proposed *Maritime Transport Security Amendment Regulations 2004 (No. 1*)

1 Name of Regulations

This regulation provides that these regulations are to be cited as the *Maritime Transport Security Amendment Regulations 2004 (No. 1).*

2 Commencement

This regulation provides that these regulations commence in two stages. The first stage commenced on the date of gazettal and comprise Regulations 1 to 3 and Schedule 1. These amendments assist maritime industry participants with the development of their maritime and ship security plans to achieve compliance with the Act by 1 July 2004.

All other proposed amendments to the Principal Regulations will commence on the commencement of Part 2 of the Act.

Part 2 of the Act is to commence on a date to be fixed by Proclamation. The Proclamation has been made to fix 1 July 2004 as the date on which Part 2 of the Act commences. This date is consistent with the deadline for compliance with the international maritime security regime.

3 Amendment of *Maritime Transport Security*

Regulations 2003

This regulation provides that Schedules 1 and 2 amend the *Maritime Transport Security Regulations 2003.*

Schedule 1 Amendments commencing on gazettal

Item 1 Subregulation 1.03 (1), after definition of *contact details*

The defined term 'contracting government' is inserted to refer to a contracting government to the International Convention for the Safety of Life at Sea (SOLAS Convention). SOLAS uses the same term.

Item 2 Subregulation 1.03 (1), after definition of PESO

The defined term 'pleasure craft' is inserted to refer to a ship that is used, or intended to be used, wholly for recreational or sporting activities.

Item 3 Subregulation 1.03 (1), after definition *of water-side restricted zone*

The defined term 'working day' is inserted to refer to a day other than a Saturday, a Sunday, or a day that is a public holiday in the State or Territory where operations are conducted.

Item 4 Regulation 1.05

This item substitutes a new regulation 1.05. The amended regulation clarifies that an operator of a kind set out in subregulation 1.05 (2) is prescribed if the operator provides port services to security regulated ships.

The amended subregulation 1.05 (2) revises the previous list of prescribed port service providers. Most significantly, 'line handling operator' has been replaced with 'line handling boat operator' to limit the application of this regulation to those line handlers who operate on the water-side, and 'pilot boat operator' has been replaced with 'pilotage service provider' to extend the application of this regulation to pilot operators who, for instance, use helicopters to reach security regulated ships.

Item 5 Regulation 1.55, heading

This item substitutes a new heading for regulation 1.55. The amended heading is '1.55 Ship security records - regulated Australian ships', to distinguish these requirements from those in the new regulation 1.56 (see item 10, below).

Item 6 Paragraph 1.55 (1) (h)

To enable subregulation 1.55 (1) to be extended beyond paragraph 1.55 (1) (h), a semi-colon replaces the full stop at the end of that paragraph.

Item 7 After paragraph 1.55 (1) (h)

This item prescribes additional documentation which is required to be kept on board a regulated Australian ship as part of its ship security records.

This additional information includes 'other practical security-related information in accordance with regulation XI-2/9.2.1 of the SOLAS Convention', which in the guidance provided in Part B of the International Ship and Port Facility Security Code (ISPS) Code may include the information contained in the Continuous Synopsis Record (an on-board record of the ship's history as required under regulation XI-1/5 of the SOLAS Convention), location of the ship at the time the report is made, expected time of arrival of the ship in port, crew list, general description of cargo aboard the ship, passenger list and information required to be carried under regulation XI-2/5.

Item 8 Subregulation 1.55 (3)

This item substitutes subregulation 1.55 (3) and inserts a new subregulation 1.55 (3A). The amended subregulation 1.55 (3) simply provides that ship security records must be made available for inspection in accordance with the Act and these Regulations. The existing subregulation 1.55 (3) provides generally for the circumstances in which records must be made available.

New subregulation 1.55 (3A) is inserted to specify the ship security records that must be made available for inspection at the request of a person who is authorised by a contracting government to undertake such inspections.

A note under subregulation 1.55 (3A) refers the reader to the provisions specifying who may inspect the International Ship Security Certificate (ISSC) of a regulated Australian ship.

Item 9 Subregulation 1.55 (4)

The amended subregulation clarifies that ship security records must be kept on-board the ship for 7 years. The current subregulation does not stipulate that records must be kept on-board the ship.

Item 10 After regulation 1.55

This item inserts new Regulation 1.56 'Ship security records - regulated foreign ships' to prescribe ship security records for regulated foreign ships.

Item 11 After regulation 1.70

This item inserts new Regulation 1.75 'What are not regulated Australian ships' to specify the types of ships that are exempt from the Act and Principal Regulations.

This item also inserts new Regulation 1.80 'What are not regulated foreign ships' to specify the types of ships that are exempt from the Act and Principal Regulations.

Item 12 Regulation 3.35

To enable two new subregulations to be added to regulation 3.35, the existing regulation becomes subregulation 3.35 (1).

Item 13 Regulation 3.35

This item inserts new subregulation 3.35 (2) and (3) to make it a strict liability offence for a port operator to fail to notify the Secretary of the Department of Transport and Regional Services (the Secretary) within 2 working days of a change in any of the information given under this regulation. A maximum penalty of 20 penalty units applies to a breach.

Item 14 After regulation 3.105

This item inserts new Regulation 3.016 'Obligation to keep information current' to provide that a port facility operator commits a strict liability offence if he or she fails to notify the Secretary within 2 working days of a change in any of the information given under regulations 3.100 or 3.105. A maximum penalty of 20 penalty units applies to a breach.

Item 15 After regulation 3.190

This item inserts new Regulation 3.191 'Obligation to keep information current' to provide that a port service provider commits a strict liability offence if he or she fails to notify the Secretary within 2 working days of a change in any of the information given under regulations 3.185 or 3.190. A maximum penalty of 20 penalty units applies to a breach.

Item 16 Paragraph 3.210 (b)

This item substitutes a new paragraph 3.210 (b). The amended paragraph clarifies that a maritime security plan for a port service provider must also address measures to prevent unauthorised access to vessels or helicopters operated or used by the provider. The current paragraph does not refer to helicopters.

Item 17 Paragraph 4.20 (j) to (l)

This item corrects terminology and spelling errors in paragraphs 4.20 (j) to (l).

Item 18 After regulation 4.30

This item inserts a new Regulation 4.31 'Obligation to keep information current' to provide that a ship operator commits a strict liability offence if he or she fails to notify the Secretary within 2 working days of a change in any of the information given under regulations 3.185 or 3.190. A maximum penalty of 20 penalty units applies to a breach.

Item 19 Paragraph 4.45 (e)

This item substitutes a new paragraph 4.45 (e). The amended paragraph requires that ship security plans address procedures for the acknowledgement of security level notification. The existing paragraph requires more generally that such plans include procedures for responding to security directions.

Item 20 Subregulations 4.80 (2) and (3), except the note

This item substitutes new subregulations 4.80 (2) and (3). The amended subregulations requires a master of a regulated Australian ship that is due to arrive from a place outside of Australia at an Australian port to give pre-entry information, as prescribed in paragraphs 4.80 (2) (a) to (f), to a customs officer.

The amended subregulations also provide that the pre-entry information must be given at the time the crew report is given. The crew report is a report required under section 64ACB of the *Customs Act* 1901.

Item 21 Paragraph 4.100 (c)

This item amends paragraph 4.100 (c) to refer to new subregulation 1.55 (3A) (see item 8, above).

Item 22 After Division 4.3

This item inserts new Division 4.4 heading 'Approving, revising and cancelling ship security plans' with a note explaining that this Division heading is reserved for future use.

This item also inserts new Division 4.5 'International ship security certificates' and regulation 4.140 'Applications for ISSC'. 'ISSC' is defined in section 10 of the Act 'as an international ship security certificate within the meaning of the ISPS Code'.

New subregulation 4.140 (1) provides that an application for an ISSC must be in writing and must identify certain ship-specific details.

New subregulation 4.140 (2) provides that the application must state when the ship is available for an ISSC verification inspection.

New regulation 4.145 'Inspections by authorised persons' provides that an ISSC for a regulated Australian ship must be made available for inspection at the request of a contracting government.

Item 23 Paragraph 13.05 (1) (c)

This item corrects a terminology error.

Item 24 Paragraph 13.05 (1) (d)

This item corrects a terminology error.

Schedule 2 Amendments commencing on commencement of Part 2 of *Maritime Transport Security Act 2003*

Item 1 Division 2.2

Division 2.2 'Maritime security levels' is currently 'reserved for future use'. This item inserts new Regulation 2.25 'Notifying maritime security level 2 and 3 declarations and revocations (Act s 32)' under Division 2.2, to clarify that the Secretary or port operator must notify a declaration or revocation orally, in writing, or by electronic transmission.

Item 2 Regulation 2.35

This item substitutes a new Regulation 2.35 'Giving and communicating security directions (Act s 33 (5))' to provide that the Secretary must give a security direction, or notify a person of the revocation of a security direction, orally, in writing, or by electronic transmission.

A note under subregulation 2.35 (1) refers the reader to subsection 33 (4) of the Act which provides that a security direction has no effect until the Secretary commits it to writing. In practice, when an oral direction has been given it will be followed up with a written confirmation.

New subregulation 2.35 (2) provides that a port or ship operator who is required to communicate a security direction must do so orally, in writing, or by electronic transmission.

Item 3 Division 5.1

Division 5.1 'Obligations' is currently 'reserved for future use'. This item inserts new Regulation 5.10 'Pre-arrival information', under Division 5.l, to provide that a master of a regulated foreign ship that is due to arrive from a place outside of Australia at a port in Australia (regardless of whether it is the first port or a subsequent port on the same voyage) must give pre-arrival information, as prescribed in paragraphs 5.10 (2) (a) to (f), to a customs officer.

New subregulation 5.10 (1) provides that the pre-arrival information must be given at the time the crew report is given. The crew report is a report required under section 64ACB of the *Customs Act* 1901.

Item 4 Regulation 5.25

This item substitutes a new Regulation 5.25 'Giving control directions (Act s 99 (7))' to provide that the Secretary must give a control direction to a ship operator for, or master of, a regulated foreign ship orally, in writing, or by electronic transmission.

A note refers the reader to subsection 99 (5) of the Act which provides that a control direction has no effect until the Secretary commits it to writing. In practice, when an oral direction has been given it will be followed up with a written confirmation.

Item 5 Regulation 6.65

This item substitutes a new Regulation 6.65 'Identification of zones', to provide a broad description of what means can be used to clearly identify a water-side restricted zone.

Item 6 After regulation 7.30

This item inserts a new Regulation 7.33 'Notice to be displayed at screening points' to provide that notices must be displayed at screening points to alert persons that it is an offence under the Act to carry weapons or prohibited items through a screening point. The notice must include a list of weapons and prohibited items that are prescribed in the Act and regulations.

A note under regulation 7.33 refers the reader to section 10 of the Act and regulations 1.60 and 1.65 which prescribe what are prohibited items and weapons.

A second note under regulation 7.33 refers the reader to sections 121 and 128 of the Act which create offences for carrying weapons and prohibited items through screening points by persons who are not authorised under those sections and regulation 7.45 to do so.

Item 7 Paragraphs 7.40 (2) (b) and (c)

To enable the removal of paragraph 7.40 (2) (c), a full stop replaces the semi-colon at the end of paragraph 7.40 (2) (b). Paragraph 7.40 (2) (c) currently authorises the master of a security regulated ship to have a weapon or prohibited item in their possession in a cleared zone if that weapon or prohibited item is for controlling or euthanising live-stock in the ship. This provision is to be removed because it is superfluous. Paragraph 7.40 (3) (a) permits the master of a security regulated ship to have a weapon or prohibited item in a cleared zone if the purpose is to carry the weapon or prohibited item on-board and safely store it.

Item 8 Paragraph 7.50 (d)

To enable the insertion of another item after paragraph 7.50 (d), a semi-colon replaces the full stop at the end of that paragraph.

Item 9 After paragraph 7.50 (d)

This item inserts new paragraph 7.50 (e) to permit veterinarians or quarantine officers to carry weapons or prohibited items on board security regulated ships for the purpose of controlling or euthanising live-stock.

Item 10 Division 8.2

Division 8.2 'Maritime security inspectors' is currently 'reserved for future use'. This item inserts new Regulation 8.20 'Identity cards (Act s 137 (2))' to prescribe the minimum requirements for the form of identity cards for maritime security inspectors.

New subregulation 8.20 (2) makes it an offence for a maritime security inspector not to show his or her identity card if requested by a person representing or apparently representing a maritime industry participant. A maximum penalty of 5 penalty units apply to a breach.

Item 11 After Division 8.4

This item inserts a new Division 8.5 'Maritime security guards'. New Regulation 8.50 'Training and qualifications' prescribes the minimum training and qualification requirements for maritime security guards.

New Regulation 8.55 'Identity cards (Act s 162 (2) (b))' prescribes the minimum requirements for the issue, use and form of identity cards for maritime security guards.

This item also inserts new Division 8.6 'Screening officers'. New Regulation 8.60 'Training and qualifications' prescribes the minimum training and qualification requirements for screening officers.

New regulation 8.65 'Identity cards (Act s 165 (2) (b))' prescribes the minimum requirements for the issue, use and form of identity cards for screening officers.

Regulation Impact Statement

Please note that this Regulation Impact Statement (RIS) was prepared for the introduction of the Maritime Transport Security Bill 2003 into Parliament. It was not necessary to prepare a separate RIS for the Maritime Transport Security Amendment Regulations 2004 as the RIS for the Bill covers the regulatory impact of the regulations.

Part 1 Problem

The terrorist attacks since 11 September 2001, the attack on the French tanker *Limburg,* and the Bali bombing have raised global awareness and concern of the devastating effects terrorist attacks can have on human life, public infrastructure, and private industry assets and operations. At the international level and in many cases at the national level there has been a realisation that public and private assets, critical infrastructure, and business operations may not be adequately protected from the risk of being the target of a terrorist attack or other equally disruptive unlawful activity.

In the case of the maritime industry, the International Maritime Organization (IMO), the principal maritime industry body at international level, addressed this problem by developing a new preventive security regime to enhance security at ports, terminals, facilities, and on board ships. The new regime has been given effect through amendments to the Safety of Life at Sea (SOLAS) Convention, 1974. The relevant amendment to SOLAS is the newly inserted Chapter XI-2 and its companion, the two-part International Ship and Port Facility (ISPS) Code. Part A of the ISPS Code is mandatory for Contracting Governments, and Part B is recommendatory. It should be emphasised that Chapter XI-2 and the ISPS Code establish a *preventive* security system with commonsense security measures and activities for operators of ports, facilities, terminals and ships to implement. It is not intended to replace any national or international counter-terrorism response mechanisms or other law enforcement activities.

Australia is a signatory to SOLAS and adopted the amendments to SOLAS at the IMO's Conference of Contracting Governments in December 2002. The deadline for

implementation of Chapter XI-2 and the ISPS Code is tight. Contracting Governments will have been deemed to have accepted the amendments by the end of 2003 - unless an objection is lodged - and are required to ensure that the requirements in Chapter XI-2 and the ISPS Code have been adequately implemented by 1 July 2004. To do so, the Australian Government has deemed it appropriate to establish a regulatory system to guide the Australian maritime industry towards compliance with the international regime by 30 June 2004.

The consequences of not establishing an efficient regulatory maritime security regime to compliment the international one range from significant reduction in business operations for those Australian maritime industry participants (eg. ports, facilities, terminals, ships) who are not compliant and may therefore be excluded from trading with compliant international maritime industry participants to serious infrastructure and asset damage due to a terrorist incident which could have been prevented by implementing the preventive security arrangements contemplated in the Maritime Transport Security Bill (the Bill). The map below demonstrates the maritime security challenges Australia faces.

(MAP OMITTED)

A report from the Organisation for Economic Co-operation and Development (OECD) from July 2003 entitled 'Security in martime [sic] transport: risk factors and economic impact' indicates that world trade depends on maritime transport and that the vulnerabilities of the maritime transport sector range from the possibility of physical breaches of the integrity of shipments and ships to document fraud and illicit money-raising for terrorist groups. The stakes, the OECD report emphasises, are extremely high because any major breakdown in the maritime transport sector would fundamentally cripple the world's economy. The United Nations Conference on Trade and Development estimates that 5.8 billion tonnes of goods were traded by sea in 2001 which accounts for 80% of world trade by volume. The bulk of trade is carried by over 46,000 vessels servicing nearly 4,000 ports throughout the world. The OECD report makes two critical conclusions:

1. the costs of inaction are potentially tremendous because the costs of government and/or industry reaction to an attack are far greater than the costs of adequately equipping a port, port facility or ship with preventive security measures; and

2. benefits will flow from enhancing security at ports, port facilities and on board ships, such as reduced delays, faster processing times, better asset control, decreased payroll due to improved information management systems, fewer losses due to theft, and decreased insurance costs.

These conclusions align with the policy position of the Australian Government and underpin the rationale for the Maritime Transport Security Bill.

Part 2 Objectives

The primary objective for the Australian Government in taking action is to adequately safeguard against unlawful interference with maritime transport in Australia. A secondary objective is to establish a national regulatory framework to assist maritime industry

participants to comply with the requirements in Chapter XI-2 and the ISPS Code. This will enable the Australian Government to inform the IMO by the deadline of 1 July 2004 that Australian ports, facilities, terminals and ships are compliant with the new international rules. As a result there will be no disruption to trade with other SOLAS signatories. The Problem identified in Part 1 above will be adequately addressed through the implementation of these objectives.

When pursuing these objectives the Australian Government is not intending to impact adversely on:

- existing counter-terrorism arrangements, law enforcement legislation and police operations at the Commonwealth, State or Northern Territory level;

- other Commonwealth operations and activities at ports (such as border protection);

- the relationship between State and Northern Territory governments with ports under their jurisdiction; or

- the efficient operations of the maritime industry participants to be regulated.

Part C Options

The main options available to the Australian Government are described below.

Option 1 Explicit government regulation

To ensure that Australian maritime industry participants are compliant with the IMO maritime security regime, the Bill proposes an outcomes based maritime security framework to regulate the maritime industry. The universal application of a single regulatory system for maritime security will provide maritime industry participants throughout all States and the Northern Territory with a consistent approach and a central regulator, which is the Department of Transport and Regional Services (DOTARS). DOTARS will assume the responsibility for and costs associated with the assessment of security plans, verification of ship security, liaison with industry, coordination of national maritime threat information, and communication with the IMO on industry compliance issues.

At the last Australian Transport Council (ATC) meeting in May 2003, State and Northern Territory Transport Ministers agreed to the National Maritime Transport Security Framework - the precursory to this Bill - as developed by the Australian Government with the stakeholders from the States, the Northern Territory and industry. The key element of the framework is to put in place preventive security measures to protect Australia's ships, ports and port facilities from the threat of terrorism in accordance with Australia's obligations as signatory to SOLAS. The Transport Ministers also expressed commitment to meeting the international deadline for compliance of 1 July 2004.

This option is considered optimal.

Option 2 Self-regulation

Self-regulation refers to the circumstances where industry formulates the rules for its own operation and where industry is solely responsible for the enforcement of these rules. An example of this would be a code of conduct developed by a peak industry body. A voluntary code would contain the requirements in Chapter XI-2 and the ISPS Code, and it would operate in a similar way to the International Standards Organization (ISO) system. Ships, ports and facilities that wished to comply with the code would seek a certificate of compliance from the organisation administering the code in Australia.

It is suggested that this option would not result in adequate implementation of the IMO security measures because there would be no legislative backing to ensure compliance by Australian flag ships, ports and facilities and therefore no need to comply. A voluntary code would create significant uncertainty as to whether ports, facilities and ships are complying with requirements to upgrade security measures to meet increased risks. In addition, a voluntary code may not satisfy the requirements of foreign ship operators and ports, in which case they may prefer not to trade with Australian ports, facilities and ships.

The general public, for example those undertaking holiday cruises or living in the vicinity of a port facility or port, are becoming increasingly sensitive to maritime security issues. Allowing industry to set security standards would not assuage increasing public concern over maritime security. A terrorist incident involving a major port near residential areas or on board an international cruise liner with Australian citizens aboard would have a major impact on the Australian community.

The potential social and economic consequences of an ineffective industry self-regulatory scheme are too great to permit industry to determine their own standards through a voluntary code of conduct on the matter of maritime transport security.

Option 3 Devolution of the responsibility for maritime security regulation to the States and Northern Territory

Under this option the Australian Government would enact legislation to set out minimum security standards, and the responsibility for regulating the industry would be devolved to the States and the Northern Territory. The legislation would also need to include obligations placed on States and Northern Territory authorities to undertake the administration of the requirements in the amendments to SOLAS and the ISPS Code. The regime would need to be agreed to by the State and Northern Territory governments. The most likely administrative model would be for the Australian Government to enact an overarching statutory framework which would be mirrored at the State and Territory level according to jurisdictional responsibilities, administrative arrangements and local industry needs.

The two-step process of, firstly, the Australian Government enacting legislation and, secondly, each State and Northern Territory following suit would be time consuming and costly. It would be extremely unlikely for this process to be completed in enough time to ensure industry compliance with the international deadline of 1 July 2004.

Even if State and Northern Territory legislation was introduced in time for security plans to be approved and ships to be issued with International Ship Security Certificates, it is likely that each State and the Northern Territory would not have matching systems in place. This

might lead to unfair advantages and confusion, particularly where foreign masters and crew have to adapt to seven different regulatory systems when visiting different State and Northern Territory ports in Australia. It would not be in Australia's best trading interests, or in the interests of Australia's maritime industry, to have seven different, locally controlled regulatory schemes.

As mentioned above, State and Territory Transport Ministers have acknowledged the need for the Australian Government to take the lead role in maritime transport security regulation.

Part 4 Impact Analysis

Due to the urgency of the task and the international compliance deadline, there has not been time to subject the regulatory model proposed in the Bill to detailed quantitative and qualitative research to determine the impact of the Bill on the Australian maritime transport industry, other jurisdictions, and consumers. Nonetheless, information gathered during the period leading up to the development of the Bill strengthens the need for the enhancement of transport security in the maritime sector and is supportive of the proposed regulatory action. The conclusions drawn from the above mentioned OECD report reinforce this view. Ultimately, the cost of enhancing security whether in the maritime transport sector, aviation transport sector, or at home, can only be measured against the benefits from preventing unlawful interference, and the adverse economic impact unlawful interference can have on commercial enterprises and the adverse psychological impact it can have on personal wellbeing.

The assessment of the options discussed below are based on quantitative research undertaken by an independent consultant employed by DOTARS in December 2002, the OECD report referred to above, and the outcome of consultations DOTARS held with industry and State and Northern Territory government stakeholders.

Option 1 Explicit government regulation

Benefits

Under the Australian Constitution, the Australian Government has the responsibility for the obligations arising from adopted and accepted international treaties. The international obligations arising from Chapter XI-2 and the ISPS Code are considerable, and the Australian Government will need to be able to report positively to the IMO on, or before, 1 July 2004 about the domestic implementation of the treaty obligations. With this in mind and despite the tight deadline, the Australian Government has prepared a Bill which provides certainty to state-regulated entities, privately operating port facilities and the Australian shipping industry, sets penalties for offences including serious penalties for trespassing, and creates a new centralised regulatory regime with DOTARS as the regulator. Universal application is critical to ensure Australia's international obligations are met on time and to a standard acceptable to all Australian jurisdictions and affected industry participants.

A direct benefit of the Bill is that it provides a nationally consistent framework for a preventive maritime security system. The consequences of non-compliance is high and

ranges from detrimentally affecting relations with international trading partners to the adverse consequences of a terrorist attack on the public health and safety as well as government and private industry assets and business operations.

There are numerous indirect benefits to managing maritime security through explicit government regulation, including upholding Australia's reputation as a 'secure' trading partners, centralising the cost of administration, improving waterfront occupational health and safety, and reducing maritime industry participants' insurance costs by reducing the instances of theft and property damage.

Costs

Security regulated ports, including port facilities within these ports

The Bill places obligations on port authorities and/or those entities controlling vital areas of water in ports or approaches to ports to take an active role in port security. This is necessary because the definition of a 'port facility' in Chapter XI-2 and the ISPS Code refers to a *location* which covers areas where ship-port interfaces take place rather than an entity, such as a port authority or a Harbourmaster. The definition of the international term 'port facility' includes areas where direct interfaces take place as well as indirect interfaces, such as anchorages, waiting berths and seaward approaches. In the Bill, security regulated ports will be those ports which interface directly or indirectly with the types of ships which are subject to the Bill.

The regulation of ports is not without jurisdictional complexities. Ports are traditionally under the jurisdiction of the States and the Northern Territory. As a result, this Bill will have cost and resource implications for the States and Northern Territory governments. At the Australian Transport Council (ATC) meeting in May 2003 it was agreed with States and Northern Territory Transport Ministers that for the purpose of implementing the international maritime security regime the Australian Government would need to be able to regulate the entities controlling waterways. The States and the Northern Territory will be obliged to provide adequate security of their assets as owners of these assets. This is in line with the Commonwealth, State and Territory governments' principles on the protection of critical infrastructure as outlined in the National Counter-Terrorism Committee's paper 'Critical Infrastructure Protection in Australia'.

The following statutory obligations on operators of security regulated ports, and port facilities within these ports, are most likely to have the greatest cost impact:

- Security regulated ports, and relevant port facility operators, will be obliged to self-assess existing security arrangements. On completion of security assessments, port operators, and port facility operators, will need to prepare security plans based on existing arrangements and identify additional security measures and activities to ensure compliance with the Bill. The plans will include security measures and activities to be implemented at security level 1 (default level), security level 2 and security level 3. The security plans will need to be submitted to the Secretary of DOTARS for approval, and DOTARS will assess compliance as required.

- When undertaking security assessments, port operators, and relevant port facility operators, should identify areas within their ports, and port facilities, which may require stricter access control arrangements and may qualify for the establishment of a maritime security zone under the Bill. The location of the proposed maritime security zones must be submitted to the Secretary for consideration. Once the Secretary has established such a zone the port operator, or port facility operator, will be obliged to comply with extra statutory requirements, for example, screening of passengers and public notification of the boundaries of a zone. This is essential to support the enforcement regime outlined in the Bill.

- The Secretary may direct a port operator and/or one or more port facility operators within a security regulated port to implement extra security measures and activities on top of those already established in the port or port facility operator's security plan at the existing security level (1, 2 or 3) when an unlawful interference with maritime transport is imminent or probable.

At this early stage of implementation, it is extremely difficult to estimate the cost of enhancing security at the approximately 70 ports which will become security regulated ports, and the up to 300 port facilities within these ports. The local security assessment might show that a port or port facility is adequately equipped to be considered compliant with the provisions in the Bill. For example, some ports and port facilities may already have security equipment, such as hand-held radios, gates, closed circuit TV (CCTV), lights, communications system, fencing and security guards. In this case, additional costs due to upgrading security to meet the new requirements will be minimal. DOTARS is not in the position at this early stage of implementation to know exactly what security arrangements exist at each port and port facility.

The OECD report referred to in Part 1 does not provide conclusive figures for port security costs as it acknowledges that these costs will vary dramatically from port to port and will depend on what security is already in place. For example, container facilities will have security in place to reduce theft. For some types of cargo there are already extra security requirements in place, for example, for dangerous goods. Staffing costs will also vary according to local labour costs. The report concludes that the highest cost items for ports are most likely to be security officers and security guards.

Given the above caveats, the figures below must be treated with caution. They are based on an early estimate made by an independent consultant engaged by DOTARS, who undertook a desktop audit of potential security costs to 50 Australian ports based on a prescriptive regulatory model. The ports were grouped into four different risk categories, ranging from the high risk Category A to the low risk Category D. A Category A port would typically comprise a range of diverse port facilities and terminals, such as container terminals, multi-purpose terminals, passenger ship terminals, liquid bulk terminals, and tug and pilot boat facilities. These terminals and port facilities would have different security needs and requirements. The consultant estimated that a Category A port would require physical security measures (eg. fencing, patrols, CCTV, etc) and procedural measures (eg. access control, etc). Table 1 reproduces an aggregate figure for Category A ports based on the consultant's estimates.

Table 1 DOTARS cost estimates for high risk Australian ports (security level 1)

Items	$ million
Closed circuit TV (CCTV) to monitor access to the port or port facility	33
Communications, such as radios, data links, etc	33
Guards and patrols	33
Vehicle booking/community system for the tracking and management of vehicles access and departing from port facilities	28
Perimeter lighting	11
Perimeter fencing	11
Security briefings/security committees	3
Personnel ID system	2.6
Uninterrupted power supply	2.4
Personnel x-ray system, including bag conveyor, for passenger facilities	2
Training	1
Possible additional cargo security prior to loading containers at major ports	80
Other, including cost of security assessments and security plan development	36
Total	**276**

Lower risk ports are expected to incur significantly lower costs in meeting the requirements in the Bill. For these types of ports the initial costs have been estimated to be up to $24 million.

In summary, total set-up costs to security regulated ports, including the port facilities within these ports, could be up to $300 million with ongoing costs up to $90 million p.a.

Increasing from security level 1 to 2 could mean introducing extra security measures such as additional patrols, limiting access points, increasing searches of persons, personal effects and vehicles, denying access to visitors, and using patrol vessels to enhance waterside security. The cost of such measures could be about $5,000 per day for each port or port facility concerned. Port and port facility operations should be able to continue without significant delays at this level.

Maritime security level 3 is unlikely to be imposed on a national basis. The Secretary may declare that maritime security level 2 or 3 is in force for a port or a number of facilities or terminals if a heightened security risk to maritime transport has been identified. As the intelligence used to trigger a move to maritime security level 3 will be specific, DOTARS, in consultation with other Commonwealth agencies, such as the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP), will issue specific and targeted advice, aimed at reducing the risk associated with the specific threat. In extreme circumstances coordination and response arrangements will be progressed in accordance with the National Counter-Terrorism Plan.

The costs of augmenting security at maritime security level 3 could be considerable and could result in operations being slowed down. For example, a container terminal could lose about $100,000 per day in revenue from suspension of container ship operations. Costs at liquid bulk terminals (for example, petroleum products, gas) and dry bulk terminals (for

example, coal, iron ore, grain) would be considerably less as there are less people and equipment involved in the operations of such terminals.

In addition to the higher maritime security levels, the Secretary may also issue security directions to individual ports and facilities that may be affected by a particular threat. The Secretary must not give this kind of direction unless an unlawful interference with maritime transport is imminent or probable. A security direction can be given at security level 1, 2 or 3 and will be revoked by the Secretary once intelligence information has been received that the imminent or probable threat has subsided.

There will be penalties for non-compliance with the Bill. The penalties for breaching provisions which could seriously compromise maritime security are 200 penalties units for a port or port facility operator, 100 for penalties units for a minor maritime industry participant, and 50 penalty units for any person. In monetary terms, 200 penalties units for an individual equals $22,000, and for a body corporate $110,000. Infringement notices can be issued for less serious breaches of the Bill. The maximum amount of an infringement notice may not exceed one-fifth of the maximum fine that a court could impose, ie. the above monetary fines.

Regulated Australian ships

Australian ships which are of a certain type will be considered regulated Australian ships and as such will need to comply with the requirements in the Bill. The new security arrangements in the Bill apply to all Australian passenger ships and cargo ships of 500 gross tonnage and upwards on inter-state and international voyages. The Bill also has provisions which apply to foreign ships on intra-state and inter-state voyages which are referred to as regulated foreign ships.

While SOLAS and Chapter XI-2 only apply to certain types of ships on international voyages, the Australian Government decided to extend the maritime security regime to ensure broader coverage and better security of Australian ships and ports. The external affairs power in the Constitution provided the necessary head of power for the Australian Government to extend the application of the Convention to Australian ships on inter-state voyages.

The following statutory obligations on the operators of regulated Australian ships are most likely to have the greatest cost impact:

• Operators of regulated Australian ships will be obliged to self-assess existing security arrangements for their ships. On completion of the security assessments, ship operators will need to prepare security plans based on existing arrangements and identify additional security measures and activities to ensure compliance with the Bill and to qualify for an International Ship Security Certificate (ISSC). The plans will include security measures and activities to be implemented at security level 1 (default level), security level 2 and security level 3. The security plans will need to be submitted to the Secretary of DOTARS for approval, and DOTARS will assess compliance as required. The ISSC will be issued by the Secretary once security measures have been adequately implemented on board a regulated Australian ship. This certificate ensures compliance with the ISPS Code, and it is essential

that ship operators obtain ISSCs for their ships if they wish their ships to trade with ports classified as secure under the ISPS Code.

- When undertaking a security assessments, ship operators should identify areas on board their ships which may require stricter access control arrangements and may qualify for the establishment of an on board security zone under the Bill. The location of the proposed zones must be submitted to the Secretary for consideration. Once the Secretary has established such a zone the ship operator will be obliged to comply with extra statutory requirements, for example, screening of passengers and public notification of the boundaries of a zone. This is essential to support the enforcement regime outlined in the Bill.

- The Secretary may direct a ship operator to implement extra security measures and activities on top of those already established in the ship's security plan at the existing security level (1, 2 or 3) when if an unlawful interference with maritime transport is imminent or probable.

At present, there are approximately 70 Australian registered trading ships (8 on international voyages and 62 on coastal voyages) that could be engaged in international or inter-state coastal trading and would be classified as regulated Australian ships under the Bill. In addition, the Bill will also apply to mobile offshore industry units. These units will be classified as ships if able to navigate the high seas. While DOTARS has not been able to obtain an accurate figure, the number of such units which are Australian registered appears to be very small.

It should be noted that ship operators could easily switch trading ships between international, inter-state and intra-state voyages. The cost estimate below assumes that all Australian registered ships that come within the ambit of SOLAS Convention Regulation 3 could be used on international or inter-state voyages.

Table 2 DOTARS cost estimates for Australian regulated ship (security level 1)

Items	**$ million**
Security in port, such as guards, watchmen, offside patrols when required	4.55
Training	3.77
Structural modifications to secure access to on-board security zones	1.65
Equipment, including the ship security alert system	0.45
Personal identification	0.45
Admin/record keeping	0.35
Other, including cost of security assessments and security plan development	1.78
Total	**13**

On the above basis it is estimated that the initial costs for complying with the requirements in the Bill will be around $13 million. Ongoing costs have been estimated to be at around $6 million per year.

For the sake of comparison, the US Coastguard (USCG) figures for ship compliance with the ISPS Code have been reproduced here from the OECD report. The USCG requires a high

standard of compliance from the shipping industry. The costings per item per ship provide a benchmark for investment costs. According to the USCG assessment, the highest costs to ship operators will be crew training, the ship security alert system, auto-intrusion alarms, and additional locks and lights on board ships to detect unlawful interference.

Table 3 US Coastguard cost estimates for ship compliance with the ISPS Code (in Australian dollars)

Items	**Initial cost per ship over 1,000 gross tonnage**	**Ongoing cost per ship over 1,000 tonnage**
Ship security alert system	$3,070	$153
Key crew training	$7,678	$7,678
Ship security assessment	$2,457	0
Ship security plan	$614	0
Ship security officer (function to be given to Master who on average would be occupied 5 days per year in this role)	$1,045	$1,045
Ship security training and drills (1 hour 4 times per year)	$581	$581
Total	**$15,445**	**$9,457**

In addition, ships to which Chapter XI-2 applies will need to be fitted out with security equipment. Tables 4, 5 and 6 are based on US Coastguard figures for compliance with Part B of the ISPS Code, which is beyond the intention of the Bill as Part B was designed by the IMO to be recommendatory only. Australian ship operators who wish to trade with the US will need to be aware of the US maritime security laws and make the necessary arrangements.

Table 4 US Coastguard figures for security equipment for a tanker (oil, gas, chemical) required to comply with Part B of the ISPS Code (in Australian dollars)

Equipment with USCG recommended quantity	**Initial cost per ship**	**Ongoing cost per ship**
1 hand-held metal detector	$306	$15
5 hand-held radios	$1,530	$76
10 locks	$4,590	$229
5 lights	$3,060	$153
5 auto-intrusion alarms	$3,825	$191
Total	**$13,311**	**$664**

Table 5 US Coastguard figures for security equipment for a freighter required to comply with Part B of the ISPS Code (in Australian dollars)

Equipment with USCG recommended quantityInitial costOngoing cost

	per ship	per ship
2 hand-held metal detectors	$612	$30
5 hand-held radios	$1,530	$76
10 locks	$4,590	$229
5 lights	$3,060	$153
5 auto-intrusion alarms	$3,825	$191
1 portable vapour detector (for explosives)	$12,240	$612
Total	**$25,857**	**$1,291**

Table 6 US Coastguard figures for security equipment for ships under 1,000 gross tonnage required to comply with Part B of the ISPS Code (in Australian dollars)

Equipment with USCG recommended quantity	**Initial cost per ship**	**Ongoing cost per ship**
3 hand-held radios	$918	$15
5 locks	$2,295	$114
5 lights	$3,060	$153
2 auto-intrusion alarms	$1,530	$76
Total	**$7,803**	**$358**

Ship operators will also need to consider employing a company security officer who will have a key role in enabling communication between a ship, the company and relevant authorities. If the company is operating less than 10 ships on international voyages the USCG estimates the annual salary for this function to be US$37,500 which is AU$57,575. The training for this officer is estimated to be US$3,500 per year which is AU$5,374. The salary for a company security officer in a company operating more than 10 ships on international voyages is substantially higher. There are only 8 Australian flagged ships on international voyages so this figure has not been included in this comparison.

As for security regulated ports and the facilities within these ports, increasing from security level 1 to 2 will mean introducing extra security measures. The cost of such measures could be about $2,000 per day for each ship involved in the heightened security situation. Ship operations should be able to continue without significant delays at this level.

The costs of augmenting security at level 3 depends on the type of ship. Operators of container ships are more likely to face higher security costs at security level 3. Costs to container shipping companies could be about $30,000 for each day that a container ship is delayed. The operating costs of most bulk ships are significantly less than for container ships. However, as mentioned above, the Secretary may only impose security level 3 when a threat is imminent or probable in which case the ship operator would have a vested interest in incurring the costs of higher security to protect the asset and the crew.

As for port and port facility operators, there will be penalties for non-compliance by the ship operator, or master in certain instances. The same graduated penalty scheme as above applies.

Summary of costs to maritime industry participants

The best estimate that can be made at this stage of the set-up costs to the Australian maritime sector (ports and ships) of complying with the IMO security measures would be $313 million in the first year. It is estimated that ongoing costs will be around $96 million p.a. for ships and ports.

It is important to remember that because these expenses are being required for compliance with a significant international agreement, these costs will not just apply to the Australian maritime industry sector but to shipping and port services sectors in all countries which are signatories to the SOLAS Convention. In fact, even those countries which are not SOLAS signatories, will have a vested commercial interest in complying with the minimum security requirements in Chapter XI-2 and the ISPS Code to be able to continue their current trading arrangements with the maritime sector in SOLAS countries. The global necessity for compliance investment means that the need for Australian maritime industry participants to budget for compliance with the Bill should not have a major impact on the competitiveness of Australia's shipping and port services industry.

Table 6 Summary of aggregate cost estimates (security level 1)

Maritime industry participant	**Initial investment**	**Ongoing expenses**
	$ million	**$ million**
Security regulated ports, including port facilities within these ports	$300	$90
Regulated Australian ships	$13	$6
Total	**$313**	**$96**

For illustrative purposes, the cost impact on cargo could represent about $2 per tonne on containerised cargo and 40 cents per tonne on bulk cargo. While shipping companies and port facility operators can be expected to recover the costs of security measures through their normal charging mechanisms, the final cost impact on consumers of goods carried by sea is expected to be very small.

The above costs relate to security measures and activities at security level 1. The costs would increase proportionate to the additional measures or activities to be undertaken at security levels 2 and 3. Additional costs would be incurred when the Secretary issues security directions, which can happen at security level 1, 2 or 3. Additional costs would be greatest if the Secretary issued a security direction to a maritime industry participant who was already operating at security level 3. However, in this case the probability of the terrorist incident or other unlawful interference occurring would be so high that the maritime industry participant would have a vested interest in incurring additional costs to protect his or her assets, staff and business operations from the attack or other serious damage.

It should be noted that these costs must be seen in an operational context. Firstly, the set-up costs associated with raising standards in order to meet the new security requirements will largely be capital in nature. Although purchased in Year 1, the capital assets purchased

will have an effective life which is much greater. In some cases, the effective life of an asset may be 20 years. These costs would typically be represented over this 20-year period under an accrual accounting system - not on a cash basis. Secondly, the costs which are incurred through the implementation of the security measures, although principally required for security reasons, are expected to also provide business benefits. Examples include reduced criminal activity and efficiencies from improved procedures.

A difficulty in quantifying the 'costs' to industry is that the real costs are difficult to determine. Some of the costs mentioned above are in addition to the costs which would otherwise be expended through the normal course of doing business. Introducing the new security measures will effectively bring many costs forward, when infrastructure may have actually been upgraded on replacement in any event. Additionally, whilst costs are easier to quantify - at least in 'book' terms - the benefits resulting from the costs are much more difficult to quantify, and may not be immediately apparent. Reduced criminal activity and improving the integrity of cargo and confidence in the business all have commercial merit and inherent value. Some of these benefits will accrue over time and are not possible to include in an informed cost/benefit analysis at this time.

It is implicit in the OECD report that lax security at ports, facilities and on board ships will be perceived to be less attractive to trading partners which strengthens the argument that compliance with the new security measures is a cost of doing business in the maritime sector.

How to meet the costs

It is the Australian Government's view that preventive security is a cost of doing business. Maritime industry participants are in a position to recover the costs of additional security measures through existing cost recovery mechanisms. The Bill does make provision for the sharing of security arrangements. This opens up the option of local arrangements between the public and private sector to assist the development of viable cost-effective approaches to maritime security. Once again, it needs to be emphasised that the cost of security at an individual port, port facility, terminal, ship, or other maritime industry service provider will depend on existing security arrangements.

In some cases, upgrading security could result in reduced insurance premiums through a reduction in the perceived level of risk. The shipping industry is already imposing surcharges arising from increased insurance premiums on ships trading to a number of countries in the Middle-East. These surcharges have ranged from $50 per container to about $290 per container for ships calling at Yemen where the terrorist attack on the French tanker *Limburg* occurred.

The costs of additional security at ports will need to be borne by State and the Northern Territory governments and the private sector. This is in line with the existing arrangements which recognise that while the Australian Government's role is to, among others, provide coordination and national leadership in areas of joint responsibility such as maritime transport, the owners and operators of critical infrastructure have the responsibility of providing adequate security of their assets. In this case, the Bill provides a system for assessing the security at State and Territory owned ports and privately owned or leased

maritime facilities, and based on these assessment further investments may be necessary to ensure national compliance, consistency and fairness across all jurisdictions and ports.

In addition to potential costs for upgrading security at ports, States and the Northern Territory governments and the private sector will also need to consider the costs of enforcement. The new trespassing penalties may result in an increase in requests for police presence at ports and waterside police patrols.

Government costs

DOTARS' regulatory roles and responsibilities will include:

- assessment of port, port facility and ship security plans;
- verification of ship security and issuing of International Ship Security Certificates;
- checking of compliance;
- management of sensitive security threat information;
- negotiating agreement on Memoranda of Understanding with other Australian Government departments which will be assisting with the ISPS compliance checking of foreign ships;
- establishment of communications network with maritime industry participants;
- regular liaison with other Commonwealth departments and State and Northern Territory authorities;
- undertaking of compliance checking of foreign ships and control functions regarding non-compliant foreign ships;
- regular reporting on compliance issues to the IMO; and
- staff training.

The 2003-4 budget allocation is $15.6 million over 2 years for DOTARS' administrative, compliance and monitoring duties.

Option 2 Self-regulation

Benefits

The voluntary nature of self-regulation means that maritime transport security initiatives would be implemented at the discretion of industry. There would be a fair amount of freedom and flexibility for industry to decide on how to implement the obligations under Chapter XI-2 and the ISPS Code through a code of conduct. Industry would retain ownership of the problem and the solution.

Self-regulation by industry may result in the implementation of security measures which minimise costs to industry participants and reduce need for major investment in security treatments. Industry may benefit from reduced compliance costs in comparison to explicit government regulation.

The lack of government involvement would mean that public resources would be allocated to other portfolios.

Costs

There would be administrative costs associated with the development of the code and the consultation period with key industry groups. It would be administratively advisable to establish a peak regulatory body to administer the code. There would be costs involved with the administration of this national body and its subsidiaries, if any, in all States and the Northern Territory. These costs would be passed on to code members and would add to their costs of doing business. Annual conferences and seminars would need to be held to update members on new approaches and amendments to the code. Event hosting and travelling to events are costly, and would need to be subsidised by the members.

In return, the discretionary self-regulatory scheme may provide cost savings to members in the form of lenient security standards. There would be little incentive to comply as there will be no strict compliance and enforcement provisions in a voluntary industry code of conduct, apart from, for example, excluding members from the code or providing commercial disincentives or fines.

Non-compliance with the standards set in the ISPS Code would seriously disadvantage the reputation of Australia as a secure trading nation. To ensure a nationally consistent approach and be able to justify this approach and the impeccability of its implementation to the IMO the Australian Government would need to allocate resources to setting up a body to monitor the compliance with the code or determine a governance structure with strict terms of reference to temper industry's discretionary decision making powers regarding maritime security.

In the end, the seriousness of the problem identified in Part 1 of this RIS, and the international obligations which flow from Chapter XI-2 and the ISPS Code do not lend themselves to industry self-regulation.

Option 3 Devolution of the responsibility for maritime security regulation to the States and Northern Territory

Benefits

A benefit that would result from this approach is that the administrative costs for the implementation of Chapter XI-2 and the ISPS Code are transferred from the Australian Government to the States and Northern Territory governments. This would result in a freeing up of Commonwealth resources for other portfolios' responsibilities.

Having local knowledge of an issue and being able to determine local solutions to local problems can have positive effects on all involved. Local industry would benefit from being

able to come to cooperative arrangements with their State or Northern Territory Government and associated maritime and/or transport authority. Local enforcement arrangements would be made to accommodate all budgets and human resource capabilities.

In addition, the Australian Government would not need to introduce a major piece of legislation as is being proposed here. Instead, and for the purposes of regulating how State and Northern Territory governments implement the international requirements, the Australian Government could introduce an overarching statutory framework which would enable the devolution of authority on maritime security to the other jurisdictions and result in State and Northern Territory legislation being developed. The Commonwealth framework would need to include strict reporting mechanisms because the Australian Government, as the signatory to SOLAS, would retain the responsibility of communication on industry compliance with Chapter XI-2 and the ISPS Code to the IMO.

Costs

Having seven authorities - one in each State and Northern Territory - with responsibility for implementing the IMO security measures is likely to cost significantly more than having a central authority. There could be problems with the consistency of enforcement of the security standards and this could impact adversely on Australia's export trades, particularly if other signatories to SOLAS believes that the Australian arrangements were not applied according to the international agreement across all Australian jurisdictions. The aggregate costs to business are therefore likely to be higher not only due to administrative duplication, but also through inconsistency of application. These costs would be greatly magnified if Australia's reputation as a secure trading partner were undermined.

The Australian Government would need to maintain and resource an administrative function in order to report back to the IMO on the implementation of Chapter XI-2 and the ISPS Code.

Part 5 Consultation

DOTARS has consulted extensively with representatives from the maritime industry, Commonwealth departments, and State and Northern Territory governments and relevant authorities. Attachment 1 lists the groups of stakeholders consulted and types of forums used for consultation and information dissemination. Overall, there has been a high level of cooperation from all concerned. At State and Northern Territory level it was acknowledged at the Australian Transport Council (ATC) meeting in May 2003 that the Australian Government needed to take the lead role in maritime security regulation.

The most significant consultation process was the recent release of the exposure draft of the Bill to peak maritime industry organisations, State and Territory transport and maritime authorities, and a number of other influential organisations and senior staff. Around 40 submissions were received by the deadline. Key issues identified were:

- differences in the use of terminology between Chapter XI-2 and the Bill;

- lack of detail in the Bill;

- overlap with maritime safety issues, particularly in the definition of unlawful interference with maritime operations;

- enforcement of waterside issues;

- zoning provisions too top down;

- relationship between a port security plan and a port facility security plan unclear;

- definition of a security regulated ship difficult to understand;

- definition of critical installation unclear;

- demerit points system questioned;

- implications for existing cost recovery mechanisms at State and Territory level for port services mentioned;

- penalties on non-compliant foreign ships considered too lenient; and

- some concerns about the responsibilities attached to incident reporting.

DOTARS considered the merits of these issues and where reasonable have reflected these in the Bill. In some cases, further clarification of the intention of a particular provision, or group of provisions, in the Bill has been provided in the Explanatory Memorandum. Many of the issues raised will be addressed in the regulations as they relate predominantly to operational matters.

Part 6 Recommended Option

It is recommended that Option 1 be adopted.

ATTACHMENT A

Consultation on exposure draft

Exposure draft was sent to all key Commonwealth departments with a presence at ports, otherwise involved in the maritime industry, or with an interest in law enforcement and legal matters. The draft was also sent to peak industry bodies, State and Northern Territory premier departments and transport agencies and other relevant authorities, police agencies in all States and the Northern Territory, the Australian Local Government Association, and a number of maritime unions.

During the consultation period bilateral discussions were held with relevant Commonwealth departments and agencies, the NSW government, peak industry bodies, and the Maritime Union of Australia.

Maritime Security Working Group (MSWG)

The primary vehicle for consultation relating to the IMO's security framework is the Maritime Security Working Group. Membership comprises senior representatives of relevant Commonwealth departments, State and Northern Territory maritime and transport agencies, and peak industry bodies. The MSWG met 5 times in 2002.

Australian Transport Council (ATC)

The Australian Transport Council (ATC) is a Ministerial forum for Commonwealth, State and Territory consultations and provides advice to governments on the coordination and integration of all transport policy issues at a national level. The new maritime security measures were presented to ATC at meetings, most recently in May 2003.

Standing Committee on Transport (SCOT)

ATC is supported by the Standing Committee on Transport (SCOT) comprising a nominee of each ATC Minister, generally at Head of Department/Agency level. Maritime security issues were presented to SCOT at 3 meetings in 2002 and 1 meeting in 2003.

Australian Maritime Group (AMG)

The Australian Maritime Group is a sub-committee of SCOT. It brings together senior Commonwealth, State and Territory officials for consultations on the maritime sector. AMG discussed maritime security issues at 3 meetings in 2002 and 2 meetings in 2003.

The AMG has an ad hoc group on maritime security which met 3 times in 2002 and 5 times in 2003. The ad hoc group has closely scrutinised the policy and implementation model developed by DOTARS from the perspective of State and Territory governments with constitutional responsibility for ports, and as the owners and operators of ports and port facilities in several jurisdictions.

Industry meetings

Briefings and general presentations were provided to a range of key industry stakeholders, often at the invitation of the stakeholder organisation or group. Industry groups have included port authorities/port owners, shipping companies, State Counter-Terrorism Units, law enforcement organisations, and peak industry associations. There were 6 meetings in December 2002 and over 40 meetings in 2003.

Preventive Maritime Security Workshops

From May to July 2003 DOTARS held preventive maritime security workshops in each State and the Northern Territory to inform industry and other interested persons about the broad approach taken in the Bill to maritime security.