

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 202

Minute No. 30 of 2006 - Minister for Transport and Regional Services

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

*Maritime Transport and Offshore Facilities Security Amendment
Regulations 2006 (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.

The Act establishes a regulatory framework to safeguard against unlawful interference with maritime transport and offshore facilities. To achieve this purpose, the Act establishes minimum security requirements for the Australian maritime industry by imposing obligations on persons engaged in maritime activities.

The *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Principal Regulations) set out, in part, the details regarding the introduction of the Maritime Security Identification Card (MSIC) scheme for maritime industry and offshore industry participants.

The purpose of the proposed Regulations is to amend the Principal Regulations to ensure that persons who require Maritime Security Identification Cards (MSICs) apply for their MSICs as soon as possible, by providing for an 'MSIC implementation period' until the end of 2006.

A regulation impact statement was not required.

Attachment A outlines the scope of the Regulations.

Details of the Regulations are set out in Attachment B.

The Act does not specify any conditions that need to be satisfied 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*.

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

ATTACHMENT A

In 2005, the Parliament passed legislation for the introduction of a Maritime Security Identification Card (MSIC) Scheme to come into effect on 1 January 2007. This scheme will require those persons who require unescorted or unmonitored access to maritime security zones to be issued with an MSIC and undergo background checks by the Australian Federal Police and Australian Security Intelligence Organisation.

The MSIC scheme marks the first time that up to 100,000 individuals who work in or with the maritime and offshore industries will be required to undergo background checking by the Australian Government. In consultation with the maritime industry a voluntary MSIC roll out schedule was developed commencing in December 2005. This was to enable an orderly process for ports and other maritime industry participants to lodge and process MSIC applications and to allow a smooth throughput for the Government's background checking agencies.

In June 2006 it was noted that the progress of the MSIC rollout schedule had been slow. To ensure that all people who require MSICs have them before 1 January 2007 the Australian Government has decided to introduce regulations to require persons who will need an MSIC to apply for their MSIC by a set of staggered dates over August and September 2006.

The Regulations amend the *Maritime Transport and Offshore Facilities Security Regulations 2003* to specify that:

- a person, other than an exempt person, who has an operational need to work unescorted, or not continuously monitored, in a maritime security zone is required to apply for an MSIC;
- it will be an offence for such a person to enter or be in a maritime security zone without either a valid MSIC or without having applied for an MSIC;
- the requirement to have applied for an MSIC will apply on different dates to different maritime industry participants, with the Secretary of the Department of Transport and Regional Services having power to exempt a person or class of persons from the requirement in relation to a particular maritime security zone;
- Maritime Security Inspectors have been given power to direct any such person in a maritime security zone who cannot show an MSIC to produce evidence that the person has applied for an MSIC;
- Maritime Security Inspectors have also been given power to direct such a person in a maritime security zone who does not have an MSIC or evidence that he or she has applied for an MSIC to show his or her identity and address; and
- penalties may apply if a person who is not an exempt person has not applied for their MSIC by the specified dates.

During the preparation of these regulations the Government consulted widely with the maritime and offshore facilities industries, including representatives of the Association of Australian Ports & Marine Authorities, Shipping Australia, Australian Petroleum Production and Exploration Association, Australian Ship Owners Association, major ports, Maritime Security Identification Card Issuing Bodies, maritime and transport employee associations, road transport associations and federal and state government authorities.

ATTACHMENT B**Details of the Maritime Transport and Offshore Facilities Security Amendment Regulations 2006 (No. 2)****Regulation 1 - Name of Regulations**

This regulation provides that the title of the Regulations is the *Maritime Transport and Offshore Facilities Security Amendment Regulations 2006 (No. 2)*.

Regulation 2 - Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

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

This regulation provides that Schedule 1 amends the *Maritime Transport and Offshore Facilities Security Regulations 2003* ('the Principal Regulations').

Schedule 1 – Amendments**Item [1] –Subregulation 6.07A(1)**

The amendment substitutes a new subregulation 6.07A(1). This subregulation adds the requirement that a person who enters a maritime security zone in the MSIC implementation period (see items [4] and [5] below) must be an MSIC applicant or an exempt person.

Item [2] –Paragraph 6.07A(2)(a)

The amendment corrects an earlier drafting error and replaces MSICS with MSICs in paragraph 6.07A(2)(a).

Item [3] –Regulation 6.07B, after definition of *disqualifying offence*

The amendment inserts a definition of *exempt person* into regulation 6.07B. This clarifies that a person who will not require an MSIC in the period on or after 1 January 2007 is not required to apply for an MSIC during the implementation period.

Item [4] - Regulation 6.07B, after definition of *MSIC*

The amendment inserts two definitions into regulation 6.07B. The definition for *MSIC applicant* clarifies that this means a person who has applied for the issue of an MSIC in accordance with the current regulation 6.08B. The definition for *MSIC implementation period* provides that the period from the commencement of Subdivision 6.1A.1A (see item [5] below) until the end of 31 December 2006 is the MSIC implementation period.

Item [5] – After Subdivision 6.1A.1

Subdivision 6.1A.1A MSIC implementation period

Regulation 6.07HA Requirements during MSIC implementation period

Subregulation 6.07HA(1) provides that only a person who is the holder of a valid MSIC, an MSIC applicant or an exempt person may be in a maritime security zone during the MSIC implementation period.

Subregulation 6.07HA(2) provides that if a maritime security inspector requests a person to show evidence that he or she is the holder of a valid MSIC, an MSIC applicant or an exempt person, the person must provide the evidence to the Secretary no later than 14 days after the request day.

The inclusion of the examples under subregulation 6.07HA(2) provides guidance for industry members as to what evidence a Maritime Security Inspector could take into account to determine whether a person has applied for an MSIC. These are only examples and the Maritime Security Inspector could choose to accept other information or documents to determine whether a person has applied for an MSIC.

Under subregulation 6.07HA(3), a maritime security inspector may issue a warning notice to a person who has not applied for an MSIC and is not an exempt person.

Subregulation 6.07HA(4) provides guidance as to the form and content that a warning notice should contain.

Regulation 6.07HB MSIC implementation offence

Subregulation 6.07B(1) specifies that a person commits an offence if, on a relevant day during the implementation period, and 21 days after he or she has have been issued with a warning notice under subregulation 6.07HA(3) the person is in a maritime security zone, and does not hold an MSIC, or is not an MSIC applicant or is not an exempt person.

Subregulation 6.07B(2) provides that subregulation 6.07B(1) does not apply if, within 14 days, a person provides evidence to the Secretary of the Department of Transport and Regional Services that he or she has either applied for their MSIC or has reasonable ground to believe that he or she will not require an MSIC from 1 January 2007. This subregulation provides clarity of the application of the new regulations to those people who may currently work in, or need to regular access to, a maritime security zone until 31 December 2006, but will not require an MSIC on or after 1 January 2007.

Subregulation 6.07B(3) clarifies the types of evidence that may be used to show that a person was an MSIC applicant.

Subregulation 6.07B(4) clarifies the types of evidence that may be used to show that a person has reasonable grounds to believe that he or she would not require an MSIC from 1 January 2007.

Subregulation 6.07B(5) provides clarification of the specific meaning of the term 'operational need' for the purposes of the regulation.

Subregulation 6.07B(6) provides that any offence against subregulation 6.07B(1) is an offence of strict liability.

Regulation 6.07HC Powers of maritime security inspectors during MSIC implementation period

Regulation 6.07HC provides detail on the types of powers that maritime security inspectors, as defined under section 10 of the *Maritime Transport and Offshore Facilities Security Act 2003* (the Act), have in respect to the implementation period.

Subregulation 6.07HC(1) details the types of requests that a maritime security inspector may make of a person who is in a maritime security zone during the MSIC implementation period and who is not properly displaying an MSIC. It is intended that a maritime security inspector will provide a person reasonable opportunity to be able to provide appropriate evidence of that person's identity and address.

Subregulation 6.07HC(2) provides guidance to a maritime security inspector that he or she must not give a direction under subregulation 6.07HC(1) if the inspector knows the person is an exempt person in relation to the maritime security zone.

Subregulation 6.07HC(3) specifies that a maritime security inspector must show his or her inspector's identity card before directing a person to provide the evidence required under subregulation 6.07HC(1).

Subregulation 6.07HC(4) provides for a penalty of 10 penalty units if a person does not comply with the direction of a maritime security inspector under subregulation 6.07HC(1).

Regulation 6.07HD Persons exempted from operation of regulation 6.07HB

Subregulation 6.07HD(1) provides clarity to the definition of an exempt person under paragraph 6.07B(b). A person is an exempt person if he or she is in one of the following maritime security zones during the relevant exemption period: a zone in a port specified in proposed Table 6.07HD; an on-board security zone as established under subsection 110(1) of the Act; or an offshore security zone as established under subsection 113A(1) of the Act.

Subregulation 6.07HD(2) defines the exemption period as it applies to subregulation 6.07HD(1). Paragraph (a) lists the exemption periods for ports in Table 6.07HD. Paragraph (b) provides for the exemption period for on-board security zones to conclude at the end of 21 August 2006. Paragraph (c) provides for the exemption period for offshore security zones to conclude at the end of 21 August 2006.

Regulation 6.07HE Persons exempted by Secretary from operation of regulation 6.07HB

Subregulation 6.07HE(1) enables the Secretary, on his or her own initiative, or on written application by a person or industry participant to give an exemption to a person, or class of persons, from the requirement to be an MSIC applicant during the MSIC implementation period, or part of the period.

Subregulation 6.07HE(2) provides that, the Secretary may grant an exemption subject to a condition or conditions.

Subregulation 6.07HE(3) requires the Secretary to take into account relevant reasons before making a decision on whether to grant an exemption. The Secretary needs to consider why the exemption is necessary, the likely effect of any exemption, the length of time of any exemption and any other relevant matter.

Subregulation 6.07HE(4) enables the Secretary to give an exemption for a particular period to a particular person, or class of persons and provide conditions to apply to the exemption.

Subregulation 6.07HE(5) provides that, where the Secretary gives an exemption to a class of persons the Secretary must publish a notice in the *Gazette*.

Item [6] –Subdivision 6.1A.3, heading

The amendment corrects a drafting error and substitutes subdivision 6.A1.3 subdivision 6. 1A.3.