

8.6 *Paper relating to Marshals and the Maritime Transport Security Regime*

Information for Marshals on the Maritime Transport Security Regime
(Version 1 – June 2004)

This paper

This paper provides an outline of the maritime transport security regime that commences on 1 July 2004, and how the regime might impact on the work of the Court's Marshals under the *Admiralty Act 1988* (Cth).

The paper will be updated as further information becomes available.

The legislation

The maritime transport security regime is governed by the *Maritime Transport Security Act 2003* (Cth) ("the Act") and the *Maritime Transport Security Regulations 2003* (Cth) ("the Regulations").

The purpose of the Act is to enhance maritime transport security by:

- establishing a maritime transport security regulatory framework, and providing for adequate flexibility within this framework to reflect a changing threat environment;
- implementing the mandatory requirements in Chapter XI-2 and the International Ship and Port Facility (ISPS) Code of the Safety of Life at Sea (SOLAS) Convention, 1974, to ensure that Australia is aligned with the international maritime transport security regime;
- ensuring that identified Australian ports, port facilities within them, and other maritime industry participants operate with approved maritime security plans;
- ensuring that certain types of Australian ships operate with approved ship security plans;
- issuing International Ship Security Certificates (ISSCs) to Australian ships which have been security verified so that these ships will be able to enter ports in other SOLAS Contracting Countries; and
- undertaking control mechanisms to impose control directions on foreign ships that are not compliant with the relevant maritime security requirements in this Act.

The Act has thirteen parts:

- **Part 1 - Preliminary:** This Part includes the objects of the Act, its application, both inside and outside Australia, and definitions.
- **Part 2 - Maritime security levels:** This Part outlines the application of maritime security levels, security directions, and a system for notification.
- **Part 3 - Maritime security plans:** This Part requires certain maritime industry participants to have maritime security plans in force which must include security measures and activities to be undertaken at security levels 1, 2 and 3.

- **Part 4 - Ship security plans and ISSCs:** This Part requires certain Australian ships to have ship security plans in force which must include security measures and activities to be undertaken at security levels 1, 2 and 3.
- **Part 5 - Regulated foreign ships:** This Part requires certain foreign ships to provide pre-arrival information and their ISSCs to demonstrate their compliance with the Act. Foreign ships are also obliged to comply with the existing security levels.
- **Part 6 - Maritime security zones:** Under this Part, the Secretary may establish port security zones within a security regulated port, declare ship security zones around a security regulated ship, and establish on board security zones on board a security regulated ship. The purpose of such zones is to subject these areas to access control measures for the prevention of unlawful interference with maritime transport.
- **Part 7 - Other security measures:** This Part establishes security requirements in relation to screening and clearing, weapons and prohibited items. The Part creates a number of offences relating to carriage of weapons and other items that, while not strictly weapons, could be used to threaten or cause injury (ie. prohibited items).
- **Part 8 - Powers of officials:** This Part deals with five classes of persons who may exercise powers for the purposes of checking compliance with this Act and/or preventing unlawful interference with maritime security. It sets out eligibility criteria for each class of person, grants specific powers to each class and places limits upon the exercise of those powers.
- **Part 9 - Reporting maritime transport security incidents:** This Part formalises a communications system to ensure that adequate information is reported to relevant persons, including industry organisations and the Australian Government, in the event of a maritime transport security incident.
- **Part 10 - Information-gathering:** This Part enables the Secretary to collect security compliance information from maritime industry participants.
- **Part 11 - Enforcement:** This Part provides for a number of different enforcement options in circumstances where contraventions of the Act have occurred or are suspected to have occurred.
- **Part 12 - Review of decisions:** This Part sets out the decisions which can be made under this Act, which are reviewable by the Administrative Appeals Tribunal (AAT).
- **Part 13 - Miscellaneous:** This Part contains technical information about the operation of this Act and its intended effect on the application of existing legislation such as the *Consular Privileges and Immunities Act 1972*, *Defence (Visiting Forces) Act 1963*, the *Diplomatic Privileges and Immunities Act 1967*. It allows for delegation of certain powers and functions of the Act. This Part also includes provisions relating to compensation for damage to a maritime industry participant's equipment or data and compensation for acquisition of property.

A copy of this legislation can be downloaded from the ScalePlus web site at <http://scaleplus.law.gov.au/home.htm>.

A question and answer sheet prepared by the Department of Transport and Regional Services is attachment A to this paper.

Impact on the Marshal

Ships covered by the maritime transport security regime

The regime applies to a security regulated ship, being either:

- a regulated Australian ship; or
- a regulated foreign ship.

However, the regime does not apply to, or in relation to:

- (a) a warship or other ship operated for naval, military, customs or law enforcement purposes by Australia or by a foreign state; or
- (b) a ship (other than a ship covered by paragraph (a)) that is:
 - (i) owned, leased or chartered by, or otherwise in the operational control of, the Commonwealth, a State or a Territory; and
 - (ii) being used wholly for non-commercial activities

A ship is a ***regulated Australian ship*** if the ship is an Australian ship (as defined in the *Shipping Registration Act 1981* (Cth)) that is:

- (a) a passenger ship that is used for overseas or inter-State voyages; or
- (b) a cargo ship of 500 or more gross tonnes that is used for overseas or inter-State voyages; or
- (c) a mobile offshore drilling unit that is on an overseas or inter-State voyage (other than a unit that is attached to the seabed); or
- (d) a ship of a kind prescribed in the regulations.

A ship is a ***regulated foreign ship*** if the ship:

- (a) is a foreign ship (being a ship that is not an Australian ship); and
- (b) is one of the following:
 - (i) a passenger ship;
 - (ii) a cargo ship of 500 or more gross tonnes;
 - (iii) a mobile offshore drilling unit (other than a unit that is attached to the seabed);
 - (iv) a ship of a kind prescribed in the regulations; and
- (c) is in Australian waters; and
- (d) is in, or is intending to proceed to, a port in Australia.

Entry by the Marshal to a port, ship or on-shore security zone

The Marshal will be able to rely on paragraphs 6.05(c) and 7.05(c) of the Regulations to enter a port, ship or on-shore security zone in the course of the Marshal's duties (such as executing an arrest warrant or retaining safe custody of a ship or property under arrest).

In practice, this will mean a Marshal must be able to produce photo identification when required to do so, particularly when not accompanied by a law enforcement officer (such as a member of the water police), and be able to explain the reason for entry.

Given that many of the people responsible for the security of ports, ships or on-shore security zones may not be familiar with the Marshal and his or her role, the Court will be

providing information on these matters to the Port Security Committees, Regional Security Managers and others.

As currently drafted, regulation 7.25 does not exempt a Marshal from having to be screened when seeking to enter a port, ship or on-shore security zone. The Court has asked that consideration be given to adding the Marshal to the list of exempt persons in subregulation 7.25(3) or obtaining a notice from the Secretary under subsection 115(2) of the Act.

Bringing an arrested ship into a port

In addition to having to have the usual approvals and clearances, a regulated foreign ship may not enter an Australian port unless:

- the ship has:
 - an International Ship Security Certificate (or approved International Ship Security Certificate equivalent) ('ISSC'); and
 - the ship has provided pre-arrival information in accordance with the regulations; or
- the Secretary has issued a control direction to the ship operator or the master of the ship allowing the ship to enter the port.

The Marshal should be able to ascertain whether a regulated foreign ship is able to enter a port by contacting the relevant port authority. If the ship is not able to enter the port because it does not have an ISSC, has not provided the required pre-arrival information or is not subject to an appropriate control direction, the Marshal should contact the maritime transport security operation centre of the Department of Transport and Regional Services or the relevant Regional Security Manager.

While it is an offence for a regulated Australian ship that is being used for maritime transport to:

- not have a ship security plan;
- not have an ISSC; or
- fail to comply with its ship security plan;

it seems that none of these matters will prevent a ship from entering an Australian port subject to the ship having the other necessary approvals and clearances. Nor is it clear from the legislation whether failure by a regulated Australian ship to provide pre-entry information will preclude it from entering an Australian port.

The Marshal should be able to ascertain whether a regulated Australian ship is able to enter a port by contacting the relevant port authority.

Ensuring compliance with ship security plans, security directions etc

Under the legislation, compliance with a ship security plan is the responsibility of:

- in the case of a regulated Australian ship – the company security officer and the ship security officer (being the master or another crew member) appointed by the ship operator;
- in the case of a regulated foreign ship – the ship operator and the master.

Where the master and crew remain on a ship that is in the custody of the Marshal, the ship operator and the master (or ship security officer in the case of a regulated Australian ship) will continue to be responsible for the ship security plan.

Where the master and crew of an arrested ship have been repatriated, the ship operator continues to be responsible for the ship security plan and must provide any caretaker Master and crew with a copy of the plan and any other information and resources needed to implement it.

Similarly, responsibility for complying with security directions and control directions will remain with the ship operator and master.

The Court will consider issuing a Practice Note which explains that the obligations of the ship operator and master under the maritime transport security legislation will continue while a ship is in the custody of the Marshal.

Provision of security information to the Marshal

It will be important that the Marshal responsible for a ship is informed of such matters as changes to security levels, declarations of maritime security zones and the issuing of security directions.

The most effective mechanism for ensuring the Marshal receives this information in relation to a particular matter is for arrangements to be made between the Marshal and the Regional Security Manager on a case by case basis.

Reporting maritime transport security incidents

As the Marshal is not a person described in sections 171, 172, 173 or 174 of the Act, the statutory obligation to report maritime transport security incidents does not apply to the Marshal. However, a Marshal should bring any maritime transport security incidents to the attention of the relevant Regional Security Manager.

Further information

This paper will be updated as further information becomes available. This will include the contact details for the Maritime Transport Security Operation Centre of the Department of Transport and Regional Services and the Department's Regional Security Managers.

Some information is available from the web site for the Department of Transport and Regional Services: <http://www.dotars.gov.au/transsec/index.aspx>.

In the meantime, any questions may be directed to the Deputy Registrar, Principal Registry (phone 02 9230 8336, email Philip.Kellow@fedcourt.gov.au).

Note: The following information was obtained from the web site of the Department of Transport and Regional Services. The Bill commenced as the *Maritime Transport Security Act 2003* on 12 December 2003.

MARITIME TRANSPORT SECURITY BILL 2003

QUESTIONS AND ANSWERS

OVERVIEW

1. What are the objectives of the Bill?

To safeguard against unlawful interference with maritime transport and meet Australia's international obligations to implement Chapter XI-2 of the Safety of Life at Sea Convention (SOLAS) and the International Ship and Port Facility Security Code (ISPS), collectively, 'the Code'.

The Bill establishes an outcomes-based preventive security framework that enables the maritime industry to develop individual security plans that are relevant to their particular circumstances and the specific risks that they face.

The Bill sets out a nationally consistent enforcement regime, supported by appropriate penalties. The penalties reflect the importance of the maritime industry for our trade and the public harm that could result from an incident.

Significant decision making power and fiscal control is given to port, port facility and ship operators to develop security measures that are appropriate to the risks they face. The Maritime Transport Security Regulations and guidance material currently being prepared will help ensure national consistency in the security outcomes achieved across the maritime industry.

Individual security plans for Australian ports, port facilities and Australian regulated ships will need to be approved by the Secretary of the Department of Transport and Regional Services (DoTaRS) to ensure that desired national maritime security outcomes, including adherence to certain minimum requirements, are achieved. Effective audit and compliance arrangements will be in place to ensure that industry is complying with their approved plans.

2. Why do we need this legislation?

Following terrorist attacks in September 2001 the international maritime community, through the International Maritime Organization (IMO), agreed in December 2002 on a new international framework to improve the security of ships and port facilities used in international trade and tourism. This was done through the adoption of amendments to SOLAS and the development of the associated Code.

To meet its international treaty obligations as a contracting party to the SOLAS Convention, Australia is required to enact legislation to put the new maritime security framework in place by 1 July 2004 when the new regime will enter into force internationally.

3. What would happen if Australia did not implement the Code?

As a nation highly dependent on international shipping, any non-compliance with the Code would have the potential to cause severe damage to our trade as international ships are likely to be unwilling to visit non-compliant ports. It is therefore in our interest to implement the Code swiftly and consistently on a national basis before the IMO deadline of 1 July 2004. APEC Leaders have also committed to compliance through the Secure Trade in the APEC Region initiative, and Australia is expected to play a leadership and capacity-building role in the region.

If Australia did not implement enhanced security measures this would increase the risk of a potential terrorist incident in an Australian port facility or on a ship operating in our waters, particularly as other countries move to tighten their own security arrangements.

4. Who will be affected by the Bill?

The Bill will apply to Australian trading ships on international or interstate voyages, and to foreign ships travelling to a port in Australia. The Bill will also apply to Australian ports and port facilities that serve security regulated ships.

The Bill does not include

- o defence vessels or Commonwealth or foreign government vessels on non-commercial voyages
- o fishing and recreational vessels

5. Will public access to ports be affected?

In many cases access to the working areas of port facilities is already controlled because of workplace safety, security and public liability concerns. Some port authorities have balanced the public demand for access with the need for port safety and security by measures such as providing dedicated recreational facilities. Public access to ports may be restricted where this is necessary to address a risk identified in the security assessment process.

6. What are the expected benefits to Australia?

Improved international maritime security measures will contribute to the worldwide prevention and deterrence of terrorist activity against shipping. In turn, this increases the security of Australian citizens, trade and tourism.

Australia's economy is very highly dependent on seaborne trade. 99% of Australia's cargo exports and imports (by weight) are transported by sea. This amounts to 73% of Australian trade by value.

Implementation of the measures will reduce the risk of a terrorist incident at an Australian port. It will sustain Australia's ability to trade internationally and meet our international obligations. It will ensure continued confidence in the security of Australia's ports among our trading partners.

The Bill allows Australia to take action to control foreign ships entering Australian ports if a ship does not comply with the security requirements in force for that ship or for the port to which it seeks entry.

7. Will there be any costs to the maritime industry?

At this stage it is not known with certainty what infrastructure or operational costs may be imposed on ship, port and port facility operators. The security assessment undertaken by operators will identify the need to increase security and allow determination of the costs for each operator. For some operators additional security costs will be minor. However, for others with security arrangements that are currently inadequate, costs will be greater.

Ports, port facilities and ships will gain a better understanding of costs once security assessments and security plans have been completed.

Examples of potential security costs could include providing access control arrangements, such as additional barriers, surveillance equipment, lighting, alarms, and additional security staff.

Operators will be expected to cover the costs of:

- undertaking an initial security assessment
- preparing and implementing the initial security plan
- implementing the security measures identified in approved security plans training security officers, staff and crew
- maintaining security plans (periodic reviews and updates)
- conducting internal audits and security exercises.

8. What role will the Department of Transport and Regional Services play?

The Department is responsible for:

- providing guidance to industry in the development of security assessments and plans;
- reviewing and approving security plans;
- monitoring implementation and compliance with security plans;
- issuing International Ship Security Certificates (ISSCs) to Australian flagged ships;
- verifying and checking compliance of foreign flagged ships visiting Australian ports; (Note: Other Commonwealth agencies will also undertake this role).
- setting security levels and, where appropriate, issuing security directions; and

- o act as the central point of contact and provide security level information to ships and port facilities, and to foreign ships entering an Australian port.

9. **Will there be *Maritime Transport Security Regulations*?**

Regulations are required to operationalise the Bill. For example, the regulations will provide more details about the required content of maritime security plans. The regulations will be developed in consultation with State and Territory governments and industry stakeholders. The regulations will have the same outcomes-based approach taken in the Bill.

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SHIP AND PORT SECURITY

10. **What is a security assessment?**

This is a detailed security focussed risk assessment of a port, port facility or ship, conducted on behalf of the operator by people who have the appropriate skills and experience. Security plans are prepared by operators based on the information and analysis in the security assessment. The assessment must take into account any documents required in writing by the Secretary to be taken into account (for example, threat and security environment information) and address any matters prescribed in the regulations. Guidance material currently under development will provide further information to assist operators complete their security assessment requirements.

11. **What is a security plan?**

Port, port facility and ship operators must develop and maintain a security plan. The plan must be based on the security assessment. The plan will be carried on board the ship or held within the port or port facility and must be protected from unauthorised access.

The security plan must include the security assessment, set out the security measures at level 1, 2 and 3, include contact information for the security officer, provide for the use of declarations of security and demonstrate that the plan makes a contribution towards the achievement of the maritime security outcomes as defined in the Bill.

12. **What information does a ship need to supply before entering a port?**

A ship intending to enter an Australia port must, prior to entry, provide security information. The regulations will prescribe when, how and to whom the information should be given, and what information is required.

The Code lists the following pre-arrival information that may be required from foreign ships:

- o evidence that the ship possesses a valid ISSC certificate, the purpose of which is to signify that the ship is complying with the SOLAS requirements;
- o evidence of the security level at which the ship is currently operating;
- o evidence of the security level at which the ship operated in any previous port (to cover the period of its last 10 calls at port);

- evidence of any special or additional security measures that were taken by the ship in any previous port (to cover the period of its last 10 calls at port);
- evidence that the appropriate ship security procedures were maintained during the period of its last 10 calls at port; and
- any other practical security-related information.

13. How can we ensure that foreign ships are secure?

The Code and the Bill provide for controls over foreign ships visiting Australian ports. Foreign ships are required to provide pre-arrival security information and their ISSCs to demonstrate their compliance with the Bill. Where it is suspected that a foreign ship is non-compliant, it may be subject to control measures including detention or delay. Foreign ships are also obliged to comply with the existing security levels. Ship operators of regulated foreign ships and masters of such ships are required to acknowledge communications regarding security levels and security directions.

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SCREENING AND CLEARING

14. Does the Bill allow for the screening of persons, baggage and cargo?

The Bill provides for the creation of maritime security zones within security regulated ports and on ships. For some zones, the regulations will include a requirement that people, goods, vehicles and vessels undergo screening before entry.

Screening and clearing will only take place at a designated screening point. The object of the screening is to prevent unauthorised weapons or prohibited items being brought on board a ship or into the maritime security zone.

15. What is meant by the term 'maritime security zone'?

The Secretary has the power to establish certain restricted areas within a security regulated port or on-board an Australian regulated ship as maritime security zones. The regulations will provide for different types of zones for different purposes, for example cleared areas to hold passengers after screening and before they board a ship. The regulations will also provide for penalties for people who trespass into security zones.

16. Who will provide port, port facility and ship security?

Port, port facility and ship operators will be responsible for their own security operations, albeit in a new regulatory environment where operators develop their own security plans for approval by the Secretary which they then implement. In this way, flexibility is available to operators to tailor their plans to their own needs, risks and circumstances.

Government agencies, particularly the Australian Customs Service, are also present at ports and carry out border security functions that contribute to and complement the preventive security objectives of the new international

requirements. Local police and other emergency response agencies are available should a security incident occur.

17. What will the impact be of the new regime on port workers and seafarers?

Access control is a basic requirement for port security. This may or may not include a requirement for port worker identification or the issue of access 'swipe-cards'. Arrangements will vary from port to port and facility to facility. The regulations will outline the minimum outcome based standards for identification cards.

Some key staff with security responsibilities may be required to undergo appropriate background checks.

Seafarers will be required to comply with access control requirements when boarding and disembarking in port. Security plans must take into account that seafarers live on board ships and have special needs for access to ports.