

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 158

Issued by Authority of the Minister for Local Government, Territories and Roads

Subject: *Maritime Transport and Offshore Facilities Security Act 2003*

Maritime Transport Security Amendment Regulations 2005 (No. 2)

Subsection 209(1) of the *Maritime Transport and Offshore Facilities Security Act 2003* (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.

Subsection 209(2) provides that, without limiting subsection (1) the regulations may prescribe fees in respect of matters under the Act (including the regulations); and prescribe penalties of not more than 50 penalty units for offences against the regulations. Subsection 209(3) provides that paragraph (2)(b) does not limit any provision in the Act that provides for the regulations to prescribe penalties higher than 50 penalty units.

The purpose of the Act is to safeguard against unlawful interference with maritime transport and offshore facilities by establishing a regulatory framework centred around the development of security plans for maritime industry participants. The *Maritime Transport Security Amendment Act 2005* (the Amendment Act) amended the *Maritime Transport Security Act 2003* (the 2003 Act) to strengthen Australia's offshore maritime security by:

- extending coverage of the 2003 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 Amendment Act also amended the title of the 2003 Act, to the Act, to reflect these changes.

As is the case with other maritime industry participants, the *Maritime Transport Security (Amendment) Regulations 2005* provide the necessary detail for offshore industry participants to comply with the Act. The amendments to the *Maritime Transport Security Regulations 2003* provide detail regarding the obligations for offshore facility operators, and other offshore industry participants, with regard to the content and form of their security assessments and plans; establishing and enforcing security zones; negotiating declarations of security; the role of security officers; and sharing security information.

The Office of Regulatory Review has advised that a Regulation Impact Statement (RIS) is not required. The RIS requirements were met by the RIS that was tabled as

part of the Explanatory Memorandum for the *Maritime Transport Security Amendment Bill 2005*.

Details of the provisions in the Act, relating to offshore facilities and offshore industry participants, which provide for the scope of regulations made under the Act are listed at Attachment A

Details of the Regulations are set out in Attachment B.

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

The Regulations are a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

ATTACHMENT A

Sections of the Act that provide for regulations to be made

Paragraph 6(2)(i) of the Act provides that section 15.4 of the *Criminal Code* (extended geographical jurisdiction – category D) applies to an offence under sections 109, 113D, 119, 126 or 133 where the offence is committed in, or at the edge of, an offshore security zone or a ship security zone declared under subsection 106(1A); or on or near a foreign ship regulated as an offshore facility.

Subsection 9(3) of the Act provides 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.

Section 10 of the Act defines *offshore industry participant* to include a person who conducts an enterprise connected with a security regulated offshore facility; and is prescribed in the regulations.

Subsection 16(2) of the Act provides that neither an Australian ship regulated as an offshore facility, nor a ship prescribed in the regulations are regulated Australian ships.

Subsection 17(2) of the Act provides that neither a foreign ship regulated as an offshore facility, nor a ship prescribed in the regulations are regulated foreign ships.

Subsection 17B(2) of the Act provides that a notice published in the *Gazette* by the Secretary as to what constitutes a security regulated offshore facility, must include information on the location and boundaries of the facility of the kind and form prescribed by the regulations.

Subsection 17D(4) of the Act defines *enforcement action*, with respect to persons travelling on non-regulated foreign ships, to include the issuing of an infringement notice under regulations made under section 187.

Subsection 33(5) of the Act provides that the regulations may prescribe requirements for, or in relation to the giving of security directions by the Secretary.

Subsection 99(7) of the Act provides that the Regulations may prescribe requirements for, or in relation to, the giving of control directions by the Secretary.

Section 100B of the Act prescribes offshore industry participants who are required to have an offshore security plan. These include an offshore facility operator; a participant of a kind prescribed in the regulations; and a particular participant prescribed in the regulations.

Paragraph 100G(2)(b) of the Act provides that the security assessment under paragraph 100G(1)(a) must address any matters prescribed in the regulations.

Section 100H of the Act provides that the regulations may prescribe specific matters that are to be dealt with in offshore security plans; in security plan for a particular kind of offshore industry participant; and in security plan for a particular class of a particular kind of offshore industry participant.

Paragraph 100I(1)(b) of the Act provides that an offshore security plan must be prepared in accordance with any requirements set out in the regulations.

Paragraph 100I(2)(b) of the Act provides that an offshore security plan must be accompanied by information of the kind and in the form prescribed by the regulations.

Subsection 100X(2) of the Act provides that an application for an ISSC from the operator of an Australian ship regulated as an offshore facility, must be in accordance with any requirements prescribed in the regulations, including requirements in relation to the form and content of the application, and the way in which the application is made.

Section 100ZE of the Act 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.

Subsection 100ZI(2) provides that the regulations may prescribe the persons, the circumstances and the form and manner relating to pre-arrival information to be provided by foreign ships regulated as an offshore facility. Subsection 100ZI(3) provides that different pre-arrival information is to be provided before entering Australian waters, a security regulated port, a maritime security zone within a security regulated port and a port that is not a security regulated port.

Subsection 100ZM(7) of the Act enables regulations to be made to prescribe requirements in relation to the giving of control directions by the Secretary.

Subsection 113A(2) of the Act provides that a notice by the Secretary in relation to establishment of an offshore security zone must include information about the location and boundaries of the offshore security zones of the kind and in the form prescribed in the regulations.

Subsection 113A(3) provides that, where an offshore security zone is established, the offshore facility operator must notify each maritime industry participant who conducts operations within the zone. The notice must include information about the location and boundaries of the zone of the kind and in the form prescribed by the regulations.

Subsection 113B(1) of the Act provides that the regulations may prescribe different types of offshore security zones. Subsection 113B(2) of the Act sets out various purposes for which different types of offshore security zones may be prescribed. This list is not intended to be exhaustive.

Subsection 113D(1) of the Act provides that the regulations may, for the purposes of safeguarding against unlawful interference with maritime transport or offshore facilities, prescribe requirements in relation to each type of offshore security zone. Subsection 113D(2) of the Act sets out various matters which may be dealt with by regulations made under subsection (1).

Subsection 113D(3) of the Act provides that the regulations made under section 113D may prescribe penalties for offences against those regulations.

Subsection 113D(4) of the Act provides that regulations made under subsection 113D(1) may provide for the recovery of costs and expenses reasonably incurred by a person in relation to the performance of functions or the exercise of powers, by the person in relation to a security identification card scheme set out in those regulations.

Subsection 113D(5) of the Act provides that regulations made under subsection 113D(1) may authorise the use or disclosure of information (including personal information within the meaning of the *Privacy Act 1988*) for the purpose of, or in relation to, assessing the security risk posed by a person.

Section 119 of the Act provides that the regulations may prescribe requirements for screening and clearing and the circumstances in which persons, goods, vehicles or vessels are required to be cleared in order to enter an offshore security zone.

Subsections 115(2) 116(2), 117(2) and 118(2) provide that the regulations may exempt people, goods, vehicles and vessels respectively from certain screening and clearing requirements. Subsection 119(4) provides that the regulations may prescribe penalties for offences.

Subparagraphs 120(1)(c)(iii) and 120(3)(c)(iii) of the Act provide that the regulations may authorise a person to have a weapon in his or her possession in a maritime security zone (defined in section 10 to include an offshore security zone).

Subparagraphs 121(1)(c)(ii) and 121(3)(c)(ii) provide that the regulations may authorise a person to pass through a screening point with a weapon in their possession.

Subsection 126(1) of the Act provides that the regulations may prescribe requirements in relation to the carriage and use of weapons in a maritime security zone. Subsection 126(2) sets out the matters that may be dealt with by the regulations. Subsection 126(3) provides that the regulations may prescribe penalties for offences.

Subparagraphs 127(1)(d)(iii) and 127(3)(d)(iii) of the Act provide that the regulations may authorise a person to have a prohibited item in his or her possession in a maritime security zone. Subparagraphs 128(1)(c)(ii) and 128(3)(c)(ii) provide that the regulations may authorise a person to pass through a screening point with a prohibited item in their possession.

Subsection 133(1) of the Act provides that the regulations may prescribe requirements in relation to the carriage and use of prohibited in a maritime security zone.

Subsection 133(2) sets out the matters that may be dealt with by the regulations. Subsection 133(3) provides that the regulations may prescribe penalties for offences.

ATTACHMENT B

Details of the proposed *Maritime Transport Security Amendment Regulations 2005 (No. 2)*

1 Name of Regulations

This regulation provides that these regulations are to be cited as the *Maritime Transport Security Amendment Regulations 2005 (No. 2)*.

2 Commencement

This regulation provides that these regulations commence on the day after they are registered.

3 Amendment of *Maritime Transport Security Regulations 2003*

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

Schedule 1 Amendments

Item 1 Regulation 1.01(1) - Name of Regulations

Item 1 inserts the words 'and Offshore Facilities' into the title of the regulations. The amended title is the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

Item 2 Regulation 1.03 - definition of Act

Item 2 inserts the words 'and Offshore Facilities' in the definition of the Act to reflect the changes made by the *Maritime Transport Security Amendment Act 2005*.

Item 3 Regulation 1.03, after definition of *exclusion zone*

Item 3 inserts a new definition of *HSO* or *head security officer*. This has the meaning given by regulation 1.32 (see item 12 below).

Item 4 Regulation 1.03, after definition of *member of the Australian Federal Police*

Item 4 inserts the following new definitions:

offshore facility zone means a type of offshore security zone, established by the Secretary under subsection 113A(1) of the Act that comprises the space occupied by an offshore facility.

offshore service provider means a person prescribed by regulation 1.06.

offshore water-side zone means a type of offshore security zone, established by the Secretary under section 113A(1) of the Act, that comprises an area of water that surrounds an offshore facility to a distance specified by the Secretary.

OFSSO or *offshore facility security officer* has the meaning given by regulation 1.33 (see item 12 below).

Note: *offshore facility* and *offshore area* are defined in section 17A of the Act.

Item 5 Regulation 1.03, after definition of *on-board restricted area*

Item 5 inserts a new definition of *OSPSSO* or *offshore service provider security officer*. This has the meaning given by regulation 1.34 (see item 12 below).

Item 6 Regulation 1.03, after definition of *pleasure craft*

Item 6 inserts a definition of *port of call* to provide that it includes an offshore facility.

Item 7 Regulation 1.03, after definition of *security plan review*

Item 7 inserts a definition of *ship/facility interface* to provide that it means the interaction that occurs between an offshore facility and a ship.

Item 8 Regulation 1.03, after definition of *SSO*

Item 8 inserts a definition of *supply base* to mean a place, at a port or airport, where a person stores or prepares goods that are to be transported to an offshore facility, or loads goods or passengers on to a vessel or aircraft for transport to an offshore facility.

This definition would cover the operator of a vessel supply base or the operator of an aircraft transfer base, within a port or airport, but would not extend to cover the operators of ports or airports.

Item 9 Paragraphs 1.04(a) and (b) and subparagraph 1.04(b)(i) - Purposes of these Regulations

Item 10 Subparagraph 1.04(c)(ii) - Purposes of these Regulations

Regulation 1.04 describes the purposes of the Principal Regulations. Items 9 and 10 amend regulation 1.04 to extend the purpose of the regulations to include offshore security plans and offshore industry participants. The purposes are to:

- ensure that maritime, ship and offshore security plans address specific matters;
- ensure that the requirements for maritime, ship and offshore security plans are clearly set out;
- identify types of ship, port, on-board and offshore security zones.

Item 11 After regulation 1.05 - Offshore service providers (Act s 10)

Item 11 inserts a new regulation 1.06 to prescribe for the purposes of paragraph (c) of the definition of *offshore industry participant* in section 10 of the Act, a person who manages a supply base.

Item 12 After regulation 1.30 insert

Item 12 inserts new regulations 1.32, 1.33 and 1.34.

Regulation 1.32 - Head security officer

New regulation 1.32 requires that an offshore facility operator designate a head security officer (HSO) before requesting the Secretary to approve an offshore security plan.

Subregulation (2) allows the HSO to be designated by name or by reference to a position. Designation by position is more flexible when the person occupying the position changes.

Subregulation (3) requires that the HSO perform certain duties, including answering any questions about the offshore facility security plan and acting as contact officer, during the approval process, implementing and maintaining the offshore facility security plan for facilities, liaising with the OFSO for each facility and with OSPSOs.

Subregulation (4) requires that the offshore facility operator must ensure that a HSO is able to perform the listed duties and is located in Australia at a place that is not an offshore facility.

Regulation 1.33 - Offshore facility security officers

New regulation 1.33 requires that the offshore facility operator designate an offshore facility security officer (OFSO) for a facility before submitting the offshore facility security plan to the Secretary for approval.

Subregulation 1.33(2) allows the OFSO to be designated by name or by reference to a position.

Subregulation 1.33(3) lists the duties and responsibilities of the OFSO. These duties are consistent with those listed in section 17.2 of Part A of the ISPS Code.

Subregulation 1.33(4) requires that the offshore facility operator ensure that the OFSO is able to perform the listed duties.

Regulation 1.34 - Offshore service providers security officers

New regulation 1.34 requires that an offshore service provider designate an offshore service provider security officer (OSPSO) before submitting the offshore security plan to the Secretary for approval.

Subregulation 1.34(2) allows the OSPSO to be designated by name or by reference to a position.

Subregulation 1.34(3) requires that the OSPSO perform certain duties. These duties largely reflect and are consistent with the duties prescribed for OFSOs.

Subregulation 1.34(4) requires that the offshore service provider ensure that the OSPSO is able to perform the listed duties.

Item 13 Subregulation 1.35(1) - Delegation by security officers

Regulation 1.35 allows security officers to delegate some or all of their powers (except the power of delegation) to another person who is able to perform the delegated duties. Item 13 inserts an amendment to subregulation 1.35(1) to extend the class of persons who are able to delegate some or all of their powers to include HSOs, OFSOs, and OSPSOs.

This power of delegation is necessary because it will be difficult for one person to perform all the duties of a security officer, particularly being contactable 24 hours a day. The delegation may also be used when the security officer will be absent from work.

Item 14 Subregulation 1.45(1) - Declarations of security

Item 15 After subregulation 1.45(1) - insert Declarations of security

Regulation 1.45 requires that a declaration of security be signed by people responsible for security on behalf of the parties to the declaration. Item 14 amends subregulation 1.45(1) to include a reference to a ship and another party. Item 15 inserts a new subregulation (1A) to require that a declaration of security, involving an offshore facility and another party, must be signed and dated by the facility operator or the OFSO and if the other party is a ship, by the master of, or the SSO for, the ship; or if the other party is an offshore industry participant, the operator of, or the security officer for, the participant.

The amended regulation also ensures that certain security information is included in the declaration, and that the declaration is retained for future audit and security planning processes.

Item 16 Subregulation 1.50(1) - Security plan audits and reviews

Item 17 Subregulation 1.50(2) - Security plan audits and reviews

Item 16 amends subregulation 1.50(1) to include a requirement for an offshore security plan to be audited and reviewed in accordance with the requirements of the approved plan. This is consistent with the requirements imposed for maritime and ship security plans.

Item 17 amends subregulation 1.50(2) to provide that a security plan review must be conducted as soon as practicable after a maritime transport or offshore security incident.

Item 18 Paragraphs 1.55(1)(e) and (f) - Ship security records – regulated Australian ships

Item 19 Paragraph 1.55(1)(m) - Ship security records – regulated Australian ships

Regulation 1.55 requires that a regulated Australian ship keep certain information. This list is based on section 9.2 of Chapter XI-2 of the SOLAS Convention. The information may be requested by a foreign port state to confirm compliance by the ship with the requirements of the ISPS Code.

Item 18 amends paragraphs 1.55(1)(e) and (f) and subregulation 1.55(3A) to insert a reference to a ship/offshore facility interface.

Item 19 amends paragraph 1.55(1)(m) to insert a reference to offshore facilities.

Item 20 Paragraph 1.55(3A)(b) - Ship security records – regulated Australian ships

Item 20 amends paragraph 1.55(3A)(b) to insert a reference to the interface between a ship and an offshore facility.

Item 21 Subparagraph 1.56(d)(ii) - Ship security records – regulated foreign ships

Regulation 1.56 prescribes ship security records that must be kept by regulated foreign ships. Item 21 amends subparagraph 1.56(d)(ii) to insert a reference to a ship/facility interface.

Item 22 Subregulation 1.65(2) - Weapons

Regulation 1.65 and the accompanying table provide a definition of a weapon for the purposes of section 10 of the Act. This item amends subregulation 1.65(2) to provide that despite anything contained in the table, a flare or other incendiary device is not a weapon if it is carried on board a ship or on an offshore facility as part of safety or signalling equipment.

Item 23 Regulation 2.30 - Requirement for consultation**Item 24 Paragraph 2.30(a) - Requirement for consultation**

Regulation 2.30 requires that where reasonable and practicable the Secretary must consult with certain people about a security direction that relates to the movement of a ship within, or in or out of, a security regulated port. Item 23 amends regulation 2.30 to provide for ships moving in or out of an offshore water-side zone.

Item 24 inserts an amendment to paragraph 2.30(a) to extend the scope of the Principal Regulations to include a requirement for the Secretary to consult with offshore industry participants who are likely to be affected by a security direction.

Item 25 Subregulation 2.35(2) - Giving and communicating security directions (Act s33(5))

Subregulation 2.35(2) provides that a port or ship operator required to communicate a security direction may do so either in writing or orally. This item inserts an amendment to subregulation (2) to impose similar requirements on offshore facility operators.

Item 26 Paragraph 4.45(h) - Matters that must be in plan

Regulation 4.45 requires ship operators to address certain matters in their security plan. These matters are based on the ISPS Code. Item 26 amends paragraph (h) to cover procedures for interfacing with offshore facility security activities.

Item 27 Regulation 4.85 - Maritime transport security incidents

Regulation 4.85 provides that a ship security plan must set out procedures for reporting a maritime transport security incident to the Secretary. Item 27 amends paragraph 4.85(a) to insert a reference to offshore security incidents. Information is an important tool in the maritime security regime. Requiring this information in the plan will increase awareness of reporting obligations in the Act.

This regulation also requires that a maritime security plan address procedures for responding to security threats or breaches of security, including maintaining operations. This item also amends paragraph 4.85(b) to insert a reference to ship/offshore interface.

Item 28 – After Part 5 insert**New Part 5A Offshore security plans****Division 5A.1 - Preliminary****Regulation 5A.05 - Common requirements for security assessments**

New regulation 5A.05 provides that a security assessment must include information about when, how and by whom the security assessment was completed or reviewed and what is covered by the security assessment.

Regulation 5A.10 - Common requirements for security plan audits and reviews

New regulation 5A.10 provides that an offshore security plan for an offshore industry participant must include information about when a security plan will be audited and reviewed, and the procedures for conducting audits and reviews. It is important that

offshore security plans (as well as maritime security plans) are subject to ongoing independent audit and review to ensure that they continue to contribute to the *maritime security outcomes* in subsection 3(4) of the Act.

Regulation 5A.15 - Offshore facility operator to give information

New regulation 5A.15 provides that an offshore facility operator must share certain information with other offshore service providers conducting operations at the facility. This information includes the measures to inform persons of the location of any offshore security zones and the measures to confirm the identity of persons who are authorised to have access to the zones.

It is important that offshore industry participants who are required to have security plans have access to certain information about each others' offshore security plans to ensure effective implementation of security measures and procedures. Other relevant security information may be shared through the consultation process required in new regulation 5A.65 (see below).

Regulation 5A.20 - Offshore service provider to give information

New regulation 5A.20 provides that an offshore service provider must share certain information with the operator of the offshore facility at which the provider conducts operations. This information includes information about the boundaries of the service provider's supply base, details of vessels and aircraft operated by the provider to service the facility, the measures to inform persons of the location of any security zones established at the provider's supply base, the measures to confirm the identity of persons who are authorised to have access to the zones and to vessels and aircraft operated by the provider.

Division 5A.2 Offshore facility operators

Subdivision 5A.2.1 Matters to be dealt with in plan

Regulation 5A.25 - Offshore security plans (Act s 100H)

For the purposes of section 100H of the Act, new regulation 5A.25 provides that Subdivision 5A.2.1 prescribes the matters that are to be dealt with in an offshore security plan of an offshore facility operator.

An offshore facility operator that has more than one facility may prepare a plan for each facility, or if the facilities are of the same kind and in close proximity to each other, may prepare one plan covering all the facilities.

Regulation 5A.30 - Offshore facility operator details

New regulation 5A.30 requires that an offshore security plan be accompanied by certain information that identifies the offshore facility operator who owns the plan and their contact details. The information required in this regulation may change more frequently than the security arrangements in the plan and needs to be updated quickly and easily. The information is not part of the plan because the process required in Part 3 Division 5 of the Act for the Secretary to approve changes to maritime security plans is not required for this information. The information is not about the security measures to be implemented and does not require approval by the Secretary.

Regulation 5A.35 - Details of offshore service providers

New regulation 5A.35 includes a requirement that an offshore security plan for an offshore facility operator must be accompanied by a document setting out the names and contact details of the OFSO of the facility operator and of the OSPSO for each offshore service provider conducting operations at the facility. The offshore facility operator may need to communicate quickly with those listed should a security incident occur.

Regulation 5A.40 - Obligation to keep information current

New regulation 5A.40 imposes a requirement on offshore facility operators to keep current all information included in the offshore security plan and other security documents. Where the offshore facility operator becomes aware of a change in the relevant information, the Secretary must be notified in writing within 2 working days of the change. This is a strict liability offence with a maximum of 20 penalty units.

It should be noted that the existence of strict liability does not make any other defence unavailable. Defences available to an accused other than those removed by making a matter one of strict liability remain available to him or her.

In framing the offence provisions contained in the *Maritime Transport Security Amendment Act 2005*, consideration was given to the principles contained in the *Sixth Report of 2002 on the Application of Absolute and Strict Liability Offences in Commonwealth Legislation* by the Senate Standing Committee for the Scrutiny of Bills and to matters discussed in Part 4.5 of the *Guide to Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers*. In the development of the offence provisions extensive consultation was also undertaken by the Department of Transport and Regional Services with the offshore oil and gas industry and offshore service providers, and with the Attorney-General's Department.

An effective security regime is crucial to ensure better security for offshore facilities against international terrorism. To complement the regulatory model governing the maritime and offshore facility industries, it is necessary to include a number of offences with serious consequences. It is necessary for this approach to be adopted due to the public harm which could result. Potential consequences of non-compliance are high and range from detrimentally affecting confidence in the offshore petroleum industry and the Australian economy, right through to the adverse consequences a terrorist attack could have on a facility operator's assets and physical operations.

Regulation 5A.45 - Security assessments

New regulation 5A.45 requires that security assessments for an offshore facility operator address several key matters. These requirements are consistent with the ISPS code and general risk assessment processes such as the Australian and New Zealand Risk Management Standards 4360:2004.

Subregulation 5A.45(2) also requires that the security assessment consider the types of vessels and aircraft and the types of cargoes transported by vessels and aircraft to and from the offshore facility, and any special risks or threats associated with such vessels, aircraft and cargoes.

Regulation 5A.50 - OFSO - qualifications and responsibilities

New regulation 5A.50 requires that the offshore facility operator consider the security responsibilities of employees other than the OFSO and ensure that they have appropriate knowledge and receive training. The Secretary will consider the proposed knowledge and training when deciding whether to approve the plan and records of this training may be subject to audit by the Department.

Regulation 5A.55 - Other personnel with security role

New regulation 5A.55 requires that the offshore security plan for each offshore facility operator identify offshore facility personnel who have been assigned security duties, in addition to the OFSO. Subregulation 5A.55(2) also requires that the offshore security plan set out the security duties and responsibilities of personnel with a security role together with the knowledge and skills for the security related aspects of their positions and the training or qualifications required and given to such personnel.

Regulation 5A.60 - Matters that must be in plan

New regulation 5A.60 requires that the offshore facility operator address certain matters in their security plan, in addition to the matters required under regulation 5A.15 covering security plan audits and review. These matters are based on the requirements of the ISPS Code.

Regulation 5A.65 - Consultation

New regulation 5A.65 requires that an offshore facility operator consult with other offshore industry participants conducting operations, or interfacing, with the facility, and with its employees (or their representatives) regarding security measures and procedures to be implemented. Section 10 of the Act provides that employee includes contractors.

This will ensure that security measures implemented by the various offshore industry participants complement each other, and promote a strong security culture within the offshore facility.

Regulation 5A.70 - Maritime security level 1

New regulation 5A.70 requires that an offshore facility plan detail the measures to be implemented that are appropriate to the ordinary operating environment for the offshore facility operator. The measures and procedures will vary depending on the types and levels of risk identified in the security assessment.

This regulation also recognises that not all measures in the plan will be implemented immediately. In this situation, the offshore security plan should provide that interim measures are in place until the permanent measures can be fully implemented. The Secretary will consider the schedule for implementation and the appropriateness of the interim measures when making the decision to approve an offshore security plan.

Regulation 5A.75 - Maritime security levels 2 and 3

New regulation 5A.75 requires that the offshore security plan must set out, in relation to maritime security levels 2 and 3, the additional security measures that the offshore facility operator and the offshore industry participant will implement in circumstances where the Secretary declares that security level in force for the offshore facility.

This reflects the requirement of the ISPS Code for three security levels. The Secretary has the power to change the security level in accordance with section 22 of the Act.

Regulation 5A.80 - Declarations of security

New regulation 5A.80 requires that the offshore security plan provide for declarations of security (DOS). The ISPS Code provides for DOS as a way for ports and ships to ensure that security is maintained during a ship/port interface.

This regulation will require an offshore security plan to provide details of the circumstances in which an offshore facility operator will request a DOS with an offshore industry participant; the procedures for negotiating the security measures and responsibilities of the offshore facility operator and offshore industry participant; and how security measures identified in a DOS will be implemented to ensure compliance.

Regulation 5A.85 - Offshore facility zone

New regulation 5A.85 provides that if an offshore facility operator requests the Secretary to establish an offshore facility zone for a facility, certain prescribed information needs to be set out in the offshore security plan.

This information includes the boundaries of the zone, the security measures and procedures to control access into the zone by people, aircraft or things, and the steps to be taken to inform people that an offshore facility zone is in force and that entry into the zone without authority is an offence.

Section 113C of the Act provides that, in establishing an offshore security zone, the Secretary must have regard to the purpose of the zone and take into account the views of the offshore facility operator.

Regulation 5A.90 - Offshore water-side zone

New regulation 5A.90 provides that if an offshore facility operator requests the Secretary to establish an offshore water-side zone surrounding an offshore facility, certain prescribed information needs to be set out in the offshore security plan.

This information includes the boundaries of the zone, the security measures and procedures to monitor and control access into the zone by people, vessels, aircraft or things, the steps to be taken to inform people that an offshore water-side zone is in force and that entry into the zone without authority is an offence, including measures to detect and deter unauthorised access to those zones.

Subdivision 5A.2.2 Form of plan

Regulation 5A.95 -Requirement for plans (Act s 100I)

This regulation provides that for the purposes of section 100I of the Act subdivision 5A.2.2 sets out requirements for the preparation of an offshore security plan.

Regulation 5A.100 - Information for offshore security plans

New regulation 5A.100 sets out requirements for information about the location of a facility and of any security zone covered by a plan.

Regulation 5A.105 - Protection of plan

New regulation 5A.105 provides that an offshore facility operator must ensure that the offshore security plan is protected against unauthorised access, amendment or disclosure. Preventive security measures and procedures in offshore security plans may be compromised if the plans are disclosed to persons without authority to view or possess them.

Division 5A.3 Offshore service providers

Subdivision 5A.3.1 Preliminary

Regulation 5A.110 - Service providers to have offshore security plans (Act s 100B)

For the purposes of paragraph 100B(b) of the Act, this regulation prescribes an offshore industry participant that is an offshore service provider.

Offshore service provider is defined in regulations 1.03 and 1.06 to mean a person that manages a supply base. A supply base is defined to mean a place, at a port or airport, where a person stores, or prepares goods that are to be transported to an offshore facility; or loads goods or passengers on to a vessel or aircraft for transport to an offshore facility.

An example of a prescribed service provider could be a person that operates in a security regulated port who transports people or goods to an offshore facility. Another example of a prescribed service provider could be a person that operates in an airport who transports people to an offshore facility.

New subregulation 5A.110(2) deals with certain offshore service providers who are not required to have offshore security plans. An offshore service provider need not have an offshore security plan if:

- his or her activities are covered under a covering plan of an offshore facility operator (the *covering plan*); and the service provider has agreed, in writing, to those activities being covered by the covering plan; or
- the activities of the service provider are already covered by a maritime security plan or transport security program (under the *Aviation Transport Security Act 2004*) and, where necessary, the service provider has amended their current plan to ensure that it satisfies relevant requirements for offshore service providers.

Subdivision 5A.3.2 Matters to be dealt with in plan

Regulation 5A.115 - Offshore security plans (Act s 100H)

For the purposes of section 100H of the Act, regulation 5A.115 provides that Subdivision 5A.3.2 prescribes the matters that are to be dealt with in an offshore security plan of an offshore service provider.

Regulation 5A.120 - Offshore service provider details

New regulation 5A.120 provides that an offshore security plan be accompanied by certain information that identifies the offshore service provider who owns the plan and their contact details. The information required in this regulation may change more frequently than the security arrangements in the plan and needs to be updated quickly and easily. The information is not part of the plan and does not require approval by the Secretary.

Regulation 5A.125 - Details of other offshore industry participants

New regulation 5A.125 includes a requirement that an offshore security plan for an offshore service provider be accompanied by a document setting out the names and contact details of other relevant security officers of maritime industry participants, and of airport security contact officers of security controlled airports.

Regulation 5A.130 - Obligation to keep information current

New regulation 5A.130 imposes a requirement on offshore service providers to keep current all information included in the offshore security plan and other security documents. Where the offshore service provider becomes aware of a change in the relevant information, the Secretary must be notified in writing within 2 working days of the change. This is a strict liability offence with a maximum of 20 penalty units.

It should be noted that the existence of strict liability does not make any other defence unavailable. Defences available to an accused other than those removed by making a matter one of strict liability remain available to him or her.

The text in relation to regulation 5A.40 deals in more detail with issues taken into account in relation to the imposition of strict liability offences.

Regulation 5A.135 - Security assessments

New regulation 5A.135 requires that security assessments for an offshore service provider address several key matters. These requirements are consistent with the ISPS Code and general risk assessment processes such as the Australian and New Zealand Risk Management Standards 4360:2004.

Regulation 5A.140 - OSPSO qualifications and responsibilities

New regulation 5A.140 requires that an offshore service provider ensure that the OSPSO have certain knowledge or skills to perform their responsibilities and that he or she is provided with suitable training. The Secretary will consider the proposed knowledge and training when deciding whether to approve the plan and the records of this training may be subject to audit by the Department.

Regulation 5A.145 - Other personnel with security role

New regulation 5A.155 requires that the offshore service provider consider the security responsibilities of personnel, other than the OSPSO, and ensure that they have appropriate knowledge and receive training. The Secretary will consider the proposed knowledge and training when deciding whether to approve the plan and the records of this training may be subject to audit by the Department.

Regulation 5A.150 - Matters that must be in plan

New regulation 5A.150 requires that an offshore service provider address certain matters in their security plan, in addition to the matters required under regulation 5A.15 covering security plan audits and review. These matters are based on the requirements of the ISPS Code.

Regulation 5A.155 - Consultation

New regulation 5A.155 requires that an offshore service provider consult with each offshore facility operator serviced by the provider and the operator of each port or airport from which the service provider operates; and with employees. The Act provides that 'employee' includes contractors.

This will ensure that security measures implemented by the various MIPS and aircraft operators involved in offshore activities complement each other, and promote a strong security culture.

Regulation 5A.160 - Maritime security level 1

New regulation 5A.160 requires that an offshore facility plan detail measures to be implemented that are appropriate to the ordinary operating environment for the offshore service provider. The measures and procedures will vary depending on the types and levels of risk identified in the security assessment.

This regulation also recognises that not all measures in the plan of an offshore service provider will be implemented immediately. In this situation the plan will need to provide details of any interim measures that will be implemented until permanent measures can be fully implemented.

Regulation 5A.165 - Maritime security levels 2 and 3

New regulation 5A.165 requires that an offshore security plan for an offshore service provider set out, in relation to maritime security levels 2 and 3, the additional security measures that the provider will implement if the Secretary declares that maritime security level 2 or 3 is in force for the port or airport in which the service provider operates.

This reflects the requirement of the ISPS Code for three security levels. Section 22 of the Act enables the Secretary to change the security level where a heightened risk to maritime transport or offshore facilities is identified.

Regulation 5A.170 - Declarations of security

New regulation 5A.170 requires that an offshore security plan provide details of the circumstances in which an offshore service provider will request a DOS with another offshore industry participant; the procedures for negotiating the security measures and responsibilities of the provider and of the facility operator or other offshore industry participants; and how security measures identified in a declaration will be implemented.

Regulation 5A.175 - Protection of plan

New regulation 5A.175 requires that an offshore service provider ensure that the offshore security plan is protected against unauthorised access, amendment and disclosure.

Item 29 – After Division 6.4 insert

Division 6.5 Offshore security zones

Subdivision 6.5.1 Preliminary

Regulation 6.125 - Types of offshore security zones (Act s113B)

New regulation 6.125 identifies the different types of offshore security zones that may be established by the Secretary. These are

- (a) an offshore facility zone; and
- (b) an offshore water-side zone.

Offshore facility zone means a type of offshore security zone, established by the Secretary under section 113A of the Act that comprises the space occupied by an offshore facility.

Offshore water-side zone means a type of offshore security zone, established by the Secretary under subsection 113A(1) of the Act, that comprises an area of water surrounding an offshore facility to a distance from the facility specified by the Secretary.

Subdivision 6.5.2 Offshore facility zones

Regulation 6.130 - Identification of zones

New regulation 6.130 requires that an offshore facility zone must be clearly identifiable and persons who are in or in the vicinity of the offshore facility zone must be informed that access to the zone is controlled and any unauthorised entry into the zone is an offence.

It is important that persons in or in the vicinity of an offshore facility zone are made aware of the boundary of a zone because of the criminal penalties attached to unauthorised entry into a zone. Advising people of the penalties for unauthorised access to a zone will reduce the incidence of unauthorised entry.

Regulation 6.135 - Duties of offshore facility operator

New regulation 6.135 provides that an offshore facility operator must monitor and control access to any offshore facility zone. An offence against failure to do so is an offence of strict liability, with a penalty of 200 units. It should be noted that the existence of strict liability does not make any other defence unavailable. Defences available to an accused other than those removed by making a matter one of strict liability remain available to him or her.

The access control measures will generally be in the offshore security plan of the offshore facility operator and subject to the offence for breach of offshore security plan in the Act, however zones may also be established by the Secretary independent of offshore security plans and so a separate offence is required.

It should be noted that the existence of strict liability does not make any other defence unavailable. Defences available to an accused other than those removed by making a matter one of strict liability remain available to him or her.

The text in relation to regulation 5A.40 deals in more detail with issues taken into account in relation to the imposition of strict liability offences.

Regulation 6.140 - Offences - unauthorised entry

New regulation 6.145 makes it a strict liability offence, with a penalty of 50 penalty points, for a person to enter or remain in an offshore facility zone unless authorised to do so by the offshore facility operator.

It should be noted that the existence of strict liability does not make any other defence unavailable. Defences available to an accused other than those removed by making a matter one of strict liability remain available to him or her.

The text in relation to regulation 5A.40 deals in more detail with issues taken into account in relation to the imposition of strict liability offences.

Subdivision 6.5.3 Offshore water-side zones

Regulation 6.145 - Identification of zones

New regulation 6.145 requires that a water-side zone be clearly identifiable. An offshore facility operator is also required to give notice of the establishment of, and

the boundaries of, the offshore waterside zone by water-based identification measures, or posting, publishing or broadcasting notices, or using any other means that have the effect of informing persons in or in the vicinity of the zone about the establishment of the zone and its boundaries.

Regulation 6.150 - Duties of offshore facility operator

New regulation 6.150 requires an offshore facility operator to ensure that persons who are in or in the vicinity of the security regulated offshore facility are informed that access to the water-side zone is controlled and any unauthorized entry into the zone is an offence.

This regulation makes it a strict liability offence for an offshore operator to fail to monitor access to a water-side zone. An offence against failure to do so is an offence of strict liability and the penalty is 200 units.

The access control measures will generally be in the offshore security plan of the offshore facility operator and subject to the offence for breach of offshore security plan in the Act, however zones may also be established by the Secretary independent of offshore security plans and so a separate offence is required.

It should be noted that the existence of strict liability does not make any other defence unavailable. Defences available to an accused other than those removed by making a matter one of strict liability remain available to him or her.

The text in relation to regulation 5A.40 deals in more detail with issues taken into account in relation to the imposition of strict liability offences.

Regulation 6.155 - Offences - unauthorised entry

New regulation 6.165 makes it a strict liability offence, with a penalty of 50 penalty points, for a person to enter or remain in an offshore waterside zone unless authorised to do so by an offshore facility operator.

This regulation also makes it a strict liability offence to take into or leave a vessel or thing in an offshore water-side zone unless authorised to do so by the offshore facility operator.

It should be noted that the existence of strict liability does not make any other defence unavailable. Defences available to an accused other than those removed by making a matter one of strict liability remain available to him or her.

The text in relation to regulation 5A.40 deals in more detail with issues taken into account in relation to the imposition of strict liability offences.

Item 30 – Part 9 Heading Reporting maritime transport or offshore facility security incidents

This item repeals the current heading and substitutes a new heading “Reporting maritime transport and offshore facility security incidents” to reflect changes made by the *Maritime Transport Security Amendment Act 2005*.