



# Maritime Transport and Offshore Facilities Security Amendment Regulations 2006 (No. 2)<sup>1</sup>

## Select Legislative Instrument 2006 No. 202

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Maritime Transport and Offshore Facilities Security Act 2003*.

Dated 27 July 2006

P. M. JEFFERY  
Governor-General

By His Excellency's Command

WARREN TRUSS  
Minister for Transport and Regional Services

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**1 Name of Regulations**

These Regulations are the *Maritime Transport and Offshore Facilities Security Amendment Regulations 2006 (No. 2)*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Amendment of *Maritime Transport and Offshore Facilities Security Regulations 2003***

Schedule 1 amends the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Subregulation 6.07A (1)**

*substitute*

- (1) This Division provides for a scheme under which:
- (a) an MSIC is issued to identify a person who has been the subject of a background check; and
  - (b) in the MSIC implementation period a person, other than an exempt person, who enters a maritime security zone must be an MSIC applicant; and
  - (c) on or after 1 January 2007, a maritime industry participant will not allow a person to enter, or remain in, a maritime security zone unless the person:
    - (i) displays a valid MSIC; or
    - (ii) is escorted by the holder of an MSIC.

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**[2] Paragraph 6.07A (2) (a)**

*omit*

MSICS;

*insert*

MSICs;

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

*insert*

***exempt person***, in relation to a maritime security zone, means a person who:

- (a) under the Act or these Regulations, is not required to properly display a valid MSIC in the zone; or
- (b) under regulation 6.07HD or 6.07HE, is exempt from having to make an application for an MSIC during the MSIC implementation period, or part of the MSIC implementation period, for the zone.

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

*insert*

***MSIC applicant*** means a person who has applied for the issue of an MSIC in accordance with regulation 6.08B.

***MSIC implementation period*** means the period from the commencement of Subdivision 6.1A.1A until the end of 31 December 2006.

**[5] After Subdivision 6.1A.1***insert***Subdivision 6.1A.1A MSIC implementation period****6.07HA Requirements during MSIC implementation period**

- (1) A person in a maritime security zone during the MSIC implementation period must be:
  - (a) the holder of a valid MSIC; or
  - (b) an MSIC applicant; or
  - (c) an exempt person.

- (2) If a person in a maritime security zone is requested by a maritime security inspector to provide evidence that the person satisfies subregulation (1), the person has no more than 14 days after the day the inspector made the request (the *request day*) to provide evidence to the Secretary that the person satisfied subregulation (1) on the request day.

*Examples of evidence that a person satisfies subregulation 6.07HA (1):*

1 A document from an issuing body or the person's employer about the application.

2 A record of a telephone call made, or email sent, by the person to an issuing body.

3 A copy of the completed front page of the person's application for an MSIC, a record of the person's MSIC application number or the log-in details for the person's electronic application for an MSIC.

- (3) Subject to subregulation (2), a maritime security inspector may issue a warning notice to a person who does not comply with subregulation (1).
- (4) A warning notice mentioned in subregulation (3) must:
  - (a) be in a form approved by the Secretary; and
  - (b) state:
    - (i) the effect of subregulation (1); and
    - (ii) that the person is not the holder of a valid MSIC, an MSIC applicant or an exempt person; and
  - (c) direct the person to make an application for an MSIC in accordance with regulation 6.08B.

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**6.07HB MSIC implementation offence**

- (1) A person commits an offence if, on a day (the *relevant day*) during the MSIC implementation period, the person:
- (a) is in a maritime security zone; and
  - (b) is not an MSIC applicant or the holder of a valid MSIC; and
  - (c) is not an exempt person; and
  - (d) has been issued with a warning notice under subregulation 6.07HA (3) more than 21 days before the relevant day.

Penalty: 5 penalty units.

- (2) Subregulation (1) does not apply to a person who, no more than 14 days after the relevant day, provides evidence to the Secretary that on the relevant day:
- (a) the person was an MSIC applicant; or
  - (b) the person had reasonable grounds to believe that he or she would not have an operational need for unescorted or unmonitored access to a maritime security zone on or after 1 January 2007.
- (3) For paragraph (2) (a), evidence may include any of the following:
- (a) a document from an issuing body or the person's employer in respect of the application;
  - (b) a statutory declaration by the person to the effect that an application has been made to an issuing body;
  - (c) a copy of the completed front page of the application.
- (4) For paragraph (2) (b), evidence may include a letter from, or statutory declaration by, a person responsible for the person being in the maritime security zone (a *responsible person*), stating or declaring as the case may be, that on the relevant day the responsible person believed that the person would not have an operational need for unescorted or unmonitored access to the zone on or after 1 January 2007.
- (5) In this regulation:
- operational need*, in relation to a person, means a need relating to the occupation or business interests of the person.

- (6) An offence against subregulation (1) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **6.07HC Powers of maritime security inspectors during MSIC implementation period**

- (1) If a person is in a maritime security zone during the MSIC implementation period and not properly displaying a valid MSIC, a maritime security inspector may direct the person to provide the inspector with evidence of 1 or more of the following:
- (a) the person's identity and address;
  - (b) if the person claims that he or she holds a valid MSIC — the valid MSIC;
  - (c) if the person claims that he or she is an MSIC applicant — that the person is an MSIC applicant;
  - (d) if the person claims that he or she is an exempt person — that the person is an exempt person;
  - (e) if the person claims that he or she does not require an MSIC — that the person does not require an MSIC.
- (2) A maritime security inspector must not give a direction under subregulation (1) if the inspector knows the person is an exempt person in relation to the maritime security zone.
- (3) Before directing the person to provide evidence for subregulation (1), the maritime security inspector must show the person the inspector's identity card.
- (4) A person must comply with a direction of a maritime security inspector under subregulation (1).

Penalty: 10 penalty units.

## 6.07HD Persons exempted from operation of regulation 6.07HB

- (1) For paragraph (b) of the definition of *exempt person* in regulation 6.07B, a person is exempt from the requirement to be an MSIC applicant during the MSIC implementation period, or part of the period, if the person is in a maritime security zone in:
  - (a) a port mentioned in column 2 of an item in Table 6.07HD during the exemption period; or
  - (b) an on-board security zone established by the Secretary under subsection 110 (1) of the Act during the exemption period for that zone; or
  - (c) an offshore security zone established by the Secretary under subsection 113A (1) of the Act during the exemption period for that zone.
- (2) In this regulation:
 

*exemption period* means:

  - (a) for a port — the period beginning on the day on which Subdivision 6.1A.1A commences, and ending at the end of the day specified for the port in column 3 of Table 6.07HD;
  - (b) for an on-board security zone — the period beginning on the day on which Subdivision 6.1A.1A commences, and ending at the end of 21 August 2006;
  - (c) for an offshore security zone — the period beginning on the day on which Subdivision 6.1A.1A commences, and ending at the end of 21 August 2006.

**Table 6.07HD Port exemption period**

Item	Port	End day of exemption period for a port
1	Port of Melbourne	21 August 2006
2	Port Botany	21 August 2006
3	Port Jackson – Sydney Harbour	21 August 2006
4	Newcastle	21 August 2006
5	Brisbane	21 August 2006

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<b>Item</b>	<b>Port</b>	<b>End day of exemption period for a port</b>
6	Port Alma	21 August 2006
7	Gladstone	21 August 2006
8	Hay Point	21 August 2006
9	Townsville	21 August 2006
10	Cairns	21 August 2006
11	Darwin	21 August 2006
12	Adelaide	21 August 2006
13	Hobart	21 August 2006
14	Devonport	21 August 2006
15	Barrow Island	21 August 2006
16	Broome	21 August 2006
17	Dampier	21 August 2006
18	Derby	21 August 2006
19	Fremantle	21 August 2006
20	Onslow (Airlie Island)	21 August 2006
21	Onslow (Solar Salt)	21 August 2006
22	Onslow (Thevenard Island and Saladin Marine Terminal)	21 August 2006
23	Port Hedland	21 August 2006
24	Port Walcott	21 August 2006
25	Carnarvon (Useless Loop)	21 August 2006
26	Carnarvon (Cape Cuvier)	21 August 2006
27	Varanus Island	21 August 2006
28	Wyndham	21 August 2006
29	Yampi Sound (Cockatoo Island)	21 August 2006
30	Eden	21 August 2006
31	Norfolk Island	21 August 2006
32	Port Kembla	21 August 2006

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<b>Item</b>	<b>Port</b>	<b>End day of exemption period for a port</b>
33	Yamba	21 August 2006
34	Geelong	21 August 2006
35	Port of Hastings	21 August 2006
36	Port of Corner Inlet and Port Albert	21 August 2006
37	Portland	21 August 2006
38	Geraldton	21 August 2006
39	Albany	21 August 2006
40	Bunbury	21 August 2006
41	Esperance	21 August 2006
42	Christmas Island	21 August 2006
43	Cocos (Keeling) Island	21 August 2006
44	Burnie	21 August 2006
45	Grassy	21 August 2006
46	Port Latta	21 August 2006
47	Launceston	21 August 2006
48	Spring Bay	21 August 2006
49	Stanley	21 August 2006
50	Bundaberg	4 September 2006
51	Karumba	4 September 2006
52	Abbot Point	4 September 2006
53	Lucinda	4 September 2006
54	Mackay	4 September 2006
55	Thursday Island	4 September 2006
56	Weipa	4 September 2006
57	Cape Flattery	4 September 2006
58	Mourilyan	4 September 2006
59	Bing Bong	11 September 2006

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Item	Port	End day of exemption period for a port
60	Gove	11 September 2006
61	Milner Bay	11 September 2006
62	Port Lincoln	11 September 2006
63	Port Pirie	11 September 2006
64	Whyalla	11 September 2006
65	Ardrossan	11 September 2006
66	Port Bonython	11 September 2006
67	Port Giles	11 September 2006
68	Thevenard, South Australia	11 September 2006
69	Wallaroo	11 September 2006

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#### **6.07HE Persons exempted by Secretary from operation of regulation 6.07HB**

- (1) For paragraph (b) of the definition of *exempt person* in regulation 6.07B, the Secretary may, on his or her own initiative, or on written application by a person or a maritime industry participant, give a person, or a class of persons, an exemption from the requirement to be an MSIC applicant during the MSIC implementation period, or part of the period, in a maritime security zone or zones.
- (2) The exemption may be given subject to a condition or conditions.
- (3) In deciding whether to give an exemption, the Secretary must consider:
  - (a) the reasons the exemption is necessary; and
  - (b) the likely effect of the exemption on the security of maritime transport or an offshore facility in the zone or zones; and
  - (c) the period of the exemption; and
  - (d) any other matter that the Secretary considers relevant.

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- (4) The exemption must specify the following:
- (a) the period in respect of which it is given;
  - (b) if it is given in respect of a person — the name of the person;
  - (c) if it is given in respect of a class of person — a description of the class;
  - (d) if it is given subject to a condition or conditions — the condition or conditions;
  - (e) the maritime security zone or zones in respect of which it is given.
- (5) If the Secretary gives an exemption to a class of persons, the Secretary must publish a notice of the exemption in the *Gazette*.

**[6] Subdivision 6.A1.3, heading**

*substitute*

**Subdivision 6.1A.3 MSIC issuing bodies**

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).