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MARITIME TRANSPORT SECURITY AMENDMENT BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and Regional Services, the Honourable John Anderson, MP)

MARITIME TRANSPORT SECURITY AMENDMENT BILL 2005

OUTLINE

The Maritime Transport Security Amendment Bill 2005 has two parts.

The first part of the Bill amends the *Maritime Transport Security Act 2003* by extending coverage of the provisions in the Act to Australia's offshore oil and gas facilities.

The Prime Minister made a public announcement on 15 December 2004 of several initiatives to further strengthen Australia's offshore maritime security. One of these included the announcement that the *Maritime Transport Security Act 2003* would be extended to apply to Australia's offshore oil and gas facilities.

The Prime Minister's announcement followed an initial assessment of Australia's maritime arrangements by the Secretaries Committee on National Security which resulted in the establishment of the Taskforce on Offshore Maritime Security (the Taskforce). In considering a range of issues, the Taskforce undertook an investigation into security arrangements at offshore facilities, and concluded that there is a need for an enhanced and formalised approach by operators to the security of fixed and floating offshore oil and gas platforms, and that this would be best achieved by extending the Act to offshore oil and gas facilities. The National Security Committee agreed to this course of action on 15 November 2004.

The Bill amends the *Maritime Transport Security Act 2003* by:

- extending coverage of the Act to offshore oil and gas facilities located within the territorial sea, in Australia's exclusive economic zone and on the continental shelf; and
- ensuring that all regulated offshore oil and gas facility operators and other prescribed offshore industry participants develop, and comply with, an offshore security plan based on a security assessment of each regulated facility.

The existing provisions in the *Maritime Transport Security Act 2003* regarding maritime industry participants (MIPs) and the obligations on certain MIPs to have risk-based and out-come focused security plans, which forms the basis for the preventative security regime in Australia, is being extended by this Bill to the offshore oil and gas industry. Some of the key provisions in the *Maritime Transport Security Act 2003* that will apply to the offshore oil and gas facilities include:

- determining the security levels applying to a facility and developing Plans based on these assessments;
- establishing security zones around offshore facilities;
- establishing the powers of law enforcement officers; and
- determining the penalty regime for not complying with the Act.

The second part of the Bill is to amend the *Maritime Transport Security Act 2003* to allow for the introduction of the Maritime Security Identification Card. The MSIC will be introduced to cover unmonitored personnel who are required to be in Maritime Security Zones and offshore security zones (Maritime Security Zones are defined in Part 6 of the *Maritime Transport Security Act 2003*.) The MSIC scheme will require the prospective holder to submit to a check of their background. These background checks will comprise a criminal history check

undertaken by security assessment by the Australian Security Intelligence Organisation (ASIO) and if required an unlawful non-citizen check by the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA). MSICs will only be issued to persons who have successfully met background checking requirements.

Part 1 of the Maritime Transport Security Amendment Bill 2005

The first part of the Bill amends the following parts of the *Maritime Transport Security Act 2003*:

Part 1 – Preliminary: This Part includes the objects of the Bill, its application to offshore areas and definitions. A definition of the meaning of 'unlawful interference with maritime transport or offshore facilities' is included to clarify the application of the Bill. Other definitions include 'FPO', 'FPSO', 'FSU', 'security regulated offshore facility', 'ship regulated as an offshore facility', 'offshore facility operator', 'offshore industry participant', 'offshore security plan', 'offshore security zone', 'continental shelf', and 'exclusive economic zone'.

New Division 7A deals with security regulated offshore facilities and offshore facility operators. This Division contains the meaning of terms such as 'offshore facility', and 'offshore area'. New Division 7B deals with the application of offences and enforcement action in relation to non-regulated foreign ships. The offences under the Bill will not apply to a non regulated foreign ship unless the ship is involved in some activity in relation to a security regulated offshore facility. Similarly, the offences under the Bill will not apply to a person travelling on such a ship unless the ship or person is involved in some activity in relation to the security regulated offshore facility.

Part 2 – Maritime security levels and security directions: This Part deals with the application of maritime security levels, security directions, and a system for notification. The Bill proposes amendments in respect of offshore areas and facilities, including ships regulated as offshore facilities. Maritime security level 1 is the default level. Maritime security levels 2 and 3 will be declared by the Secretary when it is appropriate for a higher level of security to be put in place for a security regulated offshore facility. In addition, in a security direction which can be issued at security level 1, 2 or 3, the Secretary may direct offshore industry participants to comply with additional security measures when an unlawful interference with maritime transport or offshore facilities is imminent or probable. The notification system ensures that those maritime industry participants and other persons, who need to know about essential security level and security direction information, are contacted.

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. Regulations provide additional detail on the content and form of the maritime security plans. The Bill inserts amendments to ensure that these plans also take account of circumstances as they relate to offshore facilities.

Part 4 – Ship security plans and ISSCs for regulated Australian ships: This Part requires ship operators to have ship security plans in force which must include security measures and activities to be undertaken at security levels 1, 2 and 3. Regulations provide additional detail on the content and form of the maritime security plans. The Bill inserts amendments to ensure that these plans also take account of circumstances as they relate to offshore facilities.

Part 5 – Regulated foreign ships: This Part sets out requirements to be met by regulated foreign ships and requires ship operators for, and the masters of, those ships to acknowledge certain communication. The Secretary is able to give control directions to regulated foreign ships to ensure that security standards are maintained. The Bill inserts amendments to ensure that regulated foreign ships do not hinder or obstruct compliance with the offshore security plan in a way that compromises the security of the operations of the offshore participant.

Part 5A: Offshore Security plans: This new Part will require various offshore industry participants to have, and comply with, offshore security plans which must include security measures and activities to be undertaken at security levels 1, 2 and 3. Various other persons and ships will also be required to comply with offshore security plans. This Part also deals with the approval of offshore security plans by the Secretary as well as with the variation and revision of plans and with the cancellation of the approval of plans. Regulations will provide additional detail on the content and form of offshore security plans.

Part 5B: ISSC obligations for Australian ships regulated as offshore facilities: This new Part will require Australian ships regulated as offshore facilities to have an ISSC. The Secretary will be able to issue ISSCs and interim ISSCs for ships as well as being able to delegate his or her powers to registered security organisations.

Part 5C: Foreign ships regulated as offshore facilities: This new Part will require foreign ships regulated as offshore facilities to acknowledge certain communications. The Secretary will be able to give control directions to foreign ships regulated as offshore facilities to ensure that security standards are maintained.

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 or offshore facilities. The Bill inserts amendments to ensure that in establishing these zones account is taken of the circumstances as they relate to offshore facilities, for example where ships are near an offshore facility.

The Bill inserts a new Division 5 which deals with offshore security zones. Under this new Division, the Secretary may establish offshore security zones within and around an offshore facility. The purpose of such zones is to subject those zones to additional security requirements. Regulations will provide additional detail on the different types of offshore security zones, matters to be considered in establishing such zones, and the requirements for such zones.

Part 7 – Other security measures: This Part imposes security requirements in relation to screening and clearing, weapons and prohibited items. The Part provides for 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 (i.e. prohibited items). The Bill inserts amendments to ensure that offshore security zones and offshore facility operators are covered by these provisions.

Part 8 – Powers of officials: This Part sets out the powers of the following:

(a) maritime security inspectors;
(b) duly authorised officers;
(c) law enforcement officers;
(d) maritime security guards;
(e) screening officers.

This Part sets out eligibility criteria for each class of official, grants specific powers to each class and places limits upon the exercise of those powers. Powers given to law enforcement officers under this Part are intended to complement existing powers conferred upon them under other State, Territory or Commonwealth legislation. The Bill inserts amendments to extend the application of the powers of these officials to offshore facilities, including operational and private living areas.

Part 9 – Reporting maritime transport or offshore facility security incidents: This Part establishes requirements to report maritime transport or offshore facility security incidents to ensure that adequate information is reported to relevant persons, including industry organisations and the Australian Government. This Part details the form, content and manner of reporting, clarifying the roles of all persons with incident reporting responsibilities in the event of any incident that is related to maritime security. The Bill inserts amendments to ensure that these requirements apply equally to offshore facility security incidents.

Part 10 – Information-gathering: This Part enables the Secretary to collect security compliance information from maritime industry participants. The collection of information is essential for the Secretary to deal with, and to resolve, compliance concerns before they become serious and compromise maritime security. The Bill inserts amendments to ensure that these requirements apply equally to offshore industry participants.

Part 11 – Enforcement: This Part provides for a number of different enforcement options in circumstances where contravention of the Act has occurred or is suspected to have occurred. These enforcement options are:

- infringement notices;
- enforcement orders;
- ship enforcement orders for regulated Australian ships;
- injunctions; and
- demerit points system.

The Bill inserts amendments to extend the application of these provisions to offshore industry participants.

Part 12 - Review of decisions: This Part sets out the decisions which can be made under the Act which are reviewable by the Administrative Appeals Tribunal (AAT). Whilst the AAT is limited in undertaking merits review to the decisions listed in this clause, this does not limit the scope for judicial review under the *Administrative Decisions (Judicial Review) Act 1976*, or at common law.

The Bill inserts a number of new provisions dealing with decisions which will now be reviewable by the AAT, for example decisions to declare an offshore facility a security regulated offshore facility, or a decision to establish an offshore security zone.

Part 13 - Miscellaneous: This Part contains technical information about the operation of the Act including, among other things, provisions relating to compensation. The Bill inserts amendments relating to compensation for damage to an offshore industry participant's equipment or data, as well as amendments relating to circumstances when compensation may be payable to the Commonwealth for inspection and detention.

Financial Impact Statement

The Department of Transport and Regional Services (DOTARS) will absorb the initial costs associated with extending the Act to the offshore oil and gas industry in 2004-05. Initial regulatory costs are estimated to be in the order of $0.2m to 0.25m per annum. Ongoing resourcing is being considered as part of the 2004-05 budget review of DOTARS' maritime security function.

In regard to the introduction of the MSIC scheme, DOTARS will incur administrative costs for the regulation of MSIC scheme. The funding of $1.9 million over four years for this function was agreed in July 2004.

Regulation Impact Statement

Part 1. The extension of the provisions in the *Maritime Transport Security Act 2003* to Australia's offshore oil and gas facilities.

PART 1 PROBLEM

Background

The Prime Minister made a public announcement on 15 December 2004 of several linked initiatives to further strengthen Australia's offshore maritime security. This announcement represented government's agreement with recommendations of a review conducted into Australia's maritime security in 2004.

Australia has one of the largest maritime domains in the world; the Australian mainland and Tasmania have a combined coastline of 35,877 kilometres and our exclusive economic zone covers an area of 6,048,681 square kilometres. Also Australia is a maritime nation, in 2000-2001 the share by value of Australia's seaborne exports in total exports was 83% and the share of all trade going by sea was 77%. All of these facts have lead to acknowledgement by government that Australia's maritime security is critical.

Terrorism against maritime targets has also been an international focus over the last several years, leading to work being done by the International Maritime Organization (the IMO) to which Australia is a signatory. The IMO agreed to write requirements for preventive security for ports and ships into the Safety of Life At Sea Convention (the SOLAS Code) in December 2002. Australia's domestic response to these issues, as expressed in the Code was the passage of the *Maritime Transport Security Act 2003* (the Act).

Implementing the preventive security arrangements in the Act is critical for ports and for ships. With the amendments to the SOLAS Code, Australia's trading partners also agreed to enhance their maritime security regime and expect all trading partners to have reliable preventive security arrangements in place.

This Bill builds on the maritime preventive security work set out in the Act by extending the Act to include offshore oil and gas facilities in Australian territorial waters and in Australia's Exclusive Economic Zone and on the Continental Shelf. Australia derives substantial commercial trading benefit from the offshore oil and gas industry and this industry was given careful attention in the 2004 maritime review – the Taskforce on Offshore Maritime Security.

Apart from recommending the extension of the Act, the new offshore initiatives included the establishment of the Joint Offshore Protection Command. That Command will allow for Australian Defence Force and Customs Coastwatch resources to provide more integrated offshore counter-terrorism, interdiction and response capabilities. There will also be augmented security patrols through Australia's maritime domain. These linked initiatives further strengthen Australia's national security agenda which has developed in consultation with industry and State and Territory Governments since the terrorist attacks of 11 September 2001 and the Bali bombing. Unfortunately maritime assets have been targeted for terrorist attack as the assault on the French tanker *Limburg* show.

The Act establishes a regulatory framework for the safeguarding of unlawful interference with maritime transport, including reducing the vulnerability of the maritime industry to terrorist attack without undue disruption to trade and the risk of maritime transport being used to facilitate terrorist attacks or other unlawful activities, and ensuring the effective communication of security information between industry and government. Certain offshore industry participants are obliged to develop and implement risk-based and outcomes-focused security plans which contain, among others, details of access controls, maritime security zones, security officers, and protocols for dealing with security incidents. The Act also provides a robust penalty regime to deter persons from unlawfully interfering with a participant's security arrangements.

The Problem

Australia's offshore oil and gas industry is currently not included in the provisions of the Act and as a result, is not covered by Australia's maritime security regime. Therefore, at present there are no formal mechanisms for responding to a potential terrorist attack. There are also no adequate mechanisms for dealing with unlawful access to offshore oil and gas facilities. While there are provisions covering this issue in the *Petroleum (Submerged Lands) Act 1987* there have been problems in the implementation of the provisions and the enforcement provisions are not considered adequate.

The oil and gas sector brings in excess of $18 billion annually into the Australian economy (Map 1 refers). With a projected increase in world oil consumption, petroleum will continue to be one of Australia's most valuable export commodities. The predominance of a small number of offshore oil and gas installations in supplying Australia's domestic and overseas energy markets make these facilities critical elements of national infrastructure and attractive targets for terrorists in the current security environment.

Since 11 September 2001 Al-Qa'ida and associated groups have consistently indicated that the energy sector is a target. Al-Qa'ida have articulated plans to 'cripple the petroleum industry' with sea-based attacks against oil tankers. There have already been attacks on oil facilities and personnel in the Middle East, such as the attempts on the *al Basra* and *Khor Al Amaya* oil terminals off southern Iraq on 24 April 2004. Al-Qa'ida has identified Australia as a legitimate target on seven separate occasions, and has carried out threats and actions intended to damage Western economies and in particular the oil and gas industry.

PART 2 OBJECTIVE

The objective of the proposed regulatory changes is to reduce the risk of unlawful interference with offshore oil and gas facilities.

When pursuing this objective the Australian Government is not intending to impact adversely on:

- existing counter-terrorism or police operations at the Commonwealth, State or Northern Territory level;
- other Australian Government operations and activities concerning the regulation of

- safety of offshore facilities;
- the relationship between State and Northern Territory governments with offshore facilities and networks under their jurisdiction; or
- the efficient operation of offshore facilities.

The Process

The Australian Government's decision that the Act be extended to apply to offshore oil and gas facilities was announced by the Prime Minister on 15 December 2004. The decision was an initial consideration of the offshore sector by the Secretaries' Committee on National Security's (SCNS) during its assessment of Australia's maritime policy settings in 2004 which resulted in the establishment of the Taskforce on Offshore Maritime Security (the Taskforce). Among others, the Taskforce undertook an investigation into security arrangements at offshore facilities, and concluded that there is a need for an enhanced and formalised approach by operators to the security of fixed and floating offshore oil and gas platforms, and that this would be best achieved by extending the Act to offshore oil and gas facilities.

PART 3 OPTIONS

Status Quo

The Taskforce did not consider that there should be no change in the maritime security regime. The driving force behind the need for an enhanced maritime regime is to better prepare this country for unlawful interference. There are security issues that can not support maintaining the status quo.

Explicit government regulation – amend the *Petroleum (Submerged Lands) Act 1967*

Discussion of this option really comes down to considering whether the most appropriate vehicle for Commonwealth legislation would be to amend the *Petroleum (Submerged Lands) Act 1967* (the PSLA) or the Act.

The PSLA is an existing piece of legislation which sets out the licensing scheme for petroleum exploration and production and which also sets up the safety regime for the offshore industry.

The Offhore Report does not reveal an extensive analysis of the provisions contained in the PSLA. However it does note that at a high level, the safety regime for the offshore industry is based on a risk identification and treatment approach. This approach is also endorsed in the Act. So, to that extent, there was no hurdle to prevent either Act being amended.

Explicit government regulation – amend the Act

The Act is also an existing piece of legislation. It represents Australia's response to the need to enhance maritime security, endorsed by the IMO in December 2002. The Act sets out a preventive security regime for ports and ships by requiring those security-regulated ports and ships to complete an analysis of risks of unlawful interference and write a plan addressing those risks.

The Offshore Report noted that placing a requirement for risk analysis and writing security plans fitted well with that requirement on ports and ships in the Act. The Report also pointed out that enhancing security regulation for offshore facilities advantaged security arrangements operating in the security-regulated ships that interfaced with those facilities. For example, tankers draw up to facilities to load petroleum products. If those tankers then travel to a security-regulated port it makes transiting that port easier if they can indicate that they have only interacted with security regulated facilities.

The Act provides:

- that offshore industry participants follow a security risk assessment process (this process is based on the relevant Australian Standard for risk assessment) to identify and address security risks. Based on that risk assessment participants are required to write a plan which sets out how they are going to manage those risks. They are then required to implement the measures that they selected with the outcome of a more comprehensive protection for their enterprises against unlawful interference;
- the implementation of those plans improves the security interaction between the facilities and security regulated ships. (Some Australian and some foreign-flagged ships are required to have security plans. This is a requirement of the SOLAS Code. When these ships interact with facilities which are not security-regulated subsequent ports may query whether or not the ships' security was properly managed when they interacted with an unregulated facility.); and
- is an appropriate legal basis for the security regulation of the offshore oil and gas facilities located within the territorial sea, in Australia's Exclusive Economic Zone and on the Continental Shelf.

Therefore the Taskforce's recommendation to regulate the industry by extending the Act was preferred.

As consequence of this decision, the industry will be regulated through explicit government regulation, with the Department of Transport and Regional Services (DOTARS) becoming responsible for oversight of the arrangements set out in the Act.

It was further agreed that:

the task – including legislative amendment, development of a new regulatory regime, consultation with relevant authorities and industry, and development, assessment and implementation of security plans - to be completed by 30 September 2005; and

b) the requirements for offshore security plans for offshore to have regard for:
    i. the special nature and location of these facilities;
    ii. the practical needs of operators; and
    iii. the need to complement, rather than duplicate, existing risk management and safety plans established under the PSLA.

The provisions in the Act concerning MIPs and the obligation on certain MIPs to have risk-based and outcomes-focused security plans forms the basis of the preventive security regime which under the provisions in this Bill will be extended to offshore industry participants. Consistent with the arrangements for existing MIPs under the Act, the *Maritime Transport*

Security Regulations 2003 (the Regulations) will provide the necessary detail to enable offshore industry participants to comply with the Act.

PART 4 IMPACT ANALYSIS

Apart from the potential safety and environmental consequences, a terrorist attack on an offshore oil and gas facility off Australia's coastline could have ramifications for Australia's economic stability and well being. While the day to day management of these facilities is undertaken by Australian-based subsidiaries of well-known multinational oil companies, the exploitation venture usually involves a number of multinationals as well as some smaller investors. An attack on a facility could significantly weaken future foreign investment in Australia's offshore oil and gas fields. Indirect effects may include short-term oil price instability, pressure on joint offshore development and security arrangements between Timor-Leste and Australia, difficulties in recruiting staff in an industry which is already suffering from skills shortage, adverse publicity, and the creation of flow-on security and hiring costs to operators of offshore-related or maritime-related enterprises.

From a shipping point of view, the exclusion of Australia's offshore oil and gas facilities from a national security regime – maritime or other – means that these facilities cannot be considered as secure as security regulated entities, and as a result interfaces with such facilities tend to be viewed as potentially risky for security regulated, or ISPS compliant, ships. To mitigate the risk security regulated ships may be required to augment their security measures at a cost to the ship operator when interfacing with these facilities and yet may still be subject to control measures when seeking entry into a security regulated, or ISPS compliant, port, which could include being prevented entry to the port.

Any unlawful interference with an offshore oil or gas facility off Australia's coastline would be highly damaging to the offshore industry, its ancillary industries including the maritime sector, and consequently for the Australian economy and the Australian public. Ultimately, the cost of enhancing security whether for the offshore oil and gas industry, in the maritime sector, aviation transport sector, or at home, can only be measured against the benefits from preventing unlawful interference, including the benefits on commercial enterprises and personal wellbeing. The extension of the Act to cover the offshore oil and gas facilities is intended to reduce the probability and consequences of these types of events.

Due to the urgency of the task and the Australian Government's compliance deadline of 30 September 2005, 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 new statutory requirements on the Australian offshore oil and gas industry, other jurisdictions and consumers. Nonetheless, the Taskforce on Offshore Maritime Security undertook consultations with industry which confirmed the need for a nationally consistent offshore security regime.

The following assessment of the option of extending the Act to cover offshore oil and gas facilities is based on research undertaken by an independent consultant employed by DOTARS, the Taskforce's report, and the outcome of consultations DOTARS held with industry and State and Northern Territory government stakeholders.

Affected stakeholders

These changes will directly affect the offshore oil and gas industry; some of their major service-providers and indirectly the general population. The indirect economic impacts on the general population are negligible and are not considered further.

Offshore facility operators

Offshore facility operators who are responsible for the day to day operation of an offshore facility located in Australian waters, in the Exclusive Economic Zone, on the Continental Shelf, will be required to prepare an offshore security plan for the approval of the Secretary of DOTARS. The offshore facilities of interest are those that are involved in the oil and gas production process, as opposed to, for instance, the exploration process.

DOTARS has estimated that there are currently up to 55 offshore oil and gas facilities (see Map 1 for location of offshore facilities) located in the above targeted waters, which are operated by approximately 12 offshore facility operators.

The offshore facilities vary from conventional steel fixed platforms and concrete gravity platforms through to mini platforms, mono-tower, mono-pods and mini-pods, Floating Storage and Offtake units (FSOs) and Floating Production Storage and Offtake units (FPSOs). FSOs and FPSOs are also ships. Fixed facilities can be manned or unmanned, with some facilities on the North West Shelf and in the Bass Strait having up to 100 staff.

In summary**,** the following minimum requirements would need to be met by offshore facility operators under the Bill:

a) Undertake a risk assessment that takes into account the types of interfaces with ships and other vessels, loading of cargo and stores, personnel and visitor movements, area of operation, and other issues which may be pertinent in determining not only the risks to the offshore facility but also to security regulated ships that visit the facility.

b) Based on the risk assessment, develop an offshore security plan for submission to the Secretary of DOTARS for approval. The plan must demonstrate how the relevant legislative and offshore facility-specific regulatory requirements will be met, including a capacity to monitor and control access, monitor the activities of cargo and people and ensure an adequate security communications capability.

c) The offshore facility operator would need to nominate a facility security officer with appropriate training, responsible for implementing and monitoring the offshore security plan. This officer will have a key role in enabling communication between the offshore facility operator and relevant authorities.

d) The offshore facility operator would be required to implement additional security measures as outlined in the offshore security plan at security level 2, and implement the required security measures at security level 3.

e) The offshore facility operator will need to monitor and secure access to offshore facility zones established by the Secretary of DOTARS. It will be necessary to protect these zones from unauthorised access, particularly with a view to deterring and detecting the unauthorised carriage of weapons and prohibited items into such zones.

f) There are a number of strict liability penalties for serious offences under the Act which offshore facility operators will need to be aware of.

The impact on offshore facility operators is intended to be minimal and the offshore security plans will take into account the special nature and location of these facilities and the practical needs of the operators in addition to the in-force safety arrangements under the PSLA. The Secretary may approve that an operator of multiple facilities submit one security plan, in certain circumstances. Australian flagged FPSOs and FSOs that can navigate under their own propulsion, i.e. operate as ships, will be required to have an approved ship security plan when undertaking a voyage. This will be consistent with the approach taken to mobile offshore drilling units under the Act.

Offshore service providers

The Bill provides flexibility for offshore security plans to cover the security arrangements for interfaces or interactions with service providers (i.e. contractors of specialist offshore-related services or port-related services). However, some service providers may be required to provide their own offshore security plan, to be approved by the Secretary of DOTARS, and implemented by 30 September 2005.

Services for offshore exploration and production facilities are usually provided by contracting companies who supply the following:

- helicopter services for transport of passengers and small or urgent items of cargo; and
- work boat or supply vessel service providers, who cover the bulk of heavy cargo and bulk materials for drilling and production operations.

There are approximately six helicopter and eight supply vessel service providers operating in Australia. Service providers frequently share facilities and provide services for a number of operators in the same area, as outlined below:

- For the Bass Strait, facilities are serviced by marine supply bases at Barry Beach Marine Terminal for general cargo and bulk liquids, and Lakes Entrance for food provisioning and urgent items. Helicopter services are all provided from Esso's facility at Longford. In the case of other operators working in the area, they may contract these services or arrange their own service providers and setup supply bases at commercial ports or airports for short periods.
- For the North West Shelf, the majority of facilities are serviced via helicopter operations based at Barrow Island and Karratha Airport and supply vessel operations at Onslow and the Dampier port on the Burrup Peninsular.
- For the Timor Sea, a number of marine supply bases in Darwin are used to service facilities, with helicopter operations based in Darwin, East Timor and Troughton Island.

The majority of interfaces between service providers and offshore oil and gas facilities are via:

- helicopter services for personnel - may include regular crew, specialist contractors, full-time contractors, visitors and support personnel, as well as small or urgent freight items (can include hazardous materials which are managed under air safety regulations).
- supply vessels - carry the majority of freight, heavy equipment and bulk materials, including water, diesel, drilling mud, cement, as well as drilling equipment, used in the drilling phase and construction materials during project phases. The supply vessels generally operate from marine supply base facilities.

Arrangements for passengers boarding helicopters are similar to those employed at commercial airports, in terms of screening for banned items. In addition, most offshore facility operators request their helicopter service providers to conduct additional screening of personnel and baggage for other prohibited items, such as cigarette lighters and matches, drugs and alcohol. It is also common for bags to be inspected on arrival after return journeys as a deterrent to stealing or carrying prohibited items.

For marine supply bases, there are various arrangements in place. These range from offshore facility operators owning and operating their own marine supply base facilities and supply vessel fleet, to all of these services being outsourced to contracted service providers. In general, the arrangements for screening of cargo and for people entering and leaving the marine supply bases is far less tighter than those required by helicopter service providers, and is made more difficult due to the type and numbers of people, as well as the variety of activities that take place.

Supply vessel service providers are increasingly delivering goods to a number of facilities and different operators, thereby increasing the risk of containers being off-loaded at the wrong facility - particularly during periods of high activity, e.g. during drilling and construction periods).

In remote locations, container loads may be pre-packed in another location (e.g. Perth or Melbourne) before being shipped to the marine supply base for transfer to an offshore facility. In some instances these containers would be opened, repacked and manifested, while in other cases, containers may go directly offshore with the original manifest.

Costs

In general, the cost impact on off-shore providers is likely to be negligible given that helicopter service providers and some supply base operators are regulated by other transport security legislation and are required to have security plans in place. Helicopter services are regulated by the *Aviation Transport Security Act 2004*. Some supply-base operators are regulated by the *Maritime Transport Security Act 2003*.

DOTARS is conscious that some service-providers have already written security plans. There is a provision written into the Bill which should facilitate easy and simple tailoring of these plans to reflect the interaction with the new regulatory regime for offshore facilities. This should minimise costs to business as much as possible.

Industry

Offshore facility operators will need to implement additional preventive security measures, at their cost, to address identified vulnerabilities. Any additional security requirements should be appropriate and relevant to the facility or group of facilities in question, should complement and not compromise existing safety requirements and thus must form part of an all hazards risk management framework.

Offshore facility operators

Consistent with the Australian Government's policy that security is a cost of doing business, the operators of offshore facilities will be required to pay for additional security measures in accordance with their offshore security plans. This includes costs associated with the security assessment and development of the security plan, implementation of the security plan, training of security officers and other staff and crew, maintaining security plans (periodic reviews and updates) and conducting internal audits and security exercises. As is the case with port and port facility operators, the costs of these measures will vary according to the nature of the facility, number of personnel, the identified security risks, as well the extent of existing security/safety measures.

The costs to industry versus the benefits to industry were not discussed in detail in the Offshore Report. So, to that extent, it is not possible to say that costs outweigh benefits or vice versa; although had it been the former it is likely that that would have diluted industry support. And there has been no substantial disagreement from industry about this aspect of the enhanced maritime security regime.

It has been difficult to collect precise estimates of the costs that facility operators will have to meet in order to write plans and then implement those measures. There is anecdotal evidence that some members of the industry estimate costs to be below $50,000 for the development of plans. These same operators make the point that they can not reliably estimate the costs of an enhanced security regime: it will depend on the preventive strategies that are put in place. These decisions have not yet been made by all of industry. However, they note that where possible some measures will be incorporated in existing work procedures. This is a sensible business decision that would minimise costs and may be open to industry. Also as part of the anecdotal discussion the Offshore Report does note that some members of industry saw that some business costs would be reduced by a formal enhancement of security. In particular they noted that the business process surrounding interaction with security-regulated ships would be stream-lined if their facility was also security-regulated.

Thus, there has not been a quantitative analysis of costs versus benefits undertaken by the Offshore Taskforce before recommending this option. In implementing this option there was no detailed quantitative analysis undertaken again. But in implementing the option there is no reason to conclude that the costs will outweigh the benefits for the following reasons:

- industry has not settled on their preventative strategies (therefore costs can only be an estimate);
- they will take the sensible business strategy of writing in security considerations to existing business procedures, presumably, where possible (they will minimise cost)
- industry considers that enhanced security arrangements will improve their interaction with security-regulated ships and guess that that will derive a benefit.

The United States has already regulated for the application of maritime security plans to larger scale offshore facilities on the 'outer continental shelf' (OCS), under the *US Maritime Transportation Security Act 2003* (OCS Facility Security, 33 Code of Federal Regulations, Part 106). It should be noted that the US legislation only applies to offshore facilities that meet or exceed any of the following threshold characteristics:

1. OCS facility hosts more than 150 persons for 12 hours or more in each 24-hour period continuously for 30 days or more;
2. Production greater than 100,000 barrels of oil per day; or
3. Production greater than 200,000,000 cubic feet of natural gas per day.

Despite the Bill not proposing similar thresholds, the cost estimates for the US version provide an indication of the major costs that the offshore facility operators can expect.

The United States Coast Guard (USCG) estimated cost of compliance for the approximately 40 OCS facilities to be regulated was approximately US$37 million over the period 2003-2012. According to the USCG assessment, the major initial costs would be the assigning and establishing of Company Security Officers and Facility Security Officers. Other initial costs would include security assessments and plans, training, personnel, and paperwork. Following initial implementation, major ongoing costs were associated with training (including quarterly drills) and ongoing employment of Company and Facility Security Officers.

While unable to provide specific cost impacts for the offshore oil and gas facility operators affected by the Bill, based on discussions with an independent industry consultant and DITR, DOTARS expects the costs to be minimal with key costs being the initial security assessment and security plan development. It is expected that the majority of offshore facility operators will engage consultants to undertake this work. Some of the larger operators, with their own security resources, may complete this work in-house.

Offshore facility operators will also need to consider assigning a security officer, who will have a key role in enabling communication between the offshore facility and relevant authorities. The costs for the facility security officer would be dependent on whether a new employee was appointed or whether the duties were assigned to an existing employee.

There could also be some initial costs associated with tightening of access arrangements to newly established security zones, enhancements to the checking and screening of people, goods and cargo being transported to the offshore facility, additional costs for measures at higher security levels, as well as costs for initial and ongoing staff training and awareness-raising.

Initial training costs associated with ports, port facilities and ships complying with the Act show that, with the exception of the major ports, training costs were generally in the range of AU$5,000-$25,000 per facility per annum.

There would also be minimal costs to industry associated with providing access (i.e., helicopter) for DOTARS personnel to inspect facilities for compliance with the Act.
In relation to security infrastructure and equipment costs, the USCG assumed that the industry was adequately prepared with equipment suitable to be used for security purposes (lights, radios, and communications) and did not believe any additional costs associated with security

equipment installation, upgrades, or maintenance would be necessary. From discussions with an independent industry consultant, DOTARS envisages that this would also be the case for a majority of the offshore oil and gas facilities to be covered by the Bill, though some facilities may be required to upgrade their alarm systems.

Much of the response mechanisms and procedures in place as part of the safety case requirements under the PSLA will be similar in the event of an incident occurring on the facility, although there would be some differences in reporting arrangements. The security regime for offshore facilities is intended to be complementary to the existing safety regime.

Offshore Service Providers

The most significant cost impacts associated with implementing the new security measures would most likely be at the access control points, i.e. helicopter and marine supply bases, as it is unlikely that service providers will have the internal resources to undertake risk assessments and prepare security plans, and therefore will rely extensively on external consultants to complete this work.

In relation to the impact of having to implement additional security measures, helicopter service providers already conduct extensive security and identity checks at their helicopter bases. However, marine supply bases, due to their nature of activities, tend to have less screening and controls in place and may incur additional costs associated in upgrading their security.

How to meet these costs

It is the Australian Government's view that preventive security is a cost of doing business. Offshore facility operators are in a position to recover the costs of additional security measures through commercial mechanisms. It needs to be emphasised that the cost of security to an individual operator will depend on existing security arrangements.

DOTARS does not expect the implementation and ongoing costs to be prohibitive or counterproductive to the offshore oil and gas industry.

Penalties

The Act prescribes penalties for failing to comply with security plans. There is a maximum penalty of 200 penalty units for summary offences ($22,000 for an individual; $110,000 for a body corporate) and up to seven years' imprisonment for indictable offences. This penalty regime has been extended to the offshore sector.

Australian Government

DOTARS will absorb the initial costs associated with extending the Act to the offshore oil and gas industry in 2004-05. Initial regulatory costs are estimated to be in the order of $0.2m to $0.25m per annum. Ongoing resourcing is being considered as part of the 2004-05 budget review of DOTARS' maritime security function.

DOTARS' regulatory roles and responsibilities will include:

- assessment of offshore facility operators' security plans;
- administering an audit and compliance checking process;
- management of sensitive security threat information;
- establishment of communications network with offshore facility operators and the Joint Offshore Protection Command;
- ongoing liaison with Australian Government departments and State and Northern Territory government authorities; and
- staff training.

To some extent, it is possible that the cost of auditing a security regulated offshore facility could be minimised by combining DOTARS audits with visits by regulators from other Australian Government agencies.

Benefits

The Bill is based on an existing nationally consistent framework for a preventive maritime security system established under the Act. This has the benefit of having one single central security regulator – which is DOTARS – for offshore industry participants.

Those offshore industry participants who are required to have security plans will need to undertake risk assessments and develop offshore security plans for their facilities. This provides the necessary means and guidance for offshore facility operators to identify and address security risks, which is beneficial in reducing the risk of an unlawful interference with an offshore facility, including interference by a terrorist.

The consequences of non-compliance are high and range from detrimentally affecting confidence in the offshore petroleum industry and the Australian economy, as well as relations with international trading partners, right through to the adverse consequences a terrorist attack could have on a facility operator's assets and operations.

Further benefits are derived from the fact that ISPS compliant ships will be able to record an interface with a regulated offshore facility in their ship security records, rather than having to record an interface with an unregulated entity. The latter can have adverse consequences for the ship when wishing to enter an ISPS compliant port elsewhere in the world. The ship may be subject to control directions which prevent it from entering its port of destination, or the ship may even be denied entry if it is deemed a risk after interfacing with an unregulated entity. Coverage under the Act will mean that Australia's offshore facilities will be included in the international maritime security regime under ISPS and will be recognised as being compliant with ISPS Code.

There are also significant benefits to offshore oil and gas companies and their employees by extending coverage of the Act to the offshore oil and gas sector. Through undertaking risk assessments of their facilities and developing security plans based on these assessments, companies will be reducing the opportunities for unlawful activities which have the potential to interrupt the economic activities of the company. This will ensure that economic growth, profits and employment growth is retained in the current environment.

Other indirect benefits which flow from regulation under the Act include upholding Australia's reputation as a 'secure' trading partner, centralising the cost of administration, and reducing instances of goods being delivered to the wrong facility or theft and property damage due to enhanced checking and access control measures at marine supply bases which supply persons, cargo and goods to security regulated offshore facilities.

PART 5 CONSULTATION

At the outset it should be noted that the oil and gas industry support extending the *Maritime Transport Security Act 2003* to cover offshore oil and gas facilities and the industry does not consider the (likely) extra costs to the industry as being too onerous. Although costs of meeting any new security activities are, as yet, unable to be quantified there have been no serious assertions from industry that they can not meet the costs.

The process of consultation on the issue of extending the Act to cover Australia's offshore oil and gas facilities began when the Secretaries Committee of National Taskforce established a taskforce in July 2004 to undertake work on this issue. The Taskforce consulted with the Australian Petroleum Production and Exploration Association (APPEA) and companies involved in the offshore oil and gas industry. While potential costs of implementing the measures were not discussed in detail, the offshore oil and gas industry was generally in agreement with the proposal to extend the Act to cover offshore oil and gas facilities. Industry agreed with the need to have security risk assessments and security plans for offshore oil and gas facilities. The Taskforce also suggested that the regulation of the offshore facilities under the Act was likely to be welcomed by shipping companies whose vessels interact with those facilities.

Since the Prime Minister's public announcement on 15 December 2004 concerning the extension of the Act to Australia's offshore oil and gas sector, DOTARS has consulted extensively with representatives from the offshore oil and gas industry, Australian Government departments and agencies, and the State and Northern Territory governments and their relevant authorities. Attachment A 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. DOTARS also engaged the services of an independent oil and gas industry expert to assist with policy, legal and implementation issues.

DOTARS representatives have also made visits to various offshore facilities and service providers to gain a better operational insight into the security challenges being faced.

DOTARS held an industry workshop on the exposure draft of the Bill on 20 April 2005. Representatives from the peak industry association, petroleum industry, State and Northern Territory government authorities, and other stakeholders attended.

The key issues identified as a result of the above consultation processes include:

- scope of coverage regarding the facilities and industry participants being covered under the Act;
- practicality of preventive security measures required under a security plan, i.e. the use of physical preventive security to control access to key points of vulnerability on facilities;
- the need for flexibility in relation to coverage of security plans in regards to offshore service providers and for offshore facilities which formed a group of facilities;
- whether operators of FPSOs would be required to have both a ship security plan and an offshore security plan;
- training requirements for specified roles if they required the employment of additional personnel;
- identification requirements (i.e. MSIC) for personnel and other persons interfacing with an offshore facility;
- security issues in relation to pre-checking cargo coming onto the facilities, particularly from supply vessels where items have been reloaded from large shipping containers into smaller containers;
- doubts about the enforceability of the 500-metre zones surrounding a facility;
- a desire that DOTARS coordinate visits with other regulatory authorities to minimise impacts of security audits on daily operations; and
- whether a Declaration of Security will be required for an offshore facility when interacting with a security regulated ship.

DOTARS considered the merits of these issues and, where reasonable, reflected these in the Bill. For example:

- some operators have several small similar facilities located quite close to each other (some petroleum fields are best worked by having a network of small facilities). In that case the legislation (and regulations) will foreshadow that if the security assessment for each facility is largely identical, the facilities are located in a similar area and each facility makes an equivalent contribution to the commercial outputs for that operator then DOTARS will accept one security plan which covers all of those facilities. In one instance this may drop the number of plans from about fifteen to about three.

In other cases, further clarification of the intention of a particular provision, or group of provisions, in the Bill has been provided in the Explanatory Memorandum. Some issues not covered in the Bill will be addressed in the Regulations which deal with operational matters.

DOTARS also released guidance material and a risk context statement, on 20 April 2005, to assist the offshore facility operators with the preparation of offshore security plans.

PART 6 IMPLEMENTATION AND REVIEW

The Australian Government agreed that the new security regime for the offshore oil and gas sector be fully implemented by 30 September 2005. DOTARS, as the Department that administers the Act, is responsible for coordinating the extension of the Act and completing formal implementation by 30 September 2005, meaning that all required offshore security plans will need to have been assessed, approved and implemented by offshore facility operators by that deadline.

The Regulations are being amended to provide details on how offshore industry participants are required to meet the new provisions in the Act.

Consistent with current Regulations, offshore facility operators will be required to include in their security plans effective audit and review procedures which ensure that security measures and procedures are adequate and that the security plan has been implemented correctly. DOTARS audit process will take into account the need to minimise disruptions to operations from external visits by DOTARS and other regulators, such as the National Offshore Petroleum Safety Authority.

The security plans will be reviewed after five years in operation. After that time, offshore industry participants will be required to develop new plans and submit these plans to DOTARS for approval. The review of the security plans provides the opportunity to review various aspects of the legislation. The Offshore Report does not recommend a specific date for reviewing the new maritime security arrangements that have been established by the amending Act.

As regulator under the Act, DOTARS has the responsibility for, and carries the cost of, the assessment of security plans, auditing offshore facility operators, liaison with industry, and communication of national maritime threat information.

PART 7 CONCLUSION/RECOMMENDATION

The conclusion of this process is to amend the Act to cover the offshore oil and gas facilities and this will:

a) protect Australia's offshore oil and gas industry assets by ensuring that these facilities have assessed their security risks and have in place appropriate preventive security measures for the nominated security level; and
b) address concerns about interfaces between offshore facilities and ISPS compliant ships, where an ISPS compliant ship may face additional security costs and encountering difficulties at subsequent ISPS compliant ports because of an interface with an unregulated entity.

This is the option agreed upon by the Australian Government and publicly announced on 15 December 2004. While there may have been other options to achieve the objective none were seriously considered in the Offshore Report and therefore those options were not fully considered and analysed in this document.

It is recommended that this option be adopted.

ATTACHMENT A

Consultation with other Australian Government departments and agencies

DOTARS has held consultations with key departments involved with the offshore oil and gas industry, or with an interest in law enforcement and legal matters. These included Department of Industry Tourism and Resources (DITR), National Offshore Petroleum Safety Authority (NOPSA), Department of Foreign Affairs and Trade (DFAT), and the Joint Offshore Protection Command (JOPC).

Consultation with State/Territory governments

DOTARS visited Perth, Darwin and Melbourne in January 2005 to meet with representatives of the respective State and Northern Territory governments and police forces to inform them of the Australian Government's decision and issues to be addressed.

The affected State and Northern Territory governments have also been updated on the progress of the offshore amendments to the Act via various high-level inter-governmental committee meetings since the Prime Minister's announcement of 15 December 2004. These included meetings of the National Counter-Terrorism Committee (NCTC), NCTC Executive Committee (NCTCEC), Standing Committee on Transport (SCOT), and the Transport Security Working Group (TSWG).

Consultation with industry

Briefings and general presentations were provided to a range of key industry stakeholders throughout the first half of 2005. The main forums for discussion were meetings held during February in Perth. Participants included representatives from the Australian Petroleum Production and Exploration Association (APPEA), Woodside Petroleum, Apache Energy, Inpex and BHP Billiton, Chevron Texaco, ConocoPhillips, Coogee Resources, Mermaid Marine, and the Western Australian State government and police force. DOTARS has also held consultations on separate occasions with APPEA and Santos.

DOTARS officers visited Darwin in early February 2005. This visit included meetings with representatives from Timor Sea Designated Authority, Port of Darwin, Darwin International Airport and Air North and CHC Helicopters. DOTARS officers also visited offshore facilities on the North West Shelf in April 2005. These visits provided DOTARS with an insight into the conduct of how the offshore oil and gas industry operates in the region.

Further consultation with industry groups took place at the Maritime Industry Security Consultative Forum meeting in Melbourne and the exposure draft workshop in Perth.

Maritime Industry Security Consultative Forum (MISCF)

The purpose of the Maritime Industry Security Consultative Forum (MISCF) is to facilitate high level industry government consultation on policy, operational, legal and other issues. Membership consists of industry leaders and decision-makers, as they are best placed to provide input to government and communicate with the maritime industry. An overview of the offshore amendments to the Act was presented to the MISCF meeting in Melbourne on 11 March 2005.

Consultation on exposure draft

An open meeting on the Exposure Draft to the Bill which contained the extension to the offshore oil and gas industry was held in Perth on 20 April 2005. There were representatives from the industry, service-providers to the industry, union organisations and State Government agencies and police forces.

Part 2 The Introduction of the Maritime Security Identification Card

PART 1 PROBLEM

Background

On 20th July 2004, the Prime Minister, the Hon John Howard MP, announced a range of new security measures to further strengthen Australia's maritime industry. As part of these measures the Prime Minister announced the introduction of a nationally consistent Maritime Security Identification Card (MSIC). MSICs will be issued subject to the successful completion of background checks for all maritime personnel requiring unescorted access to a maritime security zone. A key part of the MSIC initiative is to minimise the risk of people that may unlawfully interfere with maritime infrastructure obtaining legitimate access to maritime facilities.

Since the terrorist attacks of 11 September 2001, the attack on the French tanker *Limburg*, and the Bali bombing, the Australian Government has worked with industry, states and territories to put in place a robust transport security framework, including the establishment of a maritime security preventative regulatory system via the *Maritime Transport Security Act 2003* (the Act).

The Act gives effect to the obligations set out in Chapter XI-2 of the Annex to the 1974 International Convention on the Safety of Life at Sea (SOLAS) and Part A of the accompanying International Ship and Port Facility Security (ISPS) Code, as adopted at the International Maritime Organization's (IMO) Diplomatic Conference on 12 December 2002. The Act regulates maritime security consistent with the requirements of the ISPS Code which commenced on 1 July 2004.

The Act applies to ships (Australian and foreign flagged) of certain classes, port facilities and ports which have interfaces with security regulated ships, and port service providers who operate within the boundaries of security regulated ports and interface with security regulated ships. It is designed to reduce the vulnerability of the maritime industry to terrorist attack and to reduce the risk of maritime transport being used to facilitate terrorist attacks or other

unlawful activities, and to ensure the effective communication of security information between industry and government without undue disruption to trade. The Act increases maritime transport security by requiring ships, ports, port facilities, and other maritime industry participants to have risk-based security plans in place.

The Problem

Under the current maritime security regime there is no regulatory requirement for a standard identity card issued on the successful completion of background checks. As such, we have limited knowledge on who is accessing the sensitive areas of our ports and ships. Current access control arrangements to Maritime Security Zones (MSZ) are managed by each individual Maritime Industry Participant (MIP). There is no requirement to confirm the character and identity of those entering a MSZ.

The preference of terrorist organisations for targets of convenience means that visibly tighter maritime security border control measures, particularly security identification cards are likely to have a significant deterrent effect. Security identification cards deliver some assurance that people who have been issued with such a card are not a security risk. Not having a security identification card with background checks for maritime personnel requiring unescorted access to maritime security zones may increase the opportunity for criminals and potential terrorists to infiltrate the maritime sector by legitimate means and unlawfully interfere with maritime infrastructure in Australia.

On 20 July 2004 the Prime Minister announced the introduction of the MSIC initiative following an assessment of maritime security policy settings by the Secretaires' Committee on National Security.

The current *Maritime Security Act 2003*, Part 6 provides for the establishment of the following Maritime Security Zones: Port Security, Ship Security and On-Board Security Zones and there is authority to make regulations to restrict access to each of these zones which could include the introduction of a nationally consistent identity card, such as the MSIC, issued subject to background checks.

MSICs will also be required by unescorted personnel on oil and gas offshore facilities with the introduction of a new maritime security zone on Australian regulated oil and gas offshore facilities.

PART 2 OBJECTIVE

The objective of the proposed regulatory changes is to enhance Australia's maritime transport security through the introduction of an MSIC for all personnel requiring unescorted access into maritime security zones. The MSIC will identify the bearer as having met the necessary threshold background checking requirements and is permitted to be in a maritime security zone unescorted. It will however not in itself give a right of access to a particular secure area. Access will remain entirely a matter for each maritime industry participant to decide.

PART 3 OPTIONS

The Government has decided to use explicit government regulation by amending the Act to more clearly articulate the role and responsibility of the Australian Government and maritime industry participants in the management of the MSIC initiative.

The current legislative framework establishes minimum security standards for maritime industry participants, ensuring that national security outcomes are achieved, and consumer interests recognised. Industry members must demonstrate that they meet security requirements to lawfully operate. The Department also has responsibility for monitoring and ensuring compliance. It is appropriate for the Government to explicitly regulate in this area.

While the consequences of a terrorist incident are catastrophic, market forces cannot be relied upon to arrive at the optimal level of security. In addition to this fact the ownership arrangements within the maritime industry means that is would be impossible to guarantee consistency in the absence of Government enforced standards. Any inconsistencies in the application of background checking, hence access to critical maritime infrastructure, would severely compromise the entire system.

As the background checks are a key element of the proposed system, in the absence of Government regulation, privacy laws would prevent industry participants for accessing important information on the employees who have access to maritime security zones. Privacy Principle 11 (under the *Privacy Act 1988*) states such personal information can only be released where legislation requires.

The amendments to the Act in relation to the MSIC initiative will mean that maritime industry participants will be regulated under an outcomes – based maritime security framework. The amended Act will provide maritime industry participants with a nationally consistent approach and a single 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 MSIC plans, and liaison with industry. During the implementation phase DOTARS will coordinate background checks for personnel requiring unescorted access to maritime security zones

To achieve this objective, the Australian Government has decided that the Act be amended to;

- More clearly articulate the specific tasks and powers of MSIC Issuing Bodies to ensure that there is lawful authority for the disclosure of personal information to and by Commonwealth agencies, which is necessary to facilitate the process of background checking.
- Allow Maritime and Offshore Security Plan holders to be MSIC issuing bodies or to nominate an agent to issue MSICs on their behalf.
- Allow MSIC Issuing Bodies to recover the costs associated with background checks by an MSIC applicant; and
- Enable DOTARS to approve MSIC Plans submitted by MIPS or their nominated agent and to authorise them as MSIC issuing bodies.

As the MSIC initiative is an expansion on the current provisions of the Act, the Government agreed that the most straight forward approach is to amend the Act. During the implementation phase DOTARS will work closely with the maritime industry to further develop the ongoing administrative framework for the MSIC initiative.

As such explicit government regulation is the most appropriate option

OTHER OPTIONS

No other options were considered by the Secretaries Committee on National Security.

PART 4 IMPACT ANALYSIS

Any attempt, even failed, to unlawfully interfere with the maritime industry would be highly damaging to the confidence in the Maritime Industry. Over $184 billion in trade goes through Australian Ports annually. Any delays in trade would have a serious impact on the Australian economy.

A key part of the MSIC initiative is to minimise the risk of people that may have intentions to unlawfully interfere with maritime infrastructure obtaining legitimate access to facilities. The Australian Government has decided that an MSIC initiative will be introduced for the maritime industry. An MSIC with background checks can assist to reduce the risk of potential terrorists infiltrating sensitive areas of maritime infrastructure by legitimate means. The MSIC like the Aviation Security Identification Card (ASIC) will deliver some assurance that people with such a card are not a security risk.

The ASIC has been a valuable tool in mitigating the risk of people interfering with Aviation Infrastructure through legitimate means. There have been minimal security breaches under the ASIC Scheme in relation to inappropriate persons entering secure areas of an airport; when this has occurred it has been easy to identify those that should not be in the secure area and act accordingly.

There would be some compliance costs to be met by industry, as well as additional regulatory costs for the administering department, DOTARS. However these costs would be minimal in comparison with the economic impact from a person interfering with maritime infrastructure.

Ultimately, the cost of enhancing security whether in the maritime sector, aviation security 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 impact it can have on personal wellbeing.

MSIC is expected to commence from 1 October 2005 and to be fully operational by 30 June 2006 enabling systems and process to be put in place to support the MSIC initiative.

The MSIC will be a nationally recognised form of maritime security identification with a standard appearance to facilitate easy recognition. The MSIC will be introduced to cover all unescorted personnel within Maritime Security Zones. While subject to the individual security arrangements for each MIP, it is probable that it will capture transport operators, and the crew of Australian Regulated Ships and Offshore Oil and Gas Facilities.

It is important to note that the MSIC in itself will not give a right of access to secure areas. Access control will remain entirely a matter for each maritime industry participant to decide.

Industry Costs

Under the regulations, it is envisaged that DOTARS will authorise certain MIPs or their agent to become MSIC Issuing Bodies and if appropriate other organisations.

MSIC Issuing Bodies will be required to apply to DOTARS to become an MSIC Issuing Body by submitting a draft MSIC Plan. The draft MSIC Plan will outline how an MSIC Issuing Body proposes to operate within the MSIC regulations; and will include such things as:

- how an MSIC Issuing Body plans to issue and produce MSICs
- the safekeeping, secure transport and disposal of MSICs and associated equipment
- the recovery and secure destruction of issued MSICs that are no longer required
- the security of records in relation to MSIC applicants for MSICs, lost and those that are returned to the issuing bodies when they are cancelled, expired or no longer required.

The MSIC Issuing Body will also be required to keep a register containing the following details

- the name for the person, the date of birth and photo of the person who the MSIC was issued to.
- the general reason that he or she holds an MSIC
- the unique number of the MSIC
- its date of issue
- its date of expiry; and
- if applicable the date it was cancelled, reported lost, stolen or destroyed.

Industry will be responsible for the delivery of the MSIC initiative. DOTARS will assist in the implementation phase, by assisting industry in determining who can't hold an MSIC based on the outcome of backgrounds checks. Based on the average costs charged by Aviation Security Identification Cards (ASIC) issuing bodies in issuing a current ASIC it is anticipated that the average cost of an MSIC will be $150 per application which includes the cost of AFP and ASIO background checks plus all administrative costs associated with issuing the physical card which will be valid for a five year period. As with the aviation sector costs may vary between each issuing body based on the number of MSICs that they produce and individual Issuing Bodies cost recovery arrangements.

Each MSIC Issuing Body will determine how they recover their costs associated with issuing cards. It is anticipated that some Issuing Bodies will directly charge MSIC applicants while others will absorb the costs for issuing cards to their direct employees. On advice from industry we believe that there maybe somewhere in the vicinity of 130,000 persons requiring an MSIC.

The costs will be determined by industry under the proposed MSIC regulations MSIC Issuing bodies will be able to cost recover any costs associated with the issuing of an MSIC. This could include the cost of background checks, the administration of the MSIC Scheme and the production of the MSIC.

Government Costs

Government has allocated $0.5m in 2005-2006 for the implementation of the MSIC Scheme and $0.3 million in the 2006-2007 to provide ongoing policy advice to the maritime industry

DOTARS' regulatory roles and responsibilities will include;

- assessment of MSIC Plans
- audit of MSIC Plans
- checking compliance
- regular liaison with other Commonwealth departments and State and Northern Territory authorities; and
- staff training

To assist in the implementation phase of the MSIC initiative DOTARS will determine if maritime employee is eligible for an MSIC on the basis of the outcomes of background checks. AFP will undertake the role of handling the consent form, which includes a declaration by the employee of their criminal history.

Beyond the implementation phase DOTARS will provide ongoing assistance to the maritime industry by providing policy guidance in regard to personnel having an adverse criminal history check.

There would be additional security and audit and regulatory costs in the implementation and monitoring of such enhanced security arrangements. To some extent, that cost could be minimised through incorporation of compliance reviews of MIPs with who already captured under legislation and an increase in the audit regime for MSIC Issuing Bodies that are not MIPs.

Individuals

All persons unescorted in a maritime security zone will be required to hold an MSIC. To hold an MSIC the applicant must firstly be identified by the MSIC issuing body. The applicant is then required to apply to the AFP for a Police Record Check; Security Assessment and Immigration check (where necessary). This process may take a number of weeks and if all checks are satisfactory an MSIC is able to be issued. If an MSIC is unable to be issued to applicant that person will not be able to work unescorted in a Maritime Security Zone. Based on the rate of ASIC applicants who are refused an ASIC we anticipate an unsuccessful rate of 0.0002%. Whilst there have only been a minimal number of persons refused an ASIC there is anecdotal evidence that persons when applying for positions in a secure area when made aware of the ASIC background checking requirements will often reconsider applying for the position.

In the event of an applicant not being able to obtain an MSIC, appeal mechanisms will be incorporated into the regulatory framework. DOTARS envisages a process linked to the Administrative Appeals Tribunal as currently applies under the ASIC Scheme.

PART 5 CONSULTATION

DOTARS has undertaken extensive consultation in developing the administrative and operational framework for the MSIC initiative. Initial meetings in July 2004 and August 2004 were conducted with a range of maritime industry participants to develop an appropriate consultative forum for the MSIC initiative.

Holders of Maritime Security Plans under the current Act, peak industry bodies and employee representatives were invited to attend a two day industry workshop in Sydney on 27 and 28 September 2004 to discuss issues associated with the implementation of the MSIC initiative.

At the workshop DOTARS convened the MSIC Working Group of key stakeholders as nominated by their peers to assist in the development of the regulatory and administrative framework for the delivery of the MSIC initiative. The MSIC Working Group is made up of representatives from

- Department of Transport and Regional Services
- Australian Federal Police
- Australian Security Intelligence Organisation
- Port Operators
- Port Facility Operators
- Port Service Providers
- Ship Operators
- Peak Industry Bodies
- Employee representatives
- Supply Chain Stakeholders

The primary role of the MSIC Working Group is to keep all stakeholders informed of progress in the implementation of the MSIC initiative. The MSIC Working Group meets regularly to discuss issues associated with the design of the MSIC regulatory architecture and are kept informed on key issues effecting the implementation of the MSIC initiative.

The MSIC Working Group has accepted the Governments approach to implementing the MSIC imitative. However, the Working Group has expressed some concerns on the impact of introduction of the MSIC imitative will have on their workforce in regard to the redeployment, retraining or redundancies for those that have failed to secure an MSIC. DOTARS however, does not believe that there will be many persons unable to obtain an MSIC. Under the current ASIC model approximately 0.0002% of applicants were refused an ASIC, DOTARS expects a similar rate of refusals under the MSIC initiative.

Consultation will continue through the implementation phase of the MSIC Working Group.

PART 6 CONCLUSION/RECOMMENDATION

There will be minimal changes to the Act to more clearly articulate the role of MSIC issuing bodies and their ability to recover costs associated with issuing an MSIC.

Explicit Government Regulations will be made to support the MSIC initiative to ensure consistency across Australian maritime security zones. The entire system would be compromised if arrangements varied. Regulations will be made to ensure that there is a nationally consistent set of standards that can be enforced by DOTARS.

This is the preferred option as the MSIC initiative is an extension of the existing Maritime Security Regime which is legislated under the *Maritime Transport Security Act 2003*.

PART 7 IMPLEMENTATION AND REVIEW

The MSIC initiative will be introduced from 1 October 2005 with a rollout spanning nine months to 30 June 2005. As part of the Government's decision it was agreed that the MSIC initiative be reviewed in 2007.

During the implementation phase DOTARS will participate in the background checking regime by determining if a person has n adverse criminal history that would preclude them from holding an MSIC. Due to industry concerns around access to personal information MSIC issuing bodies will not receive any personal information on their employees, they will however receive advice from DOTARS on whether they can or can't issue an MSIC to a person. During the implementation phase DOTARS will work closely with industry to determine the ongoing administrative framework for the MSIC initiative.

Table of Acronyms

AFP	Australian Federal Police
ASIC	Aviation Security Identification Card
ASIO	Australian Security Intelligence Organisation
DOTARS	Department of Transport and Regional Services
ISPS	International Ship and Port Facility Security
MIP	Maritime Industry Participant
MSIC	Maritime Security Identification Card
MSZ	Maritime Security Zone.
SOLAS	Safety of Life at Sea

MARITIME TRANSPORT SECURITY AMENDMENT BILL 2005

NOTES ON CLAUSES

Clause 1 - Short title

This clause provides that the Bill, once enacted, will be known as the *Maritime Transport Security Amendment Act 2005*.

Clause 2 - Commencement

Subclause 2(1) provides that each provision of the Bill specified in column 1 of the table, commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Subclause 2(2) provides that information contained in column 3 of the table does not form part of the Bill.

Clause 3 – Schedule

This clause is the formal enabling provision providing that the *Maritime Transport Security Act 2003* is amended as set out in Schedules 1 and 2 to the Bill.

SCHEDULE 1 – OFFSHORE FACILITIES

Part 1 – Amendments relating to offshore facilities

Maritime Transport Security Act 2003

Item 1 - Title

Item 1 amends the title of the Act by inserting the words "and offshore facilities".

Item 2 - Section 1 Short title

Item 2 amends the short title of the Act to *Maritime Transport and Offshore Facilities Security Act 2003*.

Item 3 - Subsection 3(1) Purpose of this Act
Item 4 - Subsection 3(2) Purpose of this Act
Item 5 - Paragraph 3(4)(b) Purpose of this Act
Item 6 - Paragraph 3(4)(c) Purpose of this Act
Item 7 - Paragraph 3(4)(d) Purpose of this Act

Section 3 describes the purposes of the Act. Currently, the main purpose of the Act is to establish a regulatory framework to safeguard maritime transport against unlawful interference. In particular, the framework is aimed at protecting ships, ports and port facilities within Australia, and Australian ships operating outside of Australia. The Act establishes certain

security requirements for maritime activities, requiring persons involved in these activities to meet certain obligations. A particular obligation is the requirement of certain maritime industry participants to develop, and comply with, maritime security plans.

Item 3 amends subsection 3(1) of the Act to expand the purpose of the Act to include safeguarding against unlawful interference with offshore facilities.

Item 4 amends subsection 3(2) of the Act to expand the regulatory framework of the Act to offshore facilities.

Item 5 amends paragraph 3(4)(b) of the Act to include a reference to offshore facilities in the maritime security outcomes dealing with reducing the vulnerability to terrorist attack without undue disruption to trade.

Item 6 amends paragraph 3(4)(c) of the Act to include a reference to offshore facilities in the maritime security outcomes dealing with reducing the risk that maritime transport may be used to facilitate terrorist or other unlawful activities.

Item 7 amends paragraph 3(4)(d) of the Act to include a reference to offshore facilities in the maritime security outcomes dealing with information being communicated effectively among maritime industry participants and government agencies with maritime transport security responsibilities.

Item 8 - Section 4 Simplified overview of this Act
Item 9 - Section 4 Simplified overview of this Act
Item 10 - Section 4 Simplified overview of this Act
Item 11- Section 4 Simplified overview of this Act
Item 12 - Section 4 Simplified overview of this Act
Item 13 - Section 4 Simplified overview of this Act

Item 8 amends the simplified overview of the Act in section 4 to include a reference to offshore facilities.

Item 9 amends the simplified overview of Part 4 of the Act in section 4, which deals with ship security plans and ISSCs, to include a reference to offshore security plans.

Item 10 amends the simplified overview of Part 4 in section 4, to clarify that regulated Australian ships must have both a ship security plan and an ISSC.

Item 11 amends the simplified overview of the Act, by inserting references to new Part 5A which deals with offshore security plans. Offshore industry participants who are required to have plans must comply with their plans; Part 5B, which deals with ISSCs for Australian ships regulated as offshore facilities; and Part 5C, which deals with foreign ships regulated as offshore facilities. The Secretary can give control directions to foreign ships regulated as offshore facilities to ensure that security standards are maintained.

Item 12 amends the simplified overview of Part 6 of the Act in section 4, which deals with the establishment of maritime security zones, to include a reference to zones on and around offshore facilities.

Item 13 amends the simplified overview of Part 4 of the Act in section 4, which deals with reporting obligations in relation to security incidents, to include a reference to offshore facility incidents.

Item 14 - Section 6 Geographical jurisdiction

Item 14 repeals existing section 6 (which provides that section 15(2) of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against the Act) and substitutes a new section 6. Subsection 6(1) provides that section 15(2) of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against the Act, other than an offence mentioned in subsection (2).

New subsection 6(2) sets out various offences that are subject to section 15(2) of the Criminal Code (extended geographical jurisdiction – category D). The extension of geographical jurisdiction – category D under section 15.2 has been used for offences outlined in subsection 6(2) for the following reasons.

Offshore facilities are being regulated because a terrorist attack on such a facility could have a serious impact on the national economy;

Offshore facilities, and the offshore security zones in and around them, will often not be in Australia. Typically, an offshore facility is located in Australian waters (as defined in the Act), in the EEZ or in waters above the continental shelf. Because of the physical location of the facilities, they are also not in a foreign country.

The person committing the offence will not necessarily be an Australian resident, Australian citizen or company incorporated in Australia. For example, an offshore industry participant may be none of these. However, that participant will have a close connection with an offshore facility. Such persons are typically helicopter operators, caterers and other suppliers. Because they have such a close connection with the facility, they have an opportunity to interfere with its operation, and so have been made subject to the same safety precautions, such as screening, clearance, limits on the carriage of weapons and other prohibited items, as Australians.

Similarly, the offtake tankers that collect product may have no connection with Australia that is significant for the purposes of section 15 of the Criminal Code. Some of the tankers are foreign ships that collect product from an offshore facility and sail on to another jurisdiction, such as Japan, never entering an Australian port. These vessels also present risks for the facilities, and so have been subjected, for example, to the screening, clearance, weapons and prohibited items regime.

Foreign ships regulated as offshore facilities are basically Floating Product Storage and Offtake vessels and Floating Storage Units (also vessels). They are moored in waters off the Australian coast and used for the purposes set out in the definition of FPSO and FSU. If they are foreign owned and located in the EEZ, for example, there may be no connection with Australia, beyond the fact that they are being used to exploit Australian oil reserves and so have economic consequences for Australia.

The purpose of the maritime security provisions in relation to offshore facilities is to put systems in place to identify potential avenues by which the security of the facilities might be complemented and put checks in place so that these avenues cannot be used to cause harm. In

this sense, they are designed to complement the anti-terrorism offences in the Criminal Code, rather than duplicate them.

Item 15 - Section 9 Act not to apply to state ships etc. (at the end of section 9 add)

Section 9 provides that the Act does not apply to warships or other ships operated for naval, military, customs or law enforcement purposes by Australia or by a foreign state, nor does it apply to other ships owned, leased, chartered by, or in the operational control of the Commonwealth, a State or Territory and being used wholly for non-commercial activities (such as government-operated scientific research vessels).

The Australian Defence Force (ADF) and the Australian Customs Service are not included in the definition of a maritime industry participant. The provisions of the Act also do not apply to ports and port facilities operated exclusively by the ADF. Also excluded from the operation of the Act are other Commonwealth agencies that may have been inadvertently captured by the definition of a maritime industry participant by prescribing the agency in the regulations.

Item 15 inserts a new subsection 9(3) to provide that a reference to an offshore industry participant does not include a reference to the ADF or the Australian Customs Service or an agency of the Commonwealth prescribed in the regulations.

Item 16 - Section 10 Definitions

Item 16 defines *Australian ship regulated as an offshore facility* to have the meaning as given by subsection 16(3).

Item 17 - Section 10 Definitions (at the end of baggage)

Item 17 extends the definition of *baggage* by inserting two new paragraphs (c) and (d) to provide that baggage includes possessions of a crew member or visitor that are carried, or intended to be carried, onto an offshore facility; and to which the crew member or visitor will have general access while on the offshore facility.

Item 18 - Section 10 Definitions

Item 18 defines *continental shelf* to have the same meaning as the continental shelf in the *Seas and Submerged Lands Act 1973*.

Item 19 – Section 10 (definition of control direction)

Item 19 inserts a reference to section 100ZM(2) in the definition of control direction.

Item 20 - Section 10 (definition of *crew*)

Item 20 repeals the current definition of *crew* and inserts a new definition of crew to mean in relation to a ship, any person employed on the ship, and in relation to an offshore facility to include any person employed on the facility.

Item 21 - Section 10 (definition of *declaration of security*)

Item 21 repeals the current definition of *declaration of security* and inserts a new definition to mean an agreement reached between a ship and another party (a ship or person), or an agreement reached between an offshore facility operator and another party (a ship or person) which identifies the security activities or measures to be undertaken or implemented by each party in specified circumstances.

Item 22 - Section 10 Definitions

Item 22 inserts a new definition *of enforcement action* to provide that the meaning of enforcement action is as affected by subsection 17D(4), which deals with enforcement action in relation to non regulated foreign ships.

Item 23 - Section 10 Definitions

Item 23 defines *exclusive economic zone* to have the same meaning as exclusive economic zone in the *Seas and Submerged Lands Act 1973*.

Item 24 - Section 10 Definitions

Item 24 defines *foreign ship regulated as an offshore facility* to have the meaning as given by subsection 17(3).

Item 25 - Section 10 Definitions

Item 25 inserts a new definition of a *FPSO* (floating product storage offtake) to mean a ship that accepts petroleum from a subsea well or pipeline and is capable of storing and modifying the petroleum and is capable of disconnecting from its mooring, but does not include a facility that is permanently moored for the production of life of a petroleum field.

Item 26 - Section 10 Definitions

Item 26 inserts a new definition of a *FSU* (floating storage unit) to mean a ship that accepts petroleum from a subsea well or pipeline, is capable of storing the petroleum and delivering it to another ship or pipeline and is capable of disconnecting from its mooring, but does not include a facility that is permanently moored for the production of life of a petroleum field.

Item 27 - Section 10 (definition of Interim ISSC)

This item inserts a definition of interim ISSC. In the case of a security regulated ship an interim ISSC is one given under section 86; and in relation to a ship regulated as an offshore facility an interim ISSC is one given under section 100ZC.

Item 28 - Section 10 (definition of ISSC verified)

This item substitutes a definition of ISSC verified. In relation to a security regulated ship, it has the meaning given by subsections 83(1) and (3); and in relation to a ship regulated as an offshore facility, it has the meaning given by subsections 100Z(1) and (3).

Item 29 - Section 10 (after paragraph (d) of the definition of *maritime industry participant*)

Item 29 expands the current definition of *maritime industry participant* by inserting a new paragraph (da) which refers to an offshore industry participant.

Item 30 - Section 10 (at the end of the definition of *maritime security zone*)

Item 30 expands the definition of *maritime security zone* by inserting a new paragraph (d) which refers to an offshore security zone.

Item 31 - Section 10 Definitions
Item 32 - Section 10 (definition of *maritime transport security incident*)

Item 31 inserts a new definition of *maritime transport or offshore security incident* to provide that those words have the meaning given by subsections 170(1) and (2).

Item 32 repeals the current definition *maritime transport security incident*.

Item 33 - Section 10 (definition of *mobile offshore drilling unit*)

Item 33 substitutes the word vessel for ship in the definition of mobile offshore drilling unit.

Item 34 - Section 10 Definitions

Item 34 inserts a new definition of *offshore area* to provide that it has the meaning given by subsection 17A(7).

Item 35 - Section 10 Definitions

Item 35 inserts a new definition of *offshore facility* to provide that it has the meaning given by subsection 17A.

Item 36 - Section 10 Definitions

Item 36 inserts a new definition of *offshore facility operator* to provide that it has the meaning given by subsection 17C.

Item 37**- Section 10 Definitions**

Item 37 inserts a new definition of *offshore industry participant* to mean an offshore facility operator, or a contractor who provides services to an offshore facility operator, or a person who conducts an enterprise connected with a security regulated offshore facility, and is prescribed in the regulations.

Item 38 - Section 10 Definitions

Item 38 inserts a new definition of *offshore security plan* to mean a plan prepared for the purposes of Part 5A.

Item 39 - Section 10 Definitions

Item 39 inserts a new definition of *offshore security zone* to mean an offshore security zone established under subsection 113A(1).

Item 40 - Section 10 (definition of *operational area*)

Item 40 repeals the current definition of *operational area* and substitutes a new definition to provide that, in relation to a security regulated ship, it has the meaning given by subsection 140(5), and in relation to a security regulated offshore facility, it has the meaning given by subsection 140B(5).

Item 41 - Section 10 Definitions

Item 41 inserts a definition of *petroleum* to provide that it has the same meaning as in the *Petroleum (Submerged Lands) Act 1967*.

Item 42 - Section 10 (definition of *private living area*)

Item 42 repeals the current definition of *private living area* and substitutes a new definition to provide that, in relation to a security regulated ship, it has the meaning given by subsection 140(4), and in relation to a security regulated offshore facility, it has the meaning given by subsection 140B(4).

Item 43- Section 10 (paragraph (a) of the definition of *prohibited item*)

Item 43 amends the definition *of prohibited item* to include a reference to the use of such unlawful items on offshore facilities.

Item 44 - Section 10 (at the end of the definition of *security officer*)

Item 44 expands the existing definition of *security officer* to include a reference to a person responsible for implementing and maintaining offshore security plans.

Item 45 - Section 10 Definitions

Item 45 inserts a new definition of *security regulated offshore facility* to provide that it has the meaning given by section 17B.

Item 46 - Section 10 Definitions

Item 46 inserts a new definition of *ship regulated as an offshore facility* to mean either an Australian or foreign ship regulated as an offshore facility.

Item 47 - Section 10 Definitions (definition of *ship security record*)

This item extends ship security records to records found on an offshore facility as well.

Item 48 - Section 10 (definition of *ship security zone*)

Item 48 inserts a reference to new subsection 106(1A) which deals with ships near an offshore facility.

Item 49 - Section 10 (definition of *stores*)

Item 49 repeals the existing definition of *stores* and substitutes a new definition to mean items that are to be carried on board a security regulated ship or security regulated offshore facility for use, sale or consumption on the ship, or the facility.

Item 50- Section 10 (definition of *unlawful interference with maritime transport*)
Item 51 - Section 10 Definitions

Item 50 repeals the current definition of *unlawful interference with maritime transport.*

Item 51 inserts a new definition of *unlawful interference with maritime transport or offshore facilities* to provide that it has the meaning given by section 11.

Item 52 - Division 5 of Part 1 (heading) – Unlawful interference with maritime transport or offshore facilities

Section 11 of the Act defines the term *unlawful interference with maritime transport*. The term is central to the application and understanding of the Act and its purpose. It defines the types of activities that constitute unlawful interference with maritime transport and thus the types of activities the Act is aimed at safeguarding against. It covers conduct that threatens the safe operation of ports and ships and which may cause harm to passengers, crew, port personnel and the general public or damage to property (whether on board or off a ship).

Item 52 repeals the heading "Unlawful interference with maritime transport" and substitutes a new heading for Division 5 of "Unlawful interference with maritime transport or offshore facilities".

Item 53 - Subsection 11(1) Meaning of *unlawful interference with maritime operations*
Item 54 - After paragraph 11(1)(a) Meaning of *unlawful interference with maritime operations*
Item 55 - Paragraph 11(1)(b) Meaning of *unlawful interference with maritime operations*
Item 56 - After paragraph 11(1)(c) Meaning of *unlawful interference with maritime operations*
Item 57 - Subsection 11(2) Meaning of *unlawful interference with maritime operations*

Item 53 amends subsection 11(1) of the Act, which deals with the meaning of unlawful interference with maritime operations, by inserting a reference to offshore facilities.

Item 54 amends subsection 11(1) of the Act by inserting, after paragraph 11(1)(a), a new paragraph (aa) which provides that committing an act, or causing any interference or damage, that puts the safe operation of an offshore facility, or the safety of any person or property of an offshore facility, at risk will be regarded as unlawful interference with maritime operations.

Item 55 amends paragraph 11(1)(b) of the Act, which currently deals with taking control of ships, to include a reference to taking control of offshore facilities.

Item 56 inserts a new paragraph (ca) to provide that destroying an offshore facility will be considered unlawful interference with maritime operations.

Item 57 amends subsection 11(2), which deals with what is not regarded as unlawful interference with maritime transport, to include a reference to offshore facilities.

Item 58 – Subsection 16(2) Meaning of *regulated Australian ship*

Item 58 substitutes a new subsection 16(2) which provides that neither an Australian ship regulated as an offshore facility or a ship prescribed in the regulations are regulated Australian ships. Item 58 also inserts a new subsection 16(3), which provides that an Australian ship regulated as an offshore facility means a FPSO, or FSU that is an Australian ship and a security regulated offshore facility.

A FPSO, or FSU is both a ship and an offshore facility. As it is an offshore facility, the Secretary may declare it to be a security regulated offshore facility. If this occurs, the ship ceases to be a regulated Australian ship.

Item 59 – Subsection 17(2) Meaning of *regulated foreign ship*

Item 59 repeals the existing subsection 17(2) and substitutes new subsections 17(2) and (3).

New subsection 17(2) provides that neither a foreign ship regulated as an offshore facility nor a ship prescribed in the regulations are regulated foreign ships.

New subsection 17(3), provides that a foreign ship regulated as an offshore facility means a FPSO, or FSU that is a foreign ship and a security regulated offshore facility.

A FPSO, or FSU is both a ship and an offshore facility. As it is an offshore facility, the Secretary may declare it to be a security regulated offshore facility. If this occurs, the ship ceases to be a regulated foreign ship.

Item 60 - After Division 7 of Part 1 insert

Item 60 inserts two new Divisions after Division 7 of Part 1. Division 7A which deals with security regulated offshore facilities and offshore facility operators, and Division 7B which deals with application of offences and enforcement action in relation to non-regulated foreign ships.

Division 7A—Security regulated offshore facilities and offshore facility operators

Section 17A: Meaning of offshore facility

Section 17A is a new section which deals with the meaning of *offshore facility*. Subsection 17A(1) provides that an offshore facility is a facility, located in an offshore area, that is used in the extraction of petroleum from the seabed or its subsoil with equipment on the facility, and includes any structure or any vessel, located in the offshore area, used in operations or activities of that kind.

Subsections 17A(2),(3) provide that a FPSO, FSU located in an offshore area is an offshore facility. However, a ship is not an offshore facility if it is an offtake tanker, a tug or anchor handler, or a ship used to supply an offshore facility or used to travel between an offshore facility and the shore.

Subsection 17A(5) provides that an offshore facility does not include any pipeline that is beneath the low water mark.

Subsection 17A(6) provides that a mobile offshore drilling unit is not an offshore facility, nor does it form part of an offshore facility.

Subsection 17A(7) provides that an *offshore area* is an area in Australian waters, the exclusive economic zone of Australia (including its external Territories), or the sea over the continental shelf of Australia (including its external Territories).

Section 17B: Security regulated offshore facilities

Section 17B is a new section which deals with security regulated offshore facilities. Subsection 17B(1) provides that the Secretary of the department may, by notice published in the *Gazette*, declare that any of the following is a *security regulated offshore facility*:

(a) an offshore facility;
(b) a part of an offshore facility;
(c) a group of offshore facilities;
(d) parts of a group of offshore facilities.

Subsection 17B(2) provides that the notice must include information on the location and boundaries of the facility of the kind and form prescribed by the regulations.

Section 17C: Offshore facility operators

New subsection 17C(1) enables the Secretary to designate, in writing, a person as the *offshore facility operator* for a security regulated offshore facility.

Subsection 17C(2) provides that, in designating a person as an offshore facility operator, the Secretary must take into account the ability of the person to undertake the functions of an offshore facility operator, the physical and operational features of the facility, the views of the person(s) responsible for managing the operations of the facility, and whether the person is the operator of the facility under Schedule 7 of the *Petroleum (Submerged Lands) Act 1967*.

Division 7B - Offences and enforcement action in relation to non-regulated foreign ships

Section 17D: Persons traveling on non-regulated foreign ships

Section 17D applies to a person travelling (whether as a passenger or crew) on a ship that is neither a regulated foreign ship or a foreign ship regulated as an offshore facility. Subsection (2) provides that the offences under the Act do not apply to a person travelling (whether as a passenger or crew) on such a ship unless the ship or the person is involved in some activity in relation to a security regulated offshore facility, or is in Australian waters. Similarly, no enforcement action may be taken against such a person.

Enforcement action is defined in new subsection 17D(4) to include action by a maritime security inspector, a duly authorised officer, a law enforcement officer, a maritime security guard or a screening officer under Part 8, issuing of an infringement notice under regulations made under section 187, making an enforcement order under Division 3 of Part 11, giving a ship enforcement order under Division 4 of Part 11, and granting an injunction under Division 5 of Part 11.

This section has been inserted to clarify that the offence provisions that apply to persons travelling on foreign ships under this Act, apply to foreign ships differently than is the case for Australian ships, as international law does not allow the laws of a country to apply unilaterally to the ships of another country, except in some circumstances.

Therefore the offence provisions in this Act only apply to foreign ships which fall into the group of foreign ships which are not regulated foreign ships or a foreign ship regulated as an offshore facility. Further, those ships must also be involved in some activity in relation to a security regulated offshore facility, or be in Australian waters for the offence provisions to apply. Whether a ship (or a person travelling on such a ship) is caught by a particular offence provision will depend on the facts of each matter.

Section 17E Enforcement action against non-regulated foreign ships

New section 17E provides that no enforcement action may be taken against a foreign ship that is neither a regulated foreign ship nor a foreign ship regulated as an offshore facility unless the ship is involved in some activity in relation to a security regulated offshore facility, or is in Australian waters.

This section has been inserted to clarify that the enforcement provisions that apply to ships under this Act, apply to foreign ships differently than is the case for Australian ships, as international law does not allow the laws of a country to apply unilaterally to the ships of another country, except in some circumstances.

Therefore the enforcement provisions in this Act only apply to foreign ships which fall into the group of foreign ships which are not regulated foreign ships or a foreign ship regulated as an offshore facility. Further, those ships must also be involved in some activity in relation to a security regulated offshore facility, or be in Australian waters, for the enforcement provisions to apply. Whether a ship (or a person travelling on such a ship) is caught by a particular enforcement provision will depend on the facts of each matter.

Item 61 - Subparagraph 18(1)(c)(v) General defences
Item 62 - Subparagraph 18(1)(c)(v) General defences

Section 18 allows for a person to be excused from an offence under the Act when that person engages in conduct which would otherwise amount to an offence. Items 61 and 62 extend the application of this section by inserting new subparagraph 18(1)(c)(v) to cover offshore facilities.

Item 63 - Section 20 Simplified overview of Part
Item 64 - Section 20 Simplified overview of Part
Item 65 - Section 20 Simplified overview of Part
Item 66 - Section 20 Simplified overview of Part

Section 20 of the Act provides an overview of each Division of Part 2 which deals with maritime security levels and security directions.

A system of three maritime security levels operates according to the prevailing threat environment, providing direction to maritime industry participants on the security measures that should be implemented. Maritime industry participants are required in their security plans to include information on the measures to be undertaken at each level and must implement the measures according to the security level. The Secretary may also provide specific security directions on particular measures to be implemented.

Items 63, 64, and 66 insert references in section 20 to offshore industry participants, security regulated offshore facilities, and ships regulated as offshore facilities which will now be required to comply with these requirements.

Item 65 inserts in the simplified overview of this Part a reference to the fact that a foreign ship regulated as an offshore facility may also be directed by its flag state to operate at a higher security level. If maritime security level 2 or 3 is in force for a security regulated offshore facility, that maritime security level is in force for every maritime industry participant within the facility, and every security regulated ship in the vicinity of the facility that is engaged in activity in relation to the facility, for example loading or unloading goods from or to the facility, and for which a lower security level was in force.

Item 66 - Section 10 Definitions

This item adds security regulated offshore facility to section 20.

I**tem 67 – After paragraph 21(b) Default security level - maritime security level 1**

Section 21 of the Act provides that the default level is maritime security level 1. That is, unless the Secretary advises otherwise, maritime security level 1 applies at all times to each maritime industry participant. Item 67 inserts a new paragraph 21(ba) imposing a similar requirement on security regulated offshore facilities.

Item 68 – After paragraph 22(1)(b) Secretary may declare maritime security level 2 or 3
Item 69 – Paragraph 22 (1)(e) Secretary may declare maritime security level 2 or 3
Item 70 - Subsection 22(3) Secretary may declare maritime security level 2 or 3
Item 71 - Subsection 22(3) Secretary may declare maritime security level 2 or 3
Item 72 – After subsection 22(3) Secretary may declare maritime security level 2 or 3
Item 73 - Section 22(note) Secretary may declare maritime security level 2 or 3

Section 22 of the Act provides that where there are grounds for raising the security level to 2 or 3 the Secretary may declare this in writing. A declaration may apply to one or more ports, regulated Australian ships or class of ships, areas within a security regulated port, operations within or in connection with a security regulated port or ports, or maritime industry participants. Items 68 and 69 extend application of these security levels to security regulated offshore facilities.

The Secretary may declare in writing that maritime security level 2 or 3 is in force for a regulated foreign ship or facility. However, subsection 22(3) of the Act provides that if a foreign regulated ship is operating at a higher security level than the port operator or port facility operator or other maritime industry participant, these maritime industry participants will not be obliged to match the foreign regulated ships security level unless the Secretary makes a declaration of security in such circumstances. Items 70 and 71 extend the application of subsection 22(3) to include offshore facilities.

Item 72 inserts a new subsection (4) which provides that where a foreign ship registered in another country (the flag state) and regulated as an offshore facility is directed by that country to implement a higher security level than would otherwise apply then the higher level is taken to have been declared by the Secretary to be in force for the ship.

Item 73 inserts a reference to offshore security plans and to Part 5A in the note to subsection 22(3).

Item 74 - Section 23 When a maritime security level is in force

Section 23 of the Act provides that a security level declaration will remain in place for the port, ship, area or participant concerned until any period specified in the Secretary's declaration (or where one is deemed to have been made under subsection 22(3)) expires, or the declaration is revoked in writing by the Secretary. Item 74 inserts a reference in section 23 to deemed decisions under subsection 22(3).

Item 75 - Paragraphs 24(a) and (b) Maritime security level declaration for a port covers all port operations

Section 24 of the Act provides that where the Secretary makes a declaration for a security regulated port, the declaration applies to each area or security regulated ship and any operations conducted by a maritime industry participant within the boundaries of the security regulated port. Item 75 extends the reach of section 24 to cover security regulated offshore facilities and ships regulated as offshore facilities.

Item 76 - After section 24 insert

Section 24A Maritime security level declaration for an offshore facility covers ships and operations in the vicinity

Item 76 inserts a new section 24A which provides that where the Secretary declares that a maritime security level is in force for a security regulated offshore facility, that maritime security level is in force for every security regulated ship in the vicinity of the facility that is engaged in any activity in relation to the facility, and any operations conducted by a maritime industry participant within the boundaries of the facility.

Item 77 – At the end of section 25 add offshore security plans

Item 77 inserts a new subsection 25(3) which provides that where maritime security level 2 or 3 is in force, any affected offshore industry participant must comply with the corresponding measures set out in the security plan for that participant. Subsection 100D(1) provides that it is an offence for an offshore industry participant to fail to comply with their security plan.

Item 78 - After paragraph 26(b) Maritime security level 1, 2 or 3 applies with security directions
Item 79- Section 26 Maritime security level 1, 2 or 3 applies with security directions

Section 26 provides that when a security direction is given, the entity to which the direction is given must comply with the requirements of that direction, but all other measures remain in place at the existing security level. For example, if maritime security level 2 is in force and a security direction is given, security level 2 measures remain in force and the specific security direction must also be complied with. Where any conflict occurs between the maritime security level 2 measures and the security direction, the security direction takes precedence.

Item 78 inserts two new paragraphs 26(ba) and (bb) to cover a ship regulated as an offshore facility and a security regulated offshore facility respectively. Item 79 inserts a reference to 'facility' in section 26 of the Act.

Item 80 – At the end of subsection 27(1) Notifying declarations covering security regulated ports

Section 27 of the Act describes the manner in which the Secretary is required to communicate to affected port operators and maritime industry participants the fact that a maritime security level 2 or 3 declaration has been made. The Secretary must notify the port operator and maritime industry participant with a maritime security plan in force of the declaration as soon as practicable. Item 80 extends these notification requirements to each offshore industry

participant who is required to have an offshore security plan and who operate within the boundaries of the security regulated port.

Item 81 – After section 28 insert

Section 28A Notifying declarations covering security regulated offshore facilities

New Section 28A describes the manner in which the Secretary is required to communicate to affected offshore facility operators and offshore industry participants the fact that a maritime security level 2 or 3 declaration has been made. The Secretary must notify the offshore facility operator and offshore industry participant with an offshore security plan in force of the declaration as soon as practicable.

New subsection 28A(2) provides that the offshore facility operator must, as soon as practicable, advise the following persons of the change in the security level:

- every offshore industry participant covered by the port operator's plan, or who operates within the boundaries of the facility (for example a supply vessel or helicopter transfer operator); and
- ship operator or the master of every security regulated ship located in the vicinity of the facility that is engaged in any activity in relation to the facility.
- the master of the ship, where the security regulated offshore facility is a ship regulated as an offshore facility.

Communicating the advice about the security level to be implemented will be critical to ensuring that all relevant offshore industry participants operating in the vicinity of the facility have implemented measures commensurate with the security level, as outlined in each participant's security plan. The level of protection implemented by the measures will reflect the risks faced by each offshore industry participant as outlined in each participant's plan. If one or more participants are not notified of the change in security level, the facility may be inadequately protected.

Subsection 28A(2) provides a penalty of 10 penalty units for failure to notify. New subsection 28A(4) provides that an offence under subsection (2) is an offence of strict liability. However, subsection 28A(3) provides that the offence does not apply if the offshore facility operator has a reasonable excuse.

Item 82 – At the end of section 30 Notifying declarations covering maritime industry participants

Item 82 inserts a new paragraph 30(c) which provides that declarations of a maritime security level made for maritime industry participants must be notified by the Secretary to both the participant concerned and the offshore facility operator, if the participant is not the offshore facility operator.

Item 83 – Paragraph 31(1)(a) Notifying revocations

Section 31 of the Act provides that where the Secretary has advised a person that maritime security level is in force and the declaration is revoked, he must, as soon as practicable, notify the person of the revocation. Item 83 inserts a reference to new section 28A which deals with offshore facilities.

Note 1 to this item indicates that a new heading to subsection 31(1) is inserted as follows "*Secretary must notify of revocations*".

Note 2 to this item indicates that a new heading to subsection 31(2) is inserted "*When port operators must then notify others*".

Item 84 – At the end of section 31 Notifying revocations

Item 84 inserts a new subsection 31(5) to the Act which provides that where an offshore facility operator has notified a person that security level 2 or 3 is in force, and the Secretary revokes the declaration, the offshore facility operator must as soon as practicable advise the person of the revocation.

Adequate lines of communication when a maritime security level is revoked are important as maritime industry participants should not be required to have security measures in place which are not commensurate with the risks faced at a particular time.

Subsection 31(5) provides a penalty of 10 penalty units for failure to notify. Subsection 31(7) provides that an offence under subsection 31(5) is an offence of strict liability. However, subsection 31(6) provides that the offence does not apply if the offshore facility operator has a reasonable excuse.

Item 85 - Subsection 33(3) Secretary may give security directions

Section 33 of the Act provides that the Secretary may direct that additional security measures be undertaken or complied with. These *security directions* may be issued by the Secretary only if he or she has reason to believe that an unlawful interference with maritime transport is probable or imminent and that specific measures are appropriate to prevent the unlawful interference from occurring. Security directions are additional to the measures which maritime industry participants must comply with according to their approved plans.

Item 85 extends the application of section 33 to include the giving of security directions to encompass offshore facilities.

Item 86 – At the end of Subsection 35(1) Persons to whom the Secretary may give security directions add
Item 87 - Subsection 35(2) Persons to whom the Secretary may give security directions

Section 35 of the Act prescribes various persons to whom security directions may be given. These currently may include maritime industry participants and their employees, passengers, and persons who are otherwise within the boundaries of a security regulated port. Item 84

extends this class to include persons who are within the boundaries of a security regulated offshore facility. Item 85 inserts in subsection 35(2) a reference to new paragraph 35(1)(d).

A note to item 86 indicates that the following heading to subsection 35(1) is inserted "*Persons to whom Secretary may give security directions*".

A note to item 87 indicates that the following heading to subsection 35(3) is inserted "*Port operator may be required to communicate security directions*".

Item 88 – At the end of section 35 Persons to whom the Secretary may give security directions

Item 88 adds new subsections 35(8) (9)(10)(11) and (12) which deal with the requirements on offshore facility operators to communicate security directions.

New subsection 35(8) provides that the Secretary may, in a security direction given to the offshore facility operator require the operator to communicate the direction to specified maritime industry participants who are on board a security regulated ship in the vicinity of the facility that is engaged in any activity in relation to the facility or who operate within the facility.

If the Secretary gives an offshore facility operator a direction that requires the operator to communicate its content to specified maritime industry participants, the operator must, as soon as practicable, communicate the direction. Failure to communicate the direction on is an offence punishable by 50 penalty units. This is a strict liability offence. The offence does not apply if the port operator has a reasonable excuse.

Item 89 – After section 36 insert

Section 36A Secretary may give security directions to ships regulated as offshore facilities

Section 36A provides that the Secretary may give security directions to a ship regulated as an offshore facility. If the Secretary gives an offshore facility operator a direction that requires the operator to communicate its content to the master of the ship, the operator must, as soon as practicable, communicate the direction. Failure to communicate the direction on is an offence punishable by 50 penalty units. This is a strict liability offence. The offence does not apply if the port operator has a reasonable excuse.

Item 90 - Subsection 38(1) Revoking security directions

Item 91 - Subsection 38(2)(a) Revoking security directions

Item 90 inserts a reference to offshore facilities in subsection 38(1) of the Act which deals with the revocation of security directions by the Secretary. Item 91 amends subsection 38(2).

Item 92 - Subsection 39(1) (penalty) Failure to comply with security directions

Item 92 inserts a reference to offshore facility operators in section 39 of the Act which provides that it is an offence not to comply with a security direction that is in force and given to a person. The maximum level of penalty ranges from 200 penalty units for offshore facility

operators, 100 penalty units for other offshore industry participants, and 50 penalty units for any other person.

Item 93 - Subsection 40(1) Failure to comply with confidentiality requirements

This item amends section 40.

Item 94 - Subsection 51(3) Approval of maritime security plans

Item 94 inserts a reference to offshore facility in subsection 51(3) which deals with matters which the Secretary may take into account when approving maritime security plans.

Item 95 - Subparagraphs 55(1)(b)(i) and (ii) Secretary may direct participants to revise maritime security plans

The purpose of item 95 is to insert references to offshore facilities in subparagraphs 55(1)(b)(i) and (ii) of the Act which deal with the revision of maritime security plans.

Item 96 – Part 4 (heading)

Item 96 substitute a new heading for Part 4 "Ship security plans and ISSCs for regulated Australian ships".

Item 97 – Section 60 Simplified overview of Part

Item 97 omits a reference to "for ships" and substitutes "for those ships" in the simplified overview of the Part.

Item 98 - Subsection 70(3) Approval of ship security plans

This item allows the Secretary to consider existing circumstances as they relate to offshore facilities as well.

Item 99 - Subparagraphs 74(1)(b)(i) and (ii) Secretary may direct operator to revise ship security plan

Section 74 of the Act provides that the Secretary may, by written notice, direct the operator of a security regulated ship to revise the ship security plan if the Secretary believes that the plan is no longer adequate having regard to the requirements in Division 4. Item 94 inserts a reference to the circumstances of offshore facilities as a relevant circumstance to take into account.

Item 100 – Subsection 83(1) (note)

Item 100 substitutes a reference in the note to subsection 83(1) to inspection powers of maritime security inspectors in relation to regulated Australian ships.

Item 101 – After subsection 97(2) Complying with maritime and ship security plans
Item 102 - Subsection 97(3) Complying with maritime and ship security plans

Item 101 inserts a new subsection 97(2A) which provides that a regulated foreign ship must not operate so as to compromise compliance with an offshore security plan of an offshore industry participant in a way that compromises the security of the operations of the participant.

A note to this item indicates that the heading to section 97 is amended to read "Complying with maritime and ship and offshore security plans".

Item 102 inserts a reference to new subsection (2A).

Item 103 – After subsection 98(1) Acknowledging level notifications and directions insert

Item 103 inserts a new subsection 98(1A) which provides that if the master of a foreign regulated ship has received notice from the Secretary or offshore facility operator that maritime security level 2 or 3 is in place for the facility or a control direction has been given to the facility, and the master does not acknowledge receipt of such notice or direction to the Secretary the master commits an offence. This is an offence of strict liability with a penalty of 25 penalty units.

Item 104 – After paragraph 99(4)(c) Secretary may give control direction insert

Section 99 of the Act provides the major regulatory powers over regulated foreign ships. Under this section the Secretary may give control directions to the ship operator or master of a regulated foreign ship to either control the movement of the ship or require the master or operator to take specific action or refrain from specific action. The Secretary may only give a control direction if it is required to ensure compliance with the obligation imposed on regulated foreign ships under the Act or in respect of a special measure to enhance maritime security as set out in Chapter XI-2 of the SOLAS Convention.

Item 99 inserts two new paragraphs 99(4)(ca) and (cb) which enable the Secretary to give the following additional control directions:

- removing the ship from an offshore security zone; and
- if the ship is located in the vicinity of a security regulated offshore facility, and is engaged in any activity in relation to the facility, removing the ship from the vicinity of the facility**.**

Item 100 – After Part 5 insert

Part 5A - Offshore security plans

Division 1 – Simplified overview of Part

Section 100A Simplified overview of Part.

Certain maritime industry participants are required to have maritime security plans approved by the Secretary. Part 5A of the Bill extends this obligation to various offshore industry participants and describes the requirements for these plans and the processes for approving, revising and cancelling plans. The security plan will detail the measures that will be undertaken or implemented in order to prevent unlawful interference with the participant's operations, having regard to their identified security risks and specific physical and operational characteristics.

Division 2 - Offshore industry participants required to have offshore security plans

Section 100B Who must have offshore security plans

New section 100B provides that the following offshore industry participants are required to have a maritime security plan:

- facility operators;
- participants of a kind prescribed in the regulations; and
- particular participants prescribed in the regulations.

Section 100C Offence - operating without an offshore security plan

New section 100C makes it an offence for an offshore industry participant to operate without an offshore security plan in force when one is required. This is an offence of strict liability with a penalty of 200 penalty units for an offshore facility operator and 100 penalty units for any other offshore industry participant. A participant will not be liable if they have a reasonable excuse.

Section 100D Offence - failing to comply with offshore security plan

The purpose of an offshore security plan is to detail the measures which the offshore industry participant will implement at any given security level. In order to protect against unlawful interference with offshore facilities, the participant must ensure that the measures are fully implemented as set out in the plan. Failure to comply with an offshore security plan could potentially result in an opportunity for unlawful interference to occur. Therefore, new section 100D provides that it will be an offence to fail to comply with a plan which is in force as approved and notified by the Secretary. A penalty of 200 penalty units is prescribed for an offshore facility operator and 100 penalty units for any other offshore industry participant. A participant will not be liable if they have a reasonable excuse.

Division 3 - Complying with other plans

Section 100E Complying with offshore security plans of offshore industry participants

New section 100E deals with requirements for complying with offshore security plans of offshore industry participants. A maritime industry participant must not hinder or obstruct compliance with an offshore security plan of another offshore industry participant. For example, an offshore industry participant (who is not required to have an approved security plan) must take all reasonable steps to comply with the covering plan.

New subsection 100E(3) provides that offshore industry participants with security plans in force must not only be given the relevant parts of another offshore industry participant's security plan with which they are required to comply, they are also required to agree, in writing, to their activities being covered by another offshore industry participant's security plan. This is intended to create a record of each party's knowledge of the arrangement and their obligations under it.

Where a maritime industry participant obstructs compliance with another participant's plan, the participant does not commit an offence but may be subject to an enforcement order or an injunction. The objective of this provision is to ensure that the participant ceases the conduct which is obstructing compliance.

Section 100F Regulated Australian ships must not hinder or obstruct compliance with offshore security plans

New section 100F provides that the operations of a regulated Australian ship must not interfere with or obstruct compliance with an offshore security plan. Where the operations do obstruct compliance, either or both of the ship's operator or master may be subject to an enforcement order or an injunction.

Obligations on regulated foreign ships are dealt with in Division 2 of Part 5.

Division 4 -Content and form of offshore security plans

Section 100G Content of offshore security plans

New section 100G provides that an offshore security plan must include a security assessment of the participant's operation. The purpose of the security assessment is to ensure that a risk-based systematic and analytical process is conducted on the likelihood and consequences of a potential security incident. The security plan will set out the security activities or measures to be undertaken or implemented at maritime security levels 1, 2 and 3. These activities or measures will be informed by the security assessment and will address the individual circumstances and operational requirements of maritime industry participants.

A security plan must include the contact details of the participant's security officer and make provision for the use of declarations of security. A declaration of security may be required for specific situations, such as a ship calling at a facility when the ship is operating at a higher level of security than the facility. The plan must demonstrate that implementation will contribute towards the achievement of the maritime security outcomes. The plan must also complement to the fullest extent possible, the occupational health and safety requirements under the Commonwealth and State and Territory laws applying at a facility.

New subsection 100G(2) enables the Secretary to require offshore industry participants to take into account certain documents in completing their security assessments, for example, threat and security environment information. The regulations may set out other matters to be covered in the security assessment, for example the basic elements of security assessments and the key matters to be covered in security assessment submissions.

The Department will issue guidance material to assist offshore industry participants in the preparation of offshore security plans that should be taken into account when the plan is prepared.

Section 100H Prescribed content for offshore security plans

New section 100H provides that the regulations may set out specific matters that are to be dealt with in offshore security plans, whether in all plans, plans for a particular kind of offshore industry participant, or plans for a particular class of a particular kind of offshore industry participant.

Section 100I Form of offshore security plans

New section 100I provides that an offshore security plan must be in writing and be prepared in accordance with any requirements prescribed in the regulations.

An offshore security plan must be accompanied by information on the location of the facility, on any offshore security zones established for the area covered by the plan, and, where any changes to offshore security zones are proposed, information on the proposed changes. Division 5 of Part 6 deals with offshore security zones. The information to be provided is to be of the kind and in the form prescribed in the regulations.

Division 5 - Approving, revising and canceling, offshore security plans

Section 100J Providing offshore security plans for approval

New section 100J provides that an offshore industry participant wishing to operate with an offshore security plan may submit the plan to the Secretary for approval.

Section 100K Approval of offshore security plans

New section 100K provides that the Secretary must approve a plan and give notice, in writing, if he is satisfied that the plan addresses the relevant requirements under Division 4. If the Secretary is not satisfied, he or she must refuse to approve the plan and advise the participant in writing of the refusal and provide reasons for the refusal.

The Secretary is taken to have refused to approve a plan if a participant has given the Secretary a plan and the Secretary does not provide any written notice of approval, or refusal to approve, within 90 days after the plan was submitted. The participant may seek a review of a decision, or deemed decision to refuse to approve a plan, in the Administrative Appeals Tribunal. Decisions which are subject to review by the AAT are set out in Part 12 of the Act.

Section 100L When an offshore security plan is in force

This section provides that the plan comes into force (i.e. the operator implements the plan and compliance may be enforced) at a time specified in the notice of approval. If the time specified in the notice is earlier than the time at which the notice is given, or the notice does not specify a time, the plan is deemed to come into force when the notice is given. The plan remains in force until it is replaced or the approval of the plan is cancelled.

Section 100M Secretary may direct variations of offshore security plans

New section 100M reflects that, in changing circumstances, the Secretary is able to direct a participant to carry out specific variations to a plan. The Secretary may, by written notice, give a direction to vary a plan where he or she is no longer satisfied that the plan is adequate for the purposes of Division 4. The directed variation should address the requirements under Division 4. The notice must detail what the required variation is, and the timeframe within which the participant must give the Secretary the varied plan. If the participant does not give the Secretary the varied plan within the specified period, or within any further allowed period, the Secretary must cancel approval of the plan.

Section 100N Participants may revise offshore security plans

New section 100N provides that an offshore industry participant may provide revised plans to the Secretary for approval on their own initiative. Where the participant wishes to revise the plan, the approval process as described in new sections 100K and 100L applies. The revised plan, once approved, replaces any other plan for the participant in force at that time.

Section 100O Secretary may direct participants to revise offshore security plans

New section 100O provides that the Secretary may direct a participant in writing to revise the plan (and submit the revised plan for approval) where he or she believes that the plan no longer adequately addresses the relevant requirements under Division 4. The direction to revise the plan must include a specified time period within which the participant must give the Secretary the revised plan. If the participant does not give the Secretary the revised plan within the specified time period, or within any further period allowed by the Secretary, the Secretary must cancel the approval of the plan in writing. This provision reflects the need for security plans to remain current and responsive to the security environment during the life of the plan.

Section 100P Offshore security plans must be revised every five years

New section 100P requires that plans must be revised every five years, unless the Secretary has approved a revised plan for the participant within that period. If an offshore industry participant does not submit a revised plan for approval within that period, approval of the existing plan is automatically cancelled after 5 years.

Section 100Q Cancelling inadequate offshore security plans

New section 100Q provides that a plan may be cancelled if the Secretary believes that the plan no longer adequately addresses the requirements under Division 4 and that it would not be appropriate to direct either a variation or a revision of a plan. The Secretary must cancel approval of the plan in writing.

Section 100R Cancelling for failure to comply with offshore security plans

New section 100R provides that the Secretary may, by written notice, cancel a plan when an offshore industry participant has accumulated a prescribed number of demerit points in respect of non-compliance with the plan, as described in Division 6 of Part 11.

Where the Secretary believes it is necessary to cancel a plan due to non-compliance, he or she may request the participant to show cause why the plan should not be cancelled.

Section 100S Cancelling offshore security plans where facility moved

New section 100S provides that where an offshore security plan for an offshore industry participant is in force and that facility is moved to a new location the Secretary may, by written notice, cancel the approval of the plan. For facilities which are ships approval will only be cancelled where a move is permanent.

This provision is added to allow sufficient flexibility to consider circumstances where ships leave an area for a short time, say to avoid a cyclone. After that time they return to the same petroleum well.

Section 100T Cancelling offshore security plans on request

New section 100T enables an offshore facility operator to request the Secretary to cancel approval of a plan. Where such a request is made, the Secretary must, by written notice, cancel approval of the plan.

Part 5B – ISSC obligations for Australian ships regulated as offshore facilities

New Part 5B deals with the requirement for Australian ships regulated as offshore facilities to have ship security plans and International Ship Security Certificates (ISSCs). The responsibilities of foreign ships regulated as offshore facilities are dealt with in Part 5C.

Division 1 – Simplified overview of Part

Section 100U Simplified overview of Part

Australian ships regulated as offshore facilities are required to have an ISSC. Division 2 enables the Secretary to issue ISSCs and interim ISSCs for ships. The Secretary is able to delegate his or her powers to registered security organizations.

Division 2 - ISSC obligations

100V Australian ship regulated as an offshore facility to have ISSC

This section provides that Australian ships regulated as an offshore facility must have an ISSC. The possession of an ISSC will verify that the ship has implemented its approved security plan.

Section 100W Offence operating without an ISSC

New section 100W makes it an offence, punishable by a maximum of 200 penalty units, for an offshore facility operator to operate an Australian ship regulated as an offshore facility without an ISSC or interim ISSC. This is an offence of strict liability. The offshore facility operator will not be liable if they have a reasonable excuse.

Section 100X Applying for an ISSC

New section 100X enables an offshore facility operator for an Australian ship regulated as an offshore facility to apply to the Secretary for an ISSC for the ship. The application must be in accordance with any requirements prescribed in the regulations. The regulations may prescribe requirements in relation to the form and content of the application, and the way in which the application is made.

Section 100Y Conditions for giving an ISSC

New section 100Y provides that the Secretary must give an offshore facility operator an ISSC for an Australian ship regulated as an offshore facility if the applicant has an offshore security plan in force (which has been approved in accordance with the provisions of Division 5), and the ship is ISSC verified.

Section 100Z ISSC verification

ISSC verification forms part of the process for the issuing of an ISSC.

Section 100Z provides that following application for an ISSC, the ship will be *ISSC verified* by a maritime security inspector in accordance with procedures determined in writing by the Secretary. The verification will signify that the ship meets the requirements determined by the Secretary and an ISSC will be issued. Generally speaking, the maritime security inspector will inspect the ship to verify that the ship is operating in accordance with the procedures set out in its approved ship security plan.

In making a determination under subsection (1), the Secretary must have regard to the obligations set out in the ISPS Code.

Subsection 100Z(3) provides that, if an ISSC is in force and a maritime security inspector finds that the ship does not meet the Secretary's determined requirements for ISSC verification, the ship is no longer ISSC verified. The inspector may allow a period of time for the ship to rectify compliance with the requirements for verification.

Section 100ZA When an ISSC is in force

This section provides that an ISSC comes into force when it is issued and will remain in force until cancelled by the Secretary, or the offshore facility operator is no longer the operator for the ship, or a period of five years has expired since the ISSC was issued.

Section 100ZB Cancelling ISSCs

Section 100ZB provides that the Secretary must, by written notice given to the offshore facility operator, cancel the ISSC if either there is no longer an offshore security plan in force for the ship (or the security regulated offshore facility of which the ship forms a part) or the ship no longer meets the requirements for ISSC verification.

Section 100ZC Interim ISSCs

Section 100ZC provides that an interim ISSC may be issued by the Secretary where the offshore facility operator has applied for an ISSC and there is an offshore security plan in force for the ship (or the security regulated offshore facility of which the ship forms a part), but the ship is not yet ISSC verified, and the Secretary reasonably believes that the ship would be ISSC verified if it were to be inspected.

To facilitate the transfer of ships regulated as offshore facilities from one operator to another, where the Secretary has given an offshore facility operator an ISSC and another offshore facility operator becomes the offshore facility operator for the ship, the Secretary may give the other operator an interim ISSC for the ship.

An interim ISSC is in force for the period, not exceeding 6 months, specified in the interim ISSC.

Section 100ZD Offence - false or misleading statements in relation to having an ISSC

Section 100ZD sets out circumstances where the master of an Australian ship regulated as an offshore facility will be considered to have committed an offence. These include where the master makes a statement (whether orally, or in a document or in any other way) which suggests that an ISSC or interim ISSC is in force for the ship when that is not the case. The offence also applies if the false or misleading statement is made to another SOLAS Contracting Government. This is an offence of absolute liability with a penalty of 50 penalty units.

Division 3 - Recognised security organisations

100ZE Secretary may delegate powers and functions under this Part

Section 100ZE enables the Secretary to delegate, in writing, all or any of his or her powers and functions under Part 5B to a person who satisfies the criteria prescribed in the regulations and is engaged by a recognised security organisation.

A recognised security organisation will be an organisation determined in writing by the Secretary. This provision is to allow for suitably qualified organisations to carry out the functions of approving security plans, ISSC verification and issuing ISSCs. The Secretary may choose to delegate all or any of these functions.

In exercising powers or functions delegated under subsection 100ZE(1), the delegate must comply with any directions of the Secretary.

100ZF Recognised security organisations may conduct ISSC inspections

New subsection 100ZF(1) enables the Secretary to authorise, in writing, a person to whom powers and functions can be delegated under subsection 100ZE(1) to conduct inspections of ships for the purposes of verifying that ships meet the requirements necessary for ISSC verification.

If a person, authorised under subsection (1), conducts a ship inspection, the person is taken to be a maritime security inspector for the purposes of subsection 100Z(1).

Part 5C - Foreign ships regulated as offshore facilities
Division 1 - Simplified overview of Part

100ZG Simplified overview of Part

New section 100ZG provides a simplified overview of Part 5C. Division 2 sets out the obligations to be met by foreign ships regulated as offshore facilities and requires offshore facility operators for, and the masters of, those ships to acknowledge certain communications. Division 3 provides for the Secretary to give control directions to foreign ships regulated as offshore facilities to ensure that security standards are maintained.

Division 2 - Obligations on regulated foreign ships

100ZH Foreign ship regulated as an offshore facility to have ISSC

Section 100ZH provides that an offshore facility operator for a foreign ship regulated as an offshore facility must have a valid ISSC, or an approved ISSC equivalent, for the ship and ensure that the ship carries the required ship security records.

A valid ISSC will be issued to a foreign ship by or on behalf of its flag state in accordance with that state's acceptance of the ISPS Code. ISSCs may be issued by another flag state or a recognised security organisation (such as classification societies), where for example a foreign sate has delegated this function to a recognised security organisation or the flag state is not a signatory to the SOLAS Convention.

If an offshore facility operator for a foreign ship regulated as an offshore facility contravenes subsection (1), the offshore facility operator or the master of the ship may be given a control direction under Division 3.

The Secretary may approve in writing a certification to be an *approved ISSC equivalent.* This provision will facilitate the entry into Australian regulated ports of foreign ships that meet ISPS Code security standards but have not been issued with an ISSC.

100ZI Foreign ship regulated as an offshore facility must provide pre-arrival information

Section 100ZI requires the master of a foreign ship regulated as an offshore facility to provide certain security information prior to their arrival in Australian waters, or entry into a port, as part of pre-arrival reporting procedures. If the master of a ship contravenes this requirement, the master or the offshore facility operator for the ship may be given a control direction under Division 3.

Subsection 100ZI(2) provides that the regulations may prescribe the persons, the circumstances and the form and manner relating to pre-arrival information. Pre-arrival information is information of a kind prescribed in the regulations that must be provided by a ship before the ship enters one or more of the following:

(a) Australian waters;

(b) a security regulated port;

(c) a maritime security zone within a security regulated port;

(d) a port that is not a security regulated port.

Section 100ZJ Foreign ship regulated as an offshore facility must allow inspections etc.

Section 100ZJ provides that the master of a foreign ship regulated as an offshore facility must allow a maritime security inspector to board and inspect the ship in accordance with the powers of a maritime security inspector set out in Division 2 of Part 8. In such circumstances, the master must provide a maritime security inspector with the ship security records when requested by the inspector to do so. If the master does not allow an inspector to inspect the ship, the master or the offshore facility operator for the ship may be given a control direction under Division 3.

Section 100ZK Foreign ship regulated as an offshore facility must comply with security directions.

Foreign ships must comply with security directions.

Section 100ZL Acknowledging level notifications and directions

Subsections 100ZK(1) and (2) provide that if the master of a foreign ship regulated as an offshore facility has received notice from the Secretary, or port operator or the offshore facility operator that maritime security level 2 or 3 is in force for the ship or a control direction has been given to the ship, and the master does not acknowledge receipt of such notice or direction to the Secretary, the master commits an offence. This is an offence of strict liability with a penalty of 25 penalty units.

Subsections 100ZL(3) and (4) provide that if the offshore facility operator of a foreign ship regulated as an offshore facility has received notice from the Secretary, or port operator that maritime security level 2 or 3 is in force for the ship or a control direction has been given to the ship, and the offshore facility operator does not acknowledge receipt of such notice or direction to the Secretary, the offshore facility operator commits an offence. This is an offence of strict liability with a penalty of 100 penalty units.

Division 3 - Control directions

100ZM Secretary may give control directions

Section 100ZM enables the Secretary to give control directions to the offshore facility operator for a foreign ship regulated as an offshore facility, or the master of the ship, to either control the movement of the ship or require the master or operator to take specific action or refrain from specific action.

The Secretary must not give a control direction unless the direction is necessary for ensuring compliance with Division 2 of Part 5C, or a direction of a kind that can be given, under Chapter XI-2 of the SOLAS Convention or the ISPS Code, by a port state to a foreign flagged ship.

New subsection 100ZL sets out the action that an offshore facility operator or master may be directed to take. This includes the following:

- removing the ship from Australian waters;
- removing the ship from a security regulated port;
- moving the ship within a security regulated port;
- removing the ship from an offshore security zone;
- moving the ship within or around an offshore security zone;
- holding the ship in a particular position for a specified period or until a specified event occurs;
- taking particular actions, or ensuring that particular actions are taken, on board the ship;
- allowing a maritime security inspector on board the ship to inspect the ship or ship security records.

Article 25 of the United Convention on the Law of the Sea provides authority to remove a ship from Australian waters.

A control direction has no effect until the Secretary commits the direction to writing, although subsection 100ZL(7) enables regulations to be made to provide the method or circumstances in which a direction is given, for example orally or electronically.

The Secretary may not issue a direction requiring the payment of money other than an amount of money that is already recoverable at law.

100ZN Enforcing control directions

Section 100ZN provides that if an offshore facility operator or the master of a foreign ship regulated as an offshore facility fail to comply with a control direction, an injunction under section 197 may be sought to compel compliance by the offshore facility operator or the ship master.

Item 106 - Section 101 Simplified overview of Part
Item 107 - Section 101 Simplified overview of Part
Item 108 - Section 101 Simplified overview of Part
Item 109 - Section 101 Simplified overview of Part

Part 6 deals with the establishment of maritime security zones. These zones are used to subject areas within ports and on ships to additional security requirements. Divisions 2, 3 and 4 currently allow the Secretary to establish port security zones, ship security zones to operate around a security regulated ship, and on board security zones on regulated Australian ships respectively.

New items 106, 107, and 109 insert references to 'on and around ships, and on and around offshore facilities' 'near a security regulated offshore facility' and 'on board and offshore' respectively. Item 108 inserts a reference to new Division 5 which will allow the Secretary to establish one or more offshore security zones on and around a security regulated offshore facility.

Item 110: At the end of paragraph 104(c) Matters to be considered in establishing port security zones

New paragraph 104(c)(iii) provides that, when establishing a port security zone, the Secretary must have regard to the purpose of the zone and take into account, among other things, the views of the offshore facility operator for each security regulated offshore facility that is to be included within the zone.

Item 111 – Subsection 105(1) Requirements for port security zones
Item 112 – Paragraph 105(3)(a) Requirements for port security zones

Section 105 of the Act provides that the regulations may prescribe requirements in relation to port security zones to safeguard against unlawful interference with maritime transport. Item 111 inserts a reference to unlawful interference with offshore facilities.

Subsection 105(3) of the Act provides that the regulations may prescribe penalties. Item 112 extends the application of paragraph 105(3)(a) to offshore facility operators. The penalty for an offence committed by an offshore facility operator must not exceed 200 penalty units. The penalty for an offence committed by a maritime industry participant must not exceed 100 penalty units, and for an offence committed by any other person it must not exceed 50 penalty units.

Item 113 – After subsection 106(1) Declaring ship security zones
Item 114 – At the end of subsection 106(2) Declaring ship security zones

Subsection 106(1) of the Act currently enables the Secretary to declare a ship security zone around a security regulated ship while the ship is within a security regulated port, including while it is moving within the port. Item 113 inserts a new subsection 106(1A) which will enable the Secretary, by written notice, given to the ship operator or the master of a security regulated ship and the offshore facility operator, to declare that a ship security zone is to operate around a ship while the ship is in the vicinity of the facility and is engaged in any activity in relation to the facility. The zone must be of a type prescribed in section 107.

Subsection 106(2) of the Act provides that the purpose of ship security zones is to protect ships within those zones from unlawful interference with maritime transport. Item 114 extends the application of this subsection to unlawful interference with offshore facilities.

Item 115 – Section 108 Matters to be considered in declaring ship security zones

Item 116 – Section 108 Matters to be considered in declaring ship security zones

Item 117 – Section 108 Matters to be considered in declaring ship security zones

Items 115 and 116 and 117 rewrite subsection 108(1) and extend the work of the section to ships near an offshore facility.

Item 118 - Subsection 109(1) Requirements for ship security zones
Item 119 - Paragraph 109(3)(a) Requirements for ship security zones

Subsection 109(1) of the Act provides that the regulations may prescribe requirements in relation to ship security zones to safeguard against unlawful interference with maritime transport. Item 118 extends the application of this section to include offshore facilities.

Item 119 inserts an amendment to paragraph 109(3)(a), which provides that the regulations may prescribe penalties for offences against the regulations, to extend application of this provision to offshore facility operators.

Item 120 - Subsection 113(1) Requirements for on-board security zones
Item 121- Paragraph 113(3)(a) Requirements for on-board security zones

Section 113 of the Act provides that the regulations may prescribe requirements in relation to on-board security zones to safeguard against unlawful interference with maritime transport. Item 120 extends the application of this section to include offshore facilities.

Item 121 inserts an amendment to paragraph 113(3)(a), which provides that the regulations may prescribe penalties for offences, to extend application of this provision to offshore facility operators.

Item 122 – At the end of Part 6 add

Division 5 - Offshore security zones

New Division 5 allows the Secretary to establish offshore security zones within and around a facility in order to protect against unlawful interference with offshore facilities. Additional security requirements will apply to the different types of zones and unauthorised people, vessels and vehicles must remain outside of the zones.

Section 113A Establishing offshore security zones

New section 113A allows the Secretary to establish one or more offshore security zones within and around a facility. The zones must be of a type prescribed in the regulations. The Secretary is required to give the offshore facility operator a written notice about the establishment of an offshore security zone. The notice must include information about the location and boundaries of the zones, and be in accordance with the form prescribed in the regulations.

In practice, most offshore security zones will be established at the request of an offshore facility operator and the operator will include a map of the areas to be designated as offshore security zones in the offshore facility security plan.

Section 113B Types of offshore security zones

New subsection 113B provides that the regulations may prescribe different types of offshore security zones.

Subsection 113B(2) lists the purposes for which different types of offshore security zones may be prescribed. These include, but are not limited to, limiting contact with security regulated offshore facilities, controlling the movement of people within a security regulated offshore facility, controlling the movement of ships and other things within and around a security regulated offshore facility, providing cleared areas within and around security regulated offshore facilities, preventing interference with security regulated offshore facilities, and preventing interference with people or goods to and from security regulated offshore facilities.

Section 113C Matters to be considered in establishing offshore security zones

New section 113C provides that when establishing an offshore security zone, the Secretary must have regard to the purpose of the zone, take into account the physical and operational features of the facility and the views of the offshore facility operator and if all or part of the zone is within a security regulated port, the port operator for that port.

In establishing a zone, the Secretary is required to act consistently with Australia's obligations under international law.

Section 113D Requirements for offshore security zones

New section 113D provides that the regulations may prescribe requirements in relation to each type of offshore security zone to safeguard against unlawful interference with maritime transport or offshore facilities. The reference to unlawful interference with maritime transport

or offshore facilities limits the extent of requirements that can be prescribed by regulations made under this section.

The regulations may prescribe matters such as access control, identification and marking of zones, regulate movement in a zone, the integrity of the zones, the management of people and goods including suspicious and abandoned items in offshore security zones, and the suspension of the existence of an offshore security zone.

Subsection 113D(3) provides that the regulations may prescribe penalties. The penalties for an offence committed by an offshore facility operator must not exceed 200 penalty units. The penalties for an offence committed by other maritime industry participants may not exceed 100 penalty units. An offence committed by any other person may not exceed 50 penalty units.

Subsection 113D(4) provides that regulations may be made to enable cost recovery by any person for costs and expenses reasonably incurred in issuing a Maritime Security Card (MSIC). MSICs will be a nationally consistent identification card issued on the successful completion of background checks.

Subsection 113D(5) provides that regulations may be made authorising the use or disclosure of personal information. The purpose of this provision is to facilitate the flow of information between relevant organisations necessary for background checking to occur, including to provide that any information used or disclosed by those organisations will not be in breach the *Privacy Act 1988*.

Item 123 – Section 114 Simplified overview of Part

Item 123 amends the simplified overview of Part 7 by inserting a reference to "on board regulated Australian ships and on board ships regulated as offshore facilities.

Item 124 - Paragraph 115(1)(b) Screening and clearing people

Section 124 provides that a person is screened when they undergo screening. The regulations made under section 119 set out requirements for screening prior to entry into a cleared area or zone within a security regulated port or on-board a ship. Item 124 extends this requirement to persons entering an area within an offshore security zone.

Item 125 - Paragraph 116(1)(b) Screening and clearing goods
Item 126 - Paragraph 117(1)(b) Screening and clearing vehicles
Item 127 - Paragraph 118(1)(b) Screening and clearing vessels

Sections 116, 117 and 118 are equivalent provisions for goods, vehicles and vessels as those in section 115 for people. The same principles and grounds for screening and clearance apply. Items 125, 126 and 127 extend these requirements to goods, vehicles and vessels entering an area within an offshore security zone.

The term *goods* has its natural meaning and includes cargo, baggage and stores while the term *vehicles* includes helicopters.

Item 128 - Subsection 119(1) Requirements for screening and clearing
Item 129 - Subparagraphs 119(2)(d)(ii), (e)(ii), (f)(ii), g(ii), (h)(ii) and (i)(ii) Requirements for screening and clearing
Item 130 – Paragraph 119(4)(a) Requirements for screening and clearing

Section 119 of the Act provides the framework for regulations for screening, receiving clearance, and the circumstances in which persons, goods, vehicles or vessels are required to be cleared. These regulations are for the purposes of safeguarding against unlawful interference with maritime transport or offshore facilities. Item 128 amends subsection 119(1) to include a reference to offshore facilities.

Subsection 119(2) limits the matters which may be dealt with by regulations made under subsection 119(1). Most of these are self-explanatory and typical for a screening process, such as who can conduct screening, what things are to be detected by screening, the circumstances in which people, ships, stores, baggage, cargo, vehicles and vessels must be cleared before being taken on-board another vessel or into a cleared area within a security regulated port, or offshore security zone.

Subsection 119(4) provides that the regulations may prescribe penalties. The penalties for an offence committed by an offshore facility operator must not exceed 200 penalty units. The penalties for an offence committed by other maritime industry participants may not exceed 100 penalty units. An offence committed by any other person may not exceed 50 penalty units.

Item 131 – Paragraph 122(1)(a) Weapons on board certain ships – strict liability

Item 131 inserts in paragraph 122(1)(a) the words “or a ship regulated as an offshore facility.”

Item 132 – Paragraph 123(a) Weapons on board certain ships – general

Item 132 inserts in paragraph 123(a) the words “or a ship regulated as an offshore facility.”

Item 133 – Paragraph 124(1)(a) Failure to comply with conditions

Item 133 inserts in paragraph 124(1)(a) the words “on board a regulated Australian ship or on board a ship regulated as an offshore facility.”

Item 134 - Subsection 126(1) Other weapons requirements
Item 135 - Subsection 126(1) Other weapons requirements
Item 136 - Subsection 126(2)(a)(b) and (c) Other weapons requirements
Item 137 – Paragraph 126(3)(a) Other weapons requirements

Section 126 of the Act currently provides that regulations may be made to prescribe requirements for the purposes of safeguarding against unlawful interference with maritime transport in relation to the carriage and use of weapons in maritime security zones or on board regulated Australian ships. Item 134 extends the application of this section to offshore facilities and items 135 and 136 extend the prohibition from taking weapons on board a ship regulated as an offshore facility.

Item 137 amends paragraph 126(3)(a) of the Act which provides that the regulations may prescribe penalties. The penalties for an offence committed by an offshore facility operator must not exceed 200 penalty units. The penalties for an offence committed by other maritime industry participants may not exceed 100 penalty units. An offence committed by any other person may not exceed 50 penalty units.

Item 138 – Paragraph 129(1)(a) Prohibited items on board certain ships – strict liability

Item 138 extends the prohibition from taking prohibited items on board a ship regulated as an offshore facility.

A note to this item indicates that the heading of section 129 is amended to "Prohibited items on board certain ships – strict liability".

Item 139 – Paragraph 130(a) Prohibited items on board certain ships – general

Item 139 extends the prohibition from taking prohibited items on board a ship regulated as an offshore facility.

A note to this item indicates that the heading of section 130 is amended to "Prohibited items on board certain ships – general".

Item 140 – Paragraph 131(1)(a) Failure to comply with conditions

Item 140 extends the reach of paragraph (1)(a) by inserting a reference to on board a ship regulated as an offshore facility.

Item 141 - Subsection 133(1) Other prohibited items requirements
Item 142 - Subsection 133(1) Other prohibited items requirements
Item 143 - Paragraphs 133(2)(a), (b) and (c) Other prohibited items requirements
Item 144 - Paragraph 133(3)(a) Other prohibited items requirements

Subsection 133(1) of the Act provides that regulations may be made to prescribe requirements for the purpose of safeguarding against unlawful interference with maritime transport in relation to the carriage and use of prohibited items in maritime security zones or on board regulated Australian ships. Item 141 extends the application of this section to offshore facilities. Items 142 and 143 extend the prohibition to taking prohibited items on board a ship regulated as an offshore facility.

Item 144 amends paragraph 133(3)(a) of the Act which provides that the regulations may prescribe penalties to extend its application to offshore participants. The penalties for an offence committed by an offshore facility operator must not exceed 200 penalty units. The penalties for an offence committed by other maritime industry participants may not exceed 100 penalty units. An offence committed by any other person may not exceed 50 penalty units.

Item 145 - Section 135 Simplified overview of Division
Item 146 - Section 135 Simplified overview of Division

Division 2 of Part 8 sets out who may be a maritime security inspector, their powers and the limits on their powers. The primary role of maritime security inspectors is to conduct ISSC verifications and to audit and investigate the compliance of maritime industry participants with the Act. In order to do this effectively, they require a number of powers, including the power to enter premises and ships and inspect documents.

Item 145 amends section 135 of the Act, which sets out a simplified overview of Part 8, by inserting a reference to offshore facilities and item 146 provides that a maritime security inspector must have an inspection warrant to inspect private living areas on an offshore facility.

Item 147 – Paragraph 138(1)(a) Maritime security inspector powers - ISSC verifications
Item 148 – Subsection 138(1)(note) Maritime security inspector powers - ISSC verifications

Section 138 deals with maritime security inspector powers. Item 147 amends paragraph (1)(a) to insert a reference to a ship regulated as an offshore facility. Item 148 inserts references to new sections 100Z(1) and (2) in the note to this section.

Item 149 – Subsection 140 When powers may be exercised – security regulated ships

Item 142 omits the term ‘a ship’ and substitutes the words ‘a security regulated ship’.

Item 150 – After section 140 insert

Section 140A Maritime security inspector powers - security regulated offshore facilities

New section 140A provides a maritime security inspector with a number of powers he or she may exercise in determining whether a person or ship is complying with the Act and if non-compliance is suspected investigate a possible contravention. This section gives maritime security inspectors the ability to enter and inspect a security regulated offshore facility. A maritime industry inspector may also inspect and photograph equipment, observe operating procedures (including training drills), discuss operating procedures with employees or other maritime industry participants, inspect and copy documents and operate equipment in order to access a document or record kept by a maritime industry participant.

New subsection 140A(3) provides that a maritime security inspector’s powers are limited to the extent that the inspector must not subject a person to greater indignity than is reasonable or necessary.

In exercising a power under this section, a maritime security inspector must take account of occupational health and safety requirements under the laws of the Commonwealth, a State or Territory applying at the facility. These laws will include the laws under which the inspector operates as an employee and the safety laws that operate on facilities.
Section 140B When powers may be exercised - security regulated offshore facilities

A maritime security inspector may exercise the powers in new section 140A in an *operational area* of a security regulated offshore facility, if the power is exercised within the boundaries of

a security regulated port, at any time and without notice; or otherwise, after giving reasonable notice to the offshore facility operator.

A maritime security inspector may exercise a power mentioned in section 140A in a *private living area* of a security regulated offshore facility if both the offshore facility operator and any person who occupies the private living area consent to the inspection, or the inspector has a warrant, issued under section 145A, to search the private living area. In addition, a maritime security inspector may only exercise a power mentioned in section 140A in a private living area of a security regulated offshore facility if the inspector is accompanied by the offshore facility operator or a person nominated by the offshore facility operator.

A *private living area* of a security regulated offshore facility is defined as an area used for the purposes of providing accommodation for crew of, or visitors to, the facility, and to which neither crew nor visitors have general access.

An *operational area* of a security regulated offshore facility is an area that is not a private living area.

Item 151 – Subsection 144(1) Inspection warrants – security regulated ships

Item 151 omits the word 'ship' and substitutes the words 'a security regulated ship'.

A note to this item indicates that the heading of section 144 is amended to "Inspection warrants – security regulated ships'.

Item 152 – At the end of Division 2 of Part 8 add

Section 145A Inspection warrants – security regulated offshore facilities

New section 145A enables a maritime security inspector to apply to a magistrate for a warrant to inspect a private living area on-a security regulated offshore facility. The section provides that a magistrate may only issue a warrant if he or she is satisfied that the warrant is necessary for one of the purposes listed. The magistrate may require further information concerning the reason why a warrant is sought. A warrant must stipulate the terms, time, day and purpose for which the warrant is issued.

Section 145B Inspection warrants by telephone, fax etc. - security regulated offshore facilities

New section 145B sets out the requirements for the issuing of an urgent warrant by a magistrate. In an urgent situation, a maritime security inspector may apply for a warrant by phone, fax or other electronic means. The section provides that certain requirements are to be met by the maritime security inspector and the magistrate in such circumstances. These requirements are in place both to facilitate the provision of a warrant in urgent circumstances and to safeguard that proper procedure and accountability requirements are met.

Item 153 - Section 146 Simplified overview of Division

Division 3 of Part 8 enables the Secretary to appoint officers of certain Commonwealth agencies as duly authorised officers to perform limited functions associated with the checking of compliance by security regulated ships and offshore facilities with the Act. Item 153 inserts a reference to a security regulated ship or offshore facility in the simplified overview of Division 3.

Item 154 – Subsection 148(1)

Item 154 omits the term 'a ship' and substitutes the words 'a security regulated ship' in subsection 148(1).

A note to this item indicates that the heading of section 148 is amended to "Duly authorised officer powers – operational areas of security regulated ships'.

Item 155 – After section 148 insert

Section 148A Duly authorised officer powers - operational areas of security regulated offshore facilities

Item 148 inserts a new section 148A which limits the powers of a duly authorised officer to operational areas of a security regulated offshore facility for the purposes of determining whether a person is complying with the Act.

New subsection 148A(2) provides that a duly authorised officer may enter a security regulated offshore facility and inspect its operational areas (including restricted access areas), observe and record operating procedures, and inspect and copy security related documents and operate equipment in order to access such documents.

A duly authorised officer may exercise the powers mentioned in this section, if the power is exercised within the boundaries of a security regulated offshore facility, at any time and without notice, or otherwise, after giving the offshore facility operator reasonable notice.

Subsection 148A(4) provides that a duly authorised officer, in exercising a power under this section, must not subject a person to greater indignity than is reasonable or necessary.

In exercising a power under this section within the boundaries of a security regulated offshore facility, a maritime security inspector must take account of occupational health and safety requirements under the laws of the Commonwealth, a State or Territory applying at the facility. These laws will include the laws under which the inspector operates as an employee and the safety laws that operate on facilities

Item 156 - Section 150 Simplified overview of Division

Law enforcement officers are granted relatively extensive powers because it is recognised that there may be circumstances where coercive powers are necessary to safeguard against unlawful interference with maritime transport or offshore facilities. Police, certain customs officers, and certain defence force personnel, due to the nature and level of their training and expertise, are

seen as the most appropriate people to exercise coercive powers in security regulated ports, on board security regulated ships and on ships regulated as offshore facilities.

Item 156 inserts a reference to ships regulated as offshore facilities in the simplified overview of Division 4.

Item 157 - Section 151 Law enforcement officers

Section 151 of the Act sets out law enforcement officers who are able to exercise powers under the Act. They are members of the Australian Federal Police, the police force of a State or Territory, and customs officers prescribed in the regulations. Item 157 inserts a reference to officers being on duty at a security regulated offshore facility.

Item 158 – After section 152 insert

Section 152A Access to offshore facilities by law enforcement officers

New section 152A provides that law enforcement officers will be able to enter, and remain in, any part of a security regulated offshore facility at any time. However, before entering a part of a security regulated offshore facility that is under the control of an industry participant the law enforcement officer must identify himself or herself and inform the participant why they are entering that part of the security regulated facility.

Item 159 - Subsection 153(1) Stopping and searching people
Item 160 - Subsection 153(1) Stopping and searching people
Item 161 –Subsection 154(1) Stopping and searching vehicles
Item 162– Subsection 155(1) Stopping and searching vessels

Sections 153, 154 and 155 of the Act provide that a law enforcement officer may stop and search any person, vehicle or vessel within a maritime security zone or on-board a security regulated ship if the officer reasonably believes that it is necessary to do so to safeguard against unlawful interference with maritime transport or offshore facilities. The officer must identify himself or herself to the person being stopped, tell the person why he or she is being stopped, and if a search is to take place, the reasons for the search. The power is limited to ordinary searches and frisk searches, which have the same meaning as in the *Crimes Act 1914*. Where a vehicle or vessel is not stopped by the officer, the officer must, if the person in control of the vehicle or vessel is present, identify himself or herself and tell the person the reasons for the search.

Item 159 inserts a reference in subsection 153(1) to offshore facilities. Item 160 inserts a reference to a ship regulated as an offshore facility in subsection 153(1). Items 161 and 162 insert references in subsections 154(1) and 155(1) to offshore facilities.

In offshore areas, a “vehicle” could include a helicopter and a “driver of a vehicle” could include the pilot of a helicopter.

It is an offence for a person to hinder or obstruct a law enforcement officer from exercising these powers. The maximum penalty for this offence is imprisonment for 2 years.

Item 163 – Subsection 156(1) Requests to leave ships or zones

Items 163 inserts a reference to a ship regulated as an offshore facility in subsection 156(1).

Item 164 - Paragraph 158(1)(a) Removing vehicles from zones
Item 165 - Paragraph 159(1)(a) Removing vessels from zones

Sections 158 and 159 of the Act currently provide that if a law enforcement officer has reason to suspect that a vehicle or vessel in or near a maritime security zone presents a risk to maritime transport or is not authorised to be in a maritime security zone he or she may remove the vehicle or vessel. Before removing the vehicle or vessel the officer must make reasonable efforts to have the person in control of the vehicle or vessel remove it. A law enforcement officer must not use more force, or subject a person to greater indignity than is reasonably necessary to remove the vehicle or vessel. A law enforcement officer must make reasonable efforts to avoid damaging the vehicle or vessel.

Items 164 and 165 amend paragraphs 158(1)(a) and 159(1)(a) to extend the application of these provisions to offshore facilities.

Item 166 - Paragraph 162(1)(b) Maritime security guards

Division 5 of Part 8 sets out the framework for maritime security guards and provides them with limited powers to restrain and detain persons. The operators of security regulated ships, ports, port facilities and other maritime industry participants may choose to employ maritime security guards to safeguard against unlawful interference with their maritime operations.

Section 162(1) of the Act defines a maritime security guard as a person who satisfies the requirements prescribed in the regulations, and is on duty at a security regulated port, or on a security regulated ship.

Item 166 extends paragraph 162(1)(b) to include a person who is on duty on a security regulated offshore facility and is not a law enforcement officer.

Item 167 - Part 9 (heading)

Item 167 repeals the existing heading in Part 9 and substitutes a new heading “Part 9— Reporting maritime transport or offshore facility security incidents”.

Item 168 - Section 169 Simplified overview of Part
Item 169 - Section 169 Simplified overview of Part

Part 9 deals with the requirements relating to the provision of information about maritime transport security incidents to the Secretary and the Department. This is to ensure that the Secretary, as the regulator of maritime transport or offshore facility security, has adequate information in the event of a maritime transport or offshore facility security incident.

Items 168 and 169 insert references in the simplified overview of Part 9 to the security of offshore facilities and offshore facility security incidents respectively.

Item 170 - Division 2 of Part 9 (heading)

Item 170 repeals the existing heading of Division 2 and substitutes a new heading: "Division 2 - Meaning of maritime transport or offshore facility security incident".

Item 171 - Subsection 170(1) Meaning of *maritime transport or offshore security incident*
Item 172 - Subsection 170(1) Meaning of *maritime transport or offshore security incident*
Item 173 - Subsection 170(2) Meaning of *maritime transport or offshore security incident*
Item 174 - Subsection 170(2) Meaning of *maritime transport or offshore security incident*

Section 170 of the Act currently defines two types of maritime transport security incidents. First, if a threat of unlawful interference with maritime transport is made (for example, a bomb threat) and this threat is, or is likely to be, a terrorist act, then the threat is a maritime transport security incident. Items 171 and 172 extend the application of subsection 170(1) by inserting a reference to offshore facilities and offshore facility security incidents respectively.

Secondly, if an unlawful interference with maritime transport is, or is likely to be, a terrorist act (for example, damage to property with the intention of advancing a political, religious or ideological cause), then the unlawful interference is a maritime transport security incident. Items 173 and 174 extend the application of subsection 170(2) by inserting references to offshore facilities and to offshore facility security incident, respectively.

Item 175 - Paragraph 171(1)(a) Port operators
Item 176 - Paragraph 172(1) Ship masters
Item 177 - Paragraph 172(1)(a) Ship masters
Item 178 - Paragraph 173(1)(a) Ship operators
Item 179 - Paragraph 174(1)(a) Port facility operators

Sections 171, 172, 173 and 174 of the Act currently make it an offence for port operators, ship masters, ship operators and port facility operators not to report a maritime transport security incident according to the reporting requirements set out in Division 4 when they become aware of the incident. These are strict liability offences. The penalty does not apply if the operator or master believes on reasonable grounds that the person to whom the report has to be made is already aware of the incident.

Items 175, 176, 178 and 179 extend the reporting obligations to include the reporting of offshore facility security incidents.

Item 177 amends subsection 172(1) to impose a requirement on a ship master of a ship regulated as an offshore facility to report a maritime transport or offshore facility security incident.

Item 180 – After section 174 insert

<u>Section 174A Offshore facility operators</u>

New section 174A makes it an offence for offshore facility operator not to report a maritime transport or offshore facility security incident according to the reporting requirements set out in Division 4 when he or she becomes aware of the incident. This is a strict liability offence.

The penalty does not apply if the offshore facility operator believes on reasonable grounds that the person to whom the report has to be made is already aware of the incident.

Item 181 - Paragraph 175(1)(a) Persons with incident reporting responsibilities
Item 182 - After subparagraph 175(4)(e)(iii) Persons with incident reporting responsibilities

Subsection 175(1) of the Act makes it an offence for the persons listed in subsection 175(4) who become aware of a maritime transport security incident not to report that incident as soon as possible as required under section 181. Item 181 amends paragraph 175(1)(a) by inserting a reference to offshore facility security incidents.

The classes of persons with incident reporting responsibilities are maritime security inspectors, duly authorised officers, maritime security guards, screening officers and maritime industry participants other than a port operator, port facility operator or ship operator or an employee of a maritime industry participant. Item 182 inserts a reference to an offshore facility operator in subparagraph 175(4)(e)(iii).

This is a strict liability offence. The penalty will not apply if the person with incident reporting responsibilities believes on reasonable a ground that the person to whom the report has to be made has already been informed of the incident.

Item 183 - Paragraph 176(1)(a) Employees

Section 176 of the Act currently makes it an offence for employees of maritime industry participants who become aware of a maritime transport security incident to fail to report the incident to their employer as soon as possible. Item 183 inserts a reference in paragraph 176(1)(a) to offshore facility security incident.

Section 176 reflects the fact that, while the organisation has overall responsibility for maritime transport security, individual employees also have an important role in ensuring the security of Australia's maritime industry. This is a strict liability offence with a maximum penalty of 50 penalty units. The penalty does not apply if the employee has a reasonable excuse.

Item 184 - Subsection 177(1) Reporting by port operators
Item 185 – At the end of subsection 177(2) Reporting by port operators
Item 186 – At the end of section 177 Reporting by port operators

Division 4 deals with the reporting requirements for incidents by those with incident reporting responsibilities as defined in Division 3. This Division reflects the fact that while the Secretary needs to be made aware of maritime transport security incidents the relevant police forces are the first response agencies to an incident. Item 184 inserts a reference in subsection 177(1) to reporting offshore facility security incidents.

Section 177 stipulates the reporting requirements for port operators. An incident that relates to the port of the port operator must be reported by the port operator to the Secretary and the Australian Federal Police or the police force of the relevant State or Territory.

Item 185 provides that an incident that relates to the port of the port operator must be reported, if there is a security regulated offshore facility within the port, to the offshore facility operator for the facility. Item 186 inserts a new subsection 177(6) which provides that an incident that relates to a security regulated offshore facility must be reported to the offshore facility operator for the facility

Item 187 - Subsection 178(1) Reporting by ship masters
Item 188 - Subsection 178(1) Reporting by ship masters
Item 189 – At the end of subsection 178(2) Reporting by ship masters
Item 190 – At the end of section 178 Reporting by ship masters
Item 191 – Subsection 179(1) Reporting by ship operators
Item 192 – At the end of subsection 179(2) Reporting by ship operators
Item 193 – At the end of section 179 Reporting by ship operators
Item 194 – After section 179 Reporting by offshore facility operators
Item 195 - Subsection 180(1) Reporting by port facility operators
Item 196 – At the end of section 180 Reporting by port facility operators

Sections 178, 179 and 180 of the Act deal with similar incident reporting requirements to those specified in section 177 for other maritime industry participants. Reports of maritime transport security incidents must be given to the Secretary, the Australian Federal Police or the relevant State or Territory police, the port operator and to any other maritime industry participant or security regulated ship affected by the incident.

Item 187 extends the reporting requirements of ship masters to masters of ships regulated as an offshore facility. Items 188, 191 and 195 insert requirements for reporting of offshore facility incidents.

Items 189 and 192 provide that if an incident relates to the master's ship or to the ship operator respectively it must be reported to, if the ship is located in the vicinity of a security regulated offshore facility and is engaged in any activity in relation to the facility, for example, for the purpose of loading, or unloading, goods or people from or to the facility, to the offshore facility operator for the facility.

Items 190, 193 and 196 insert a new subsection in each of sections 178, 179 and 180 which provides that an incident that relates to a security regulated offshore facility must be reported to the offshore facility operator for the facility.

Item 194 inserts new section 179A which provides that the offshore facility operator for a security regulated offshore facility must report maritime transport or offshore facility security incidents to the Secretary, the Australian Federal Police or the police force of a State or a Territory; and if the facility is within a security regulated port, the port operator for the port and if a security regulated ship is located in the vicinity of the facility and is engaged in any activity in relation to the facility, the ship operator for, or master of, the ship.

An incident that relates to a port must be reported to the port operator for the port, and an incident that relates to a security regulated ship must be reported to the ship operator for the ship, or the master of the ship.

Item 197 - Subsection 181(1) Reporting by persons with incident reporting responsibilities
Item 198 - At the end of section 181 Reporting by persons with incident reporting responsibilities

Section 181 provides that a person with incident reporting responsibilities must report security incidents to the Secretary. Item 197 extends this requirement to reporting offshore facility incidents.

Item 198 inserts a new subsection 181(5) which provides that if the incident relates to a security regulated offshore facility it must be reported to the offshore facility operator for the facility.

Item 199 - Paragraph 182(3)(a) How reports are to be made

Section 182 of the Act allows the Secretary to publish a notice in the *Gazette* setting out what information is be included in an incident report or the way in which the report must be made. This notice must be tabled in Parliament and may be disallowed.

Subsection 182(3) provides that if a maritime industry participant or a person with incident reporting responsibilities does not report a maritime transport or offshore facility security incident in compliance with the gazetted requirements, then the report will be considered not to have been made for the purposes of Part 9. Item 199 inserts a reference in paragraph 182(3)(a) to offshore facility security incidents.

Item 200 - Section 183 Simplified overview of Part

Section 183 of the Act provides a simplified overview of Part 10 which deals with information gathering. Item 200 amends the overview by inserting a reference to offshore facilities.

The collection of security compliance information is important for ensuring that appropriate security measures are implemented and maintained to safeguard against unlawful interference with maritime transport and offshore facilities, and to ensure that Australia meets its international obligations.

Item 201 - Subsection 187(1) Infringement notices

Section 187 enables regulations to be made which allow infringement notices, or ‘on-the-spot’ fines, to be issued as an alternative to prosecution where it is alleged that an offence under the Act or the regulations has occurred. Offences for which this option would not be made available are those against subsections 43(1), 62(1), 120(3), 121(3), 127(3), 128(3), 153(3), 154(4), 155(4) or sections 123 or 130, because these are considered to be serious acts that should be subject to criminal sanction, for example, a maritime industry participant operating without a maritime security plan in force or the intentional carriage of an unauthorised weapon into a maritime security zone.

Item 201 inserts a reference to new subsection 100C(1) as one of the offences in respect of which the option of infringement notices is not available.

Item 202 - At the end of paragraph 189(2)(b) Secretary may make enforcement orders - participants

Section 189 of the Act allows the Secretary to make enforcement orders prohibiting or restricting specified activities or requiring specific action by a maritime industry participant named in the enforcement order. The Secretary's power to issue an enforcement order must be based on a reasonable belief that the maritime industry participant has contravened a provision in the Act and that the order is necessary to safeguard against unlawful interference with maritime transport. Item 202 inserts a reference in paragraph 189(2)(b) to safeguard against unlawful interference with offshore facilities.

Item 203 - At the end of subsection 191(2) Reviews of enforcement orders
Item 204 - Paragraph 191(3)(a) Reviews of enforcement orders

To ensure enforcement orders remain current and relevant, section 191 of the Act provides for their regular review. Under this section the Secretary must review enforcement orders at least every 3 months, and after each review, confirm, vary or revoke the order in writing. This reflects the fact that enforcement orders are aimed at rectification of a particular problem and should be monitored to ensure the activities or actions specified in the order continue to address that particular contravention.

Subsection 191(2) provides that an order must be revoked unless the Secretary is satisfied that the order is still required to safeguard against unlawful interference with maritime transport. Item 203 extends the scope of the subsection to include offshore facilities.

Item 204 inserts a reference to offshore facilities in paragraph 191(3)(a) which provides that the Secretary must not vary the order unless he or she is satisfied that the order as varied adequately safeguards against unlawful interference with maritime transport or offshore facilities.

Item 205 - At the end of paragraph 195(3)(b) Ship enforcement orders – regulated Australian ships
Item 206 - After paragraph 195(5)(c) Ship enforcement orders – regulated Australian ships

Section 195 of the Act allows the Secretary to issue a ship enforcement order to the ship operator for a regulated Australian ship or the master of the ship requiring the ship operator or the master to take specified action, or refraining from specified action, in relation to the ship.

The Secretary's power to issue a ship enforcement order is limited to those instances where the Secretary reasonably believes that the regulated Australian ship has contravened a provision in the Act and it is necessary to make the order to safeguard against unlawful interference with maritime transport. Item 205 inserts, in paragraph 195(3)(a), a reference to safeguarding against unlawful interference with offshore facilities.

Some of the actions that may be required include removing the ship from specified waters or port, or moving or holding the ship within a port. Item 206 inserts two additional actions in subsection 195(5) as follows: removing the ship from an offshore security zone, and if the ship

is anchored in the vicinity of a security regulated offshore facility and is engaged in any activity in relation to the facility, removing the ship from the vicinity of the facility.

Item 207 - Section 198 Demerit points system

Section 198 of the Act provides that the regulations may establish a demerit point system under which the approval of a maritime security plan or a ship security plan may be cancelled. The purpose of the demerit points system is to allow for a regulatory framework that builds a security profile for each regulated entity, and records systemic breaches of the Act and/or regulations. Such a system provides flexibility with enforcement measures and ensures that regulated entities are aware of how their organisation is performing from a compliance perspective. Item 207 inserts a reference to an offshore security plan.

Item 208 - At the end of Division 6 of Part 11

Section 200A Demerit points – offshore security plans add

New section 200A provides that the demerit point system may provide that the approval of an offshore security plan may be cancelled if the offshore industry participant has accrued a prescribed number of demerit points. New section 100R deals with the cancellation of an offshore security plan based on the accumulation of demerit points.

Demerit points only accrue if a participant is found guilty of an offence against the Act or regulations, or the person pays an infringement notice or other alternative to prosecution as set out in the regulations.

The demerit points scheme may differentiate between kinds of offshore industry participants, as well as between different classes of participants within a kind of offshore industry participant.

Item 209 - Paragraph 201(a) Review of decisions by Administrative Appeals Tribunal
Item 210 - Paragraph 201(b) Review of decisions by Administrative Appeals Tribunal
Item 211 - Paragraph 201(c)) Review of decisions by Administrative Appeals Tribunal
Item 212 - Paragraph 201(d) Review of decisions by Administrative Appeals Tribunal
Item 213 - Paragraph 201(e) Review of decisions by Administrative Appeals Tribunal
Item 214 - After paragraph 201(g) Review of decisions by Administrative Appeals Tribunal
Item 215 - After paragraph 201(j) Review of decisions by Administrative Appeals Tribunal

Section 209 provides that application may be made to the Administrative Appeals Tribunal (AAT) for review of various prescribed decisions by the Secretary. Whilst the AAT is limited in undertaking a merits review of the decisions listed in this section, this does not limit the scope for judicial review under the *Administrative Decisions (Judicial Review) Act 1976*, or at common law.

Items 209 to 215 insert the following additional decisions made by the Secretary which are reviewable:

(a) refusing to approve an offshore security plan under subsection 100K(2) or (4) (Item 202);

(b) giving a maritime industry participant or ship operator, a direction to vary a plan under sections 53, 72 or 100M (Item 203);
(c) giving a maritime industry participant or ship operator a direction to revise a plan under sections 55, 74 or 100O (Item 204);
(d) cancelling a maritime security plan, a ship security plan or an offshore security plan under sections 57, 58, 76, 77, 100Q or 100R (Item 205);
(e) refusing an interim ISSC under section 86 or 100ZC (Item 206);
(ga) declaring a security regulated offshore facility under subsection 17B(1) (Item 207)
(gb) designating a person as an offshore facility operator under section 17C (Item 207);
(k) establishing an offshore security zone under section 113A (Item 208).

Item 216 - Paragraph 203(1)(a) Compensation for damage to electronic equipment

Section 203 of the Act provides details of the circumstances in which compensation for damage to electronic equipment must be made when such equipment has been operated by maritime security inspectors in exercise of their powers under sections 139 and 141 and by duly authorised officers in exercise of their powers under section 148.

Item 216 inserts references in section 203 to new sections 140A and 148A which deal with offshore facilities.

Item 217 – At the end of section 208 Severability – Additional effect of Act

Item 217 adds a new subparagraph (8) to section 208 which deals with the severability provisions to give them additional effect in the event of a constitutional challenge. Thus section 208 has been amended to attract the trade and commerce power and the corporations power.

Part 2 – Application and transitional provisions relating to offshore facilities

Item 218 - Definitions

Item 218 inserts definitions *of amended Act*, *current Act*, and *proclamation day*.

Item 219 – Regulations made for the purposes of subsections 16(2) and 17(2) of the current Act

Item 219 provides that regulations made under subsections 16(2) and 17(2) of the current Act have effect on and after the day the Bill receives Royal Assent, as if they were made under paragraphs 16(2)(b) and 17(2)(b) of the Amended Act.

Item 220 – Application of compliance provisions

Item 220 provides that Division 7B of Part 1, sections 100C to 100F, section 100R, section 100W, section 100ZD and Part 5C apply on or after the proclamation day.

Item 221 – Application of section 100G of the amended Act

This item provides that section 100G (which deals with content of offshore security plans) applies as if the amendments made by items 5 to 7 of Schedule 1 commenced on the day when item 105 (Part 5A – offshore security plans) commences.

Item 222 – Offshore security plans given for approval before the proclamation day

Item 222 provides that where an offshore industry participant gives the Secretary a security plan before proclamation day the person designated in the plan as the person to implement and maintain the plan then section 100G has effect as if it were the participant's security officer on proclamation day. Similarly, where an offshore industry participant gives the Secretary a security plan before proclamation day any offshore security zone covered by the plan is taken to be the offshore security zone covered by the plan on proclamation day.

Item 223 – Directions before the proclamation day to vary or revise offshore security plans

Where a direction is given under section 100M to vary an offshore security plan or under section 100O to revise a plan then paragraphs 201(b) and (c) have effect as if the offshore industry participant were a maritime industry participant. That is such a person is able to seek a review of such a decision by the Administrative Appeals tribunal.

Item 224 – Exercise of certain powers by maritime security inspectors

Item 224 provides that a maritime security inspector may only exercise the powers in section 138 (ISSC verification) on or after proclamation day provided those powers relate to the inspection of a foreign ship regulated as an offshore facility.

A maritime security inspector may only exercise the powers in section 140A (security regulated offshore facilities) on or after proclamation day.

Item 225 – Exercise of certain powers by duly authorized officers

A duly authorized officer may only exercise the powers in section 148A (operational area of security regulated offshore facilities) on or after proclamation day.

SCHEDULE – MSIC

Item 1 At the end of section 105

Subsection 105(4) provides that regulations may be made to enable cost recovery by any person for costs and expenses reasonably incurred in issuing a Maritime Security Card (MSIC). MSICs will be a nationally consistent identification card issued on the successful completion of background checks.

Subsection 105(5) provides that regulations may be made authorising the use or disclosure of personal information. The purpose of this provision is to facilitate the flow of information between relevant organisations necessary for background checking to occur, including to provide that any information used or disclosed by those organisations will not be in breach the *Privacy Act 1988*.

Item 2 At the end of section 109

Subsection 109(4) provides that regulations may be made to enable cost recovery by any person for costs and expenses reasonably incurred in issuing a Maritime Security Card (MSIC. MSICs will be a nationally consistent identification card issued on the successful completion of background checks.

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Item 3 At the end of section 113

Subsection 113(4) provides that regulations may be made to enable cost recovery by any person for costs and expenses reasonably incurred in issuing a Maritime Security Card (MSIC). MSICs will be a nationally consistent identification card issued on the successful completion of background checks.

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Map 1: The Offshore Gas and Oil Maritime Security Challenge

Most of Australia's oil (93 %) and gas (83 %) for both domestic consumption and export is produced from offshore resources located in the

UPSTREAM PETROLEUM INDUSTRY

- Identifies and develops gas and oil.
- Employs around 14,000 people.
- Upstream exploration industry is made up of over 200 small, medium and large companies, many of whom are foreign- based.

Economic Value

- $18 billion market value of Australian crude oil and gas production in 2002-03.
- Over 2.4%* of Australia's GDP.

Export Value

Crude oil, LPG and condensate production:

- 208 million barrels
- Exports valued at $6 billion
- Total of $8.8 billion in 2003-04

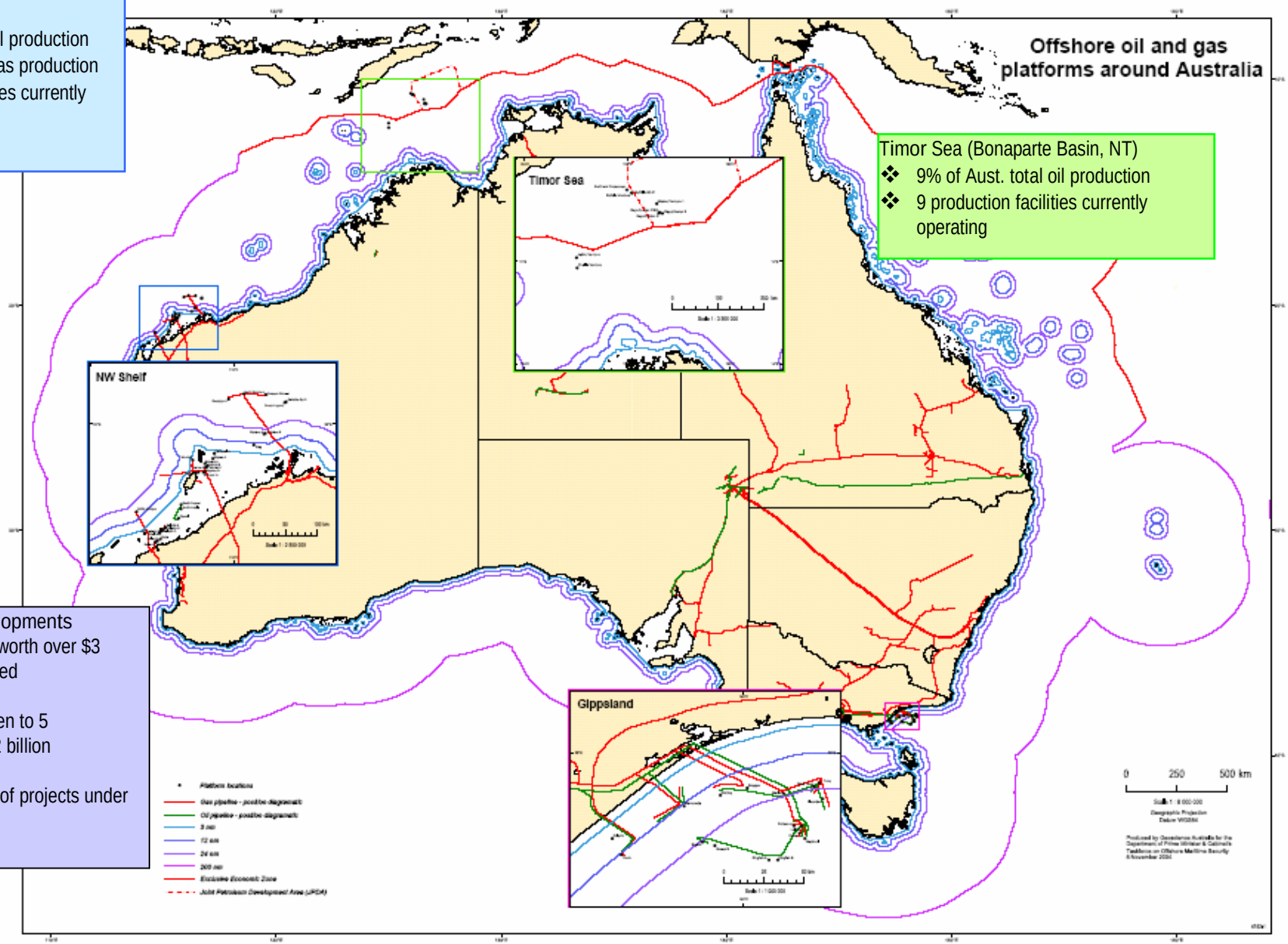
* - GDP was approx. $734 billion (2002-03)

Bass Strait (Gippsland Basin, Vic/Tas)

- 24% of Australia's total oil production
- 22% of Aust. total gas production
- 18 production facilities currently operating

North West Shelf (Carnarvon Basin, WA)

- 60% of Aust. total oil production
- 61% of Aust. total gas production
- 30 production facilities currently operating



Timor Sea (Bonaparte Basin, NT)

- 9% of Aust. total oil production
- 9 production facilities currently operating

Current and Future Developments

- 3 developments worth over $3 billion being constructed
- Commitment given to 5 developments over $2 billion
- $35 billion worth of projects under consideration

Source: based on map of 'Offshore oil and gas platforms around Australia' (No. 4162-1) produced by Geoscience Australia for the Department of Prime Minister and Cabinet's Taskforce on Offshore Maritime Security, 8 November 2004.