EXPLANATORY STATEMENT

Select Legislative Instrument No. 225

Issued by the authority of the Minister for Transport and Regional Services


Maritime Transport and Offshore Facilities Security Amendment Regulations 2005 (No. 3)

The Maritime Transport and Offshore Facilities Security Act 2003 (the Act) establishes a regulatory framework to safeguard against unlawful interference with maritime transport and offshore facilities. The framework is centred around the development of security plans for ships and other maritime transport operations.

Section 209 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to amend the Maritime Transport and Offshore Facilities Security Regulations 2003 (the Principal Regulations) to establish the infringement notices and demerit points systems.

Section 187 of the Act provides for an infringement notice system, in that the regulations may make provision enabling a person who is alleged to have committed an offence against the Act, other than against specified sections, to pay a penalty to the Commonwealth as an alternative to prosecution.

Section 198 of the Act provides that the regulations may establish a demerit points system under which the approval of a maritime security plan, a ship security plan or an offshore security plan may be cancelled.

The issue of infringement notices, including the cost of the fines, was discussed in the Regulatory Impact Statement for the Act, and the demerit points system was raised in consultation. Further consultation was conducted for the Regulations, on the infringement notices and demerit points systems:
- Relevant industry stakeholders and industrial organisations were contacted and invited to provide comment
- Relevant government agencies were contacted and invited to provide comment,
- Police forces were contacted and invited to provide comment, and
- A presentation was made to the Maritime Industry Security Consultative Forum, which comprises relevant industry stakeholders and industrial organisations, and feedback was sought.

The amendments do not create new offences under the maritime security regime. The infringement notices system provides an alternative to prosecution, and allows an issuing officer to respond appropriately to breaches of the maritime security regime. The demerit points system provides the means by which a maritime security
plan, ship security plan or offshore security plan could be cancelled for failure to comply with the Act.

Schedule 1 of the Regulations substitutes a new Part 11 – Enforcement in the Principal Regulations. It incorporates Division 11.2 which establishes the framework for the infringement notices system, and Division 11.6 which establishes the framework for the demerit points system, to be applied to maritime, ship and offshore security plans.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations would be a legislative instrument for the purposes of the **Legislative Instruments Act 2003**.

The Regulations commenced on the day after the regulations were registered.

**Authority:** Sections 209 and 187, and 198 of the *Maritime Transport and Offshore Facilities Security Act 2003*
Details of the Maritime Transport and Offshore Facilities Security Amendment Regulations 2005 (No. 3)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the Maritime Transport and Offshore Facilities Security Amendment Regulations 2005 (No. 3)

Regulation 2 – Commencement

This regulation provides that the Regulations commenced on the day after they were registered.

Regulation 3 – Amendment of Maritime Transport and Offshore Facilities Security Regulations 2003

This regulation provides that the Maritime Transport and Offshore Facilities Security Regulations 2003 (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 – Part 11 – Enforcement

This item substitutes a new ‘Part 11 – Enforcement’ for the original placeholder. It includes Division 11.2 which establishes the framework for the infringement notices system, and Division 11.6 which establishes the framework for the demerit points system.

Subregulation 11.05(1) stipulates that the purpose of Division 11.2 is to establish a system of infringement notices for offences against the Maritime Transport and Offshore Facilities Security Act 2003 (the Act) and the Principal Regulations as an alternative to prosecution.

Paragraph 11.05(2)(a) stipulates that the infringement notices system does not require that an infringement notice be issued in the event of a breach of a provision to which the system applies.

Paragraph 11.05(2)(b) stipulates that, in the event where an infringement notice is not issued for an offence, the liability of a person to be prosecuted for the offence remains unaffected.

Paragraph 11.05(2)(c) stipulates that two or more infringement notices may be issued to a person for an offence, for example in the event that a breach is ongoing the previous issuing of an infringement notice does not preclude further issuing of infringement notices to address the breach.
Paragraph 11.05(2)(d) stipulates that, in the event that an infringement notice recipient chooses not to pay an infringement notice, the liability of the person to be prosecuted for the offence remains unaffected.

Paragraph 11.05(2)(e) stipulates that nothing in the infringement notice system is intended to limit or otherwise affect the penalty that may be imposed by a court in the event that a person is convicted of an offence.

Regulation 11.10 stipulates that law enforcement officers and maritime security inspectors, as defined in the Act, are ‘authorised persons’ for the purposes of the infringement notices system.

Regulation 11.15 stipulates that the amount of the penalty that is payable under an infringement notice is one-fifth of the maximum penalty that a court could impose upon conviction for the offence.

Subregulation 11.20(1) stipulates which provisions of the Act and Principal Regulations the infringement notices system will apply to, and defines these as ‘infringement notice offences’.

Subregulation 11.20(2) gives an authorised person the power to issue an infringement notice to a person if they have reasonable grounds to believe that the person has committed an ‘infringement notice offence’.

Subregulation 11.25(1) sets out the minimum information that is to be contained in an infringement notice.

Subregulation 11.25(2) stipulates that an infringement notice can contain other information if the person issuing the notice thinks it necessary.

Subregulation 11.30(1) stipulates that an infringement notice must be served on the person to whom it is issued.

Subregulation 11.30(2) stipulates that an infringement notice may be served on an individual:
   a) by giving it to the individual; or
   b) by leaving it at, or by sending it by post, telex, fax or similar facility to the address of the place of residence or business (the relevant place) of the individual last known to the authorised person who issues it; or
   c) by giving it, at the relevant place (that is, the place of residence or business), to someone who:
      (i) lives or is employed, or apparently lives or is employed, there; and
      (ii) is, or the authorised person who issues it has reason to believe is, over 16 years.

Subregulation 11.30(3) stipulates that an infringement notice may be served on a corporation by leaving it at, or by sending it by post, telex, fax or similar facility to, the address of the head office, a registered office or a principal office of the corporation. Alternatively it can be given, at the head office, a registered office or a principal office, to someone who is, or the authorised person who issues it has reason to believe is, an officer or employee of the corporation.
Regulation 11.35 provides that the penalty stated in an infringement notice must be paid within 28 days after the day on which the notice is served on the person to whom it is issued unless the person has applied for a further period of time in which to pay the penalty or has applied for the notice to be withdrawn.

If the person applies for a further period of time in which to pay the penalty, and that application is granted, then they must pay the penalty within the further period granted. Regulation 11.40 provides that the maximum further period that can be granted is 28 days.

If the person applies for a further period of time in which to pay the penalty, and that application is refused, then they must pay the penalty within 7 days after the notice of the refusal has been served on them.

Under regulation 11.55 a person may apply for the notice to be withdrawn. If it is withdrawn then they do not have to pay the penalty. However, if the application for the notice to be withdrawn is refused under paragraph 11.35(d) they must pay the penalty within 28 days after the notice of the refusal has been served on them.

Regulation 11.40 sets out the process by which a person can seek a further period of time in which to pay a penalty, than the time allowed in the infringement notice. In order to seek a further period of up to 28 days in which to pay a penalty the person to whom an infringement notice is issued (the recipient) must make a written application to the Secretary.

Upon receipt of such a request the Secretary must, within 14 days:
   a) grant or refuse a further period not longer than the period sought; and
   b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for it.

Notice of the Secretary’s decision can be served in any way in which the infringement notice could have been served on the recipient, under regulation 11.30.

Subregulation 11.45(1) stipulates that a person is taken to have paid an infringement notice only once the whole of the amount of the penalty has been received by the Commonwealth.

Further to subregulation 11.45(1), subregulation 11.45(2) provides that when payment of an infringement notice is made by cheque, the payment is taken to have occurred only once the cheque is honoured.

Regulation 11.50 sets out that if a person to whom an infringement notice is issued pays the penalty stated in the notice then:
   a) any liability of the person for the offence is discharged; and
   b) the person may not be prosecuted in a court for the offence; and
   c) the person is not taken to have been convicted of the offence.

If two or more infringement notices are issued to a person for the same offence, the person’s liability to be prosecuted for the offence ceases if the person pays the penalty stated in any one of the notices.
Subregulation 11.55(1) stipulates that a person who has received an infringement notice wants it withdrawn they can, before the end of 28 days after receiving the infringement notice, apply in writing to the Secretary for the infringement notice to be withdrawn.

Subregulation 11.55(2) provides that the application to withdraw an infringement notice must set out the facts or matters that the person believes the Secretary should take into account in relation to the offence alleged in the infringement notice.

Subregulation 11.55(3) stipulates that if the Secretary receives an application to have an infringement notice withdrawn the Secretary has 14 days to:
   a) withdraw or refuse to withdraw the notice; and
   b) notify the person in writing of the decision and, if the decision is a refusal, the reasons for it.

Subregulation 11.55(4) provides that if the Secretary has not approved, or refused to approve, the withdrawal of the notice within 14 days, the Secretary is taken to have refused to approve the withdrawal of the notice.

Subregulation 11.55(5) provides that in deciding whether to withdraw a notice, the Secretary must consider:
   a) whether the person has been convicted previously of an offence against the Act or these Regulations (note that Part VIIC of the Crimes Act 1914 includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them); and
   b) the circumstances of the offence stated in the notice; and
   c) whether the person has previously paid a penalty under an infringement notice issued to the person for an offence of the same type as the offence mentioned in the notice; and
   d) any other relevant matter.

Subregulation 11.55(6) provides that the Secretary may withdraw an infringement notice without an application having been made.

Subregulation 11.60(1) stipulates that where the Secretary withdraws an infringement notice, notice of that withdrawal may be served on a person in any way in which the infringement notice could have been served on the person (see regulation 11.30).

Subregulation 11.60(2) stipulates that a notice withdrawing an infringement notice served on a person for an offence:
   a) must include the following information:
      (i) the full name, or surname and initials, and address of the person;
      (ii) the number of the infringement notice;
      (iii) the date of issue of the infringement notice; and
   b) must state that the notice is withdrawn; and
   c) if the Secretary intends to prosecute the person in a court for the offence, must state that the person may be prosecuted in a court for the offence.

Subregulation 11.65(1) stipulates that if an infringement notice is withdrawn after the penalty is paid then the penalty must be refunded. In the event that demerit points
have been accumulated upon payment of the infringement notice under regulation 11.305, those demerit points must be cancelled.

Subregulation 11.65(2) stipulates that in the event that demerit points have been accumulated in respect of a ship upon payment of the infringement notice under regulation 11.310, those demerit points must be cancelled.

Subregulation 11.70(1) stipulates that various types of certificates, signed on behalf of the Secretary, are evidence the facts stated in them. These certificates may be used in prosecutions for offences in relation to which an infringement notice has been issued. Each of the following certificates may be issued:

a) a certificate stating that:
   (i) the infringement notice was served on the alleged offender; and
   (ii) the infringement notice penalty has not been paid in accordance with this Division;

b) a certificate stating that the notice was withdrawn on a day specified in the certificate;

c) a certificate stating that:
   (i) a further period was refused for payment of the infringement notice penalty; and
   (ii) the infringement notice penalty has not been paid in accordance with this Division;

d) a certificate stating that:
   (i) the further time mentioned in the certificate for payment of the infringement notice penalty was granted; and
   (ii) the infringement notice penalty was not paid in accordance with the notice or within the further time.

Subregulation 11.70(2) stipulates that unless the contrary is proved, if a certificate purports to be signed by or on behalf of the Secretary then it will be presumed to be so signed.

Regulation 11.75 stipulates that where a person makes an admission in an application for withdrawal of an infringement notice (under regulation 11.55), that admission is inadmissible in a prosecution unless the person introduces the application into evidence.

Regulation 11.80 stipulates that, where a person is convicted after failing to pay an infringement notice, a court must not take into account the failure to pay the infringement notice in determining the penalty to be imposed.

Regulation 11.300 stipulates that Division 11.6 establishes a demerit points system under which the approval of a maritime security plan, ship security plan or offshore industry security plan may be cancelled.

Subregulation 11.305(1) stipulates that if a maritime industry participant (defined in section 10 of the Act) is convicted of an offence, or pays an infringement notice as an alternative to prosecution, the maritime industry participant accumulates demerit points. The number of demerit points accumulated is equivalent to the maximum number of penalty units a court could impose upon conviction for the offence.
Taking into account subsection 4B (3) of the *Crimes Act 1914*, subregulation 11.305(2) stipulates that a maritime industry participant that is a corporation is liable to accumulate demerit points equivalent to five times the penalty units listed in the Act or Principal Regulations.

Regulation 11.310 stipulates that demerit points are accumulated in respect of a ship where the ship operator is convicted of an offence against sections 62 or 63 of the Act, or where the ship operator pays an infringement notice as an alternative to prosecution for a breach of section 63 of the Act.

Regulation 11.315 stipulates that demerit points expire 5 years after they are accumulated. Regulations 11.305 and 11.310 deal with when demerit points are accumulated.

Read together with section 199 of the Act, regulation 11.320 stipulates that the Secretary may cancel the approval of a maritime security plan upon the accrual by a maritime industry participant who is an individual of 600 demerit points, and upon accrual by all other maritime industry participants of 3000 demerit points.

Read together with section 200 of the Act, regulation 11.325 stipulates that the Secretary may cancel the approval of a ship security plan upon the accumulation in respect of a ship of 3000 demerit points.

Read together with section 200A of the Act, regulation 11.330 stipulates that the Secretary may cancel the offshore security plans of individuals upon the accumulation of 600 demerit points, and the offshore security plans of others, such as corporations, upon the accumulation of 3,000 demerit points.

Regulation 11.335 stipulates that the Secretary must maintain a register of any demerit points accumulated, and specifies what details must be recorded in the register. It also stipulates that those who have demerit points recorded against them must be allowed to inspect the record of demerit points that they have accumulated.

In formulating this regulation the Australian Law Reform Commission’s view that once an infringement notice has been paid no record should be kept by the regulator has been taken into account, but in order to establish an effectual demerit points system these records are considered necessary.