



Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Act 2006

No. 103, 2006

**An Act to amend the law relating to the security of
maritime transport and offshore facilities, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 103, 2006

**An Act to amend the law relating to the security of
maritime transport and offshore facilities, and for
related purposes**

[Assented to 27 September 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	27 September 2006
2. Schedule 1, item 1	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 122 of Schedule 1 to the <i>Maritime Transport Security Amendment Act 2005</i> .	28 September 2006 (paragraph (a) applies)
3. Schedule 1, items 2 to 4	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	27 March 2007
4. Schedule 2, items 1 to 5	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 1 to the <i>Maritime Transport Security Amendment Act 2005</i> .	28 September 2006 (paragraph (a) applies)

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Schedule 2, items 6 to 8	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 72 of Schedule 1 to the <i>Maritime Transport Security Amendment Act 2005</i> .	28 September 2006 (paragraph (a) applies)
6. Schedule 2, item 9	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 89 of Schedule 1 to the <i>Maritime Transport Security Amendment Act 2005</i> .	28 September 2006 (paragraph (a) applies)
7. Schedule 2, items 10 and 11	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 1 to the <i>Maritime Transport Security Amendment Act 2005</i> .	28 September 2006 (paragraph (a) applies)
<p>Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.</p>		

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Maritime security guards

Maritime Transport and Offshore Facilities Security Act 2003

1 At the end of section 113D

Add:

- (6) Regulations made under subsection (1) must be consistent with Australia's obligations under international law.

2 Section 161

Repeal the section, substitute:

161 Simplified overview of Division

This Division provides maritime security guards with limited powers to:

- (a) request people to produce identification and state reasons for being in maritime security zones; and
- (b) restrain and detain people; and
- (c) remove unauthorised people from maritime security zones if they do not leave when requested to do so; and
- (d) remove unauthorised vehicles and vessels from maritime security zones if a guard is unable to have the vehicles or vessels removed by persons in control of them.

The Division establishes restrictions on these powers, such as limiting the amount of force that may be used. The power to detain a person is also restricted to the period before the person can be dealt with by a law enforcement officer.

Regulations must establish requirements to be met before a person can become a maritime security guard.

3 At the end of Division 5 of Part 8

Add:

163A Maritime security guards' power to request information

Power to require production of ID

- (1) A maritime security guard may request any person found in a maritime security zone to produce identification.
- (2) A person commits an offence if:
 - (a) a maritime security guard has made a request to the person under subsection (1); and
 - (b) the guard has identified himself or herself as a maritime security guard to the person; and
 - (c) the guard has informed the person of the guard's authority to make the request; and
 - (d) the guard has informed the person that it may be an offence not to comply with the request; and
 - (e) the person fails to comply with the request.

Penalty: 20 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Power to require persons to state reason for being in zone

- (4) If:
 - (a) a person is in a maritime security zone; and
 - (b) a maritime security guard believes, on reasonable grounds, that the person is not:
 - (i) a maritime security inspector; or
 - (ii) a duly authorised officer; or
 - (iii) a law enforcement officer; or

- (iv) a member of the Australian Defence Force; or
- (v) a person who is authorised by a law of the Commonwealth, State or Territory to enter a maritime security zone; or
- (vi) a person of a kind prescribed in the regulations for the purposes of this subparagraph;

the maritime security guard may request the person to state his or her reason for being in the zone.

- (5) A person commits an offence if:
- (a) a request has been made to the person under subsection (4); and
 - (b) the guard has identified himself or herself as a maritime security guard to the person; and
 - (c) the guard has informed the person of the guard's authority to make the request; and
 - (d) the guard has informed the person that it may be an offence not to comply with the request; and
 - (e) the person fails to comply with the request.

Penalty: 20 penalty units.

- (6) Subsection (5) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

163B Requests to leave maritime security zones

- (1) If a maritime security guard reasonably suspects that a person is within a maritime security zone without proper authorisation, the guard may request the person to leave the zone.
- (2) A person commits an offence if:
 - (a) a request has been made to the person under subsection (1); and
 - (b) the guard has identified himself or herself as a maritime security guard to the person; and
 - (c) the guard has informed the person of the guard's authority to make the request; and

- (d) the guard has informed the person that it may be an offence not to comply with the request; and
- (e) the person fails to comply with the request.

Penalty: 20 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) is an offence of strict liability.

163C Maritime security guards' power to remove people from zones

- (1) If:
 - (a) a request to leave a maritime security zone has been made to a person under subsection 163B(1); and
 - (b) the guard has done the things mentioned in paragraphs 163B(2)(b), (c) and (d); and
 - (c) the person fails to comply with the request;the guard may remove the person from the zone.
- (2) A maritime security guard must not use more force, or subject the person to greater indignity, than is necessary and reasonable to remove the person from the zone.

163D Maritime security guards' power to remove vehicles from zones

- (1) A maritime security guard may remove, or cause to be removed, a vehicle from a maritime security zone if the guard reasonably suspects that the vehicle is in the zone without proper authorisation.
- (2) However, a vehicle must not be removed under this section without the maritime security guard making reasonable efforts to have the person in control of the vehicle remove the vehicle.
- (3) The maritime security guard must ensure that:
 - (a) no more force than is necessary and reasonable to remove the vehicle is used; and

- (b) a person is not subjected to greater indignity than is necessary and reasonable to remove the vehicle; and
 - (c) reasonable efforts are taken to avoid damaging the vehicle.
- (4) If a vehicle is removed under this section, the maritime security guard must make reasonable efforts to notify:
 - (a) the vehicle's owner; and
 - (b) persons of a kind (if any) prescribed in the regulations; about the vehicle's removal and the vehicle's new location.
- (5) If a person reasonably incurs costs or expenses in relation to the vehicle's removal, relocation or storage under this section, the vehicle's owner is liable to pay to the person an amount equal to those costs and expenses. This amount:
 - (a) may be recovered by the person as a debt due to the person in a court of competent jurisdiction; and
 - (b) must not be such as to amount to taxation.
- (6) The regulations may make provision for:
 - (a) the disposal, through sale or otherwise, of unclaimed vehicles; and
 - (b) the manner in which the proceeds of any sale are to be distributed.

163E Maritime security guards' power to remove vessels from zones

- (1) A maritime security guard may remove, or cause to be removed, a vessel, other than a security regulated ship or a ship regulated as an offshore facility, from a maritime security zone if the guard reasonably suspects that the vessel is in the zone without proper authorisation.
 - (2) However, a vessel must not be removed under this section without the maritime security guard making reasonable efforts to have the person in control of the vessel remove the vessel.
 - (3) The maritime security guard must ensure that:
 - (a) no more force than is necessary and reasonable to remove the vessel is used; and
 - (b) a person is not subjected to greater indignity than is necessary and reasonable to remove the vessel; and
 - (c) reasonable efforts are taken to avoid damaging the vessel.
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- (4) If a vessel is removed under this section, the maritime security guard must make reasonable efforts to notify:
 - (a) the vessel's owner; and
 - (b) persons of a kind (if any) prescribed in the regulations; about the vessel's removal and the vessel's new location.
- (5) If a person reasonably incurs costs or expenses in relation to the vessel's removal, relocation or storage under this section, the vessel's owner is liable to pay to the person an amount equal to those costs and expenses. This amount:
 - (a) may be recovered by the person as a debt due to the person in a court of competent jurisdiction; and
 - (b) must not be such as to amount to taxation.
- (6) The regulations may make provision for:
 - (a) the disposal, through sale or otherwise, of unclaimed vessels; and
 - (b) the manner in which the proceeds of any sale are to be distributed.

4 Subsection 187(1)

Omit "or 155(4)", substitute " , 155(4), 163A(2) or 163A(5)".

Schedule 2—Miscellaneous amendments

Maritime Transport and Offshore Facilities Security Act 2003

1 Section 10 (definition of *cleared area*)

Omit “persons who”, substitute “persons, goods, vehicles and vessels that”.

2 Section 10

Insert:

gross tonnage has the same meaning as in the SOLAS Convention.

3 Section 10 (paragraph (e) of the definition of *maritime industry participant*)

Repeal the paragraph.

4 Paragraph 16(1)(b)

Omit “500 or more gross tonnes”, substitute “500 gross tonnage or more”.

5 Subparagraph 17(1)(b)(ii)

Omit “500 or more gross tonnes”, substitute “500 gross tonnage or more”.

6 After subsection 22(4)

Insert:

- (5) A declaration under subsection (1) that a maritime security level is in force for a regulated Australian ship may specify that the level is only in force for the ship while it is in specified waters.

7 Section 23

Repeal the section, substitute:

23 When a maritime security level is in force

- (1) If a declaration is made under subsection 22(1) or (2), the maritime security level declared in the declaration is in force for the port, facility, area, participant, operation or regulated foreign ship covered by the declaration until either of the following occurs:
 - (a) the period (if any) specified in the declaration expires;
 - (b) the declaration is revoked, in writing, by the Secretary.
- (2) If a declaration is made under subsection 22(1) for a regulated Australian ship, and the declaration does not limit the waters in which the security level is in force in reliance on subsection 22(5), the maritime security level declared in the declaration is in force for the ship until either of the following occurs:
 - (a) the period (if any) specified in the declaration expires;
 - (b) the declaration is revoked, in writing, by the Secretary.
- (3) If a declaration is made under subsection 22(1) for a regulated Australian ship, and the declaration limits the waters in which the security level is in force in reliance on subsection 22(5), then unless:
 - (a) the period (if any) specified in the declaration expires; or
 - (b) the declaration is revoked, in writing, by the Secretary;the maritime security level declared in the declaration is in force for the ship while it is in those waters.

8 Section 28

Repeal the section, substitute:

28 Notifying declarations covering security regulated ships

If the Secretary declares that:

- (a) a maritime security level is in force for a regulated Australian ship; or
- (b) a maritime security level is in force for a regulated Australian ship while it is in specified waters; or
- (c) a maritime security level is in force for a regulated foreign ship;

the Secretary must, as soon as practicable, notify the ship operator for the ship, or the master of the ship.

9 Subsection 39(1)

After “A person”, insert “(including a person to whom a security direction to a ship is given under section 36 or 36A)”.

10 Subsection 46(2)

Omit “an enforcement order (see section 189)”, substitute “a ship enforcement order (see section 195)”.

11 Subsection 64(2)

Omit “an enforcement order (see section 189)”, substitute “a ship enforcement order (see section 195)”.

*[Minister’s second reading speech made in—
Senate on 23 June 2005
House of Representatives on 7 September 2006]*

(123/05)
