

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 258**

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

*Maritime Transport and Offshore Facilities Security Amendment  
Regulation 2012 (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 oil and gas 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.

Subsection 209(1) 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.

Paragraph 119(2)(m) of the Act provides that the regulations may prescribe requirements in relation to the supervision and control measures for ensuring that persons, goods, vehicles and vessels that have received clearance remain cleared on vessels that are not cleared vessels or in areas that are not cleared areas.

The regulatory framework is centred on the development of security plans for ships, other maritime transport operations, and offshore facilities. The *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Principal Regulations) set out the requirements for maritime, ship and offshore security plans to ensure that these plans achieve the maritime security outcomes specified in the Act. Generally, these plans must be in writing, and prepared in accordance with any requirements set out in the Principal Regulations.

Further, the Act and the Principal Regulations provide for officials whose powers in many cases are linked to a security regulated port boundary or a security regulated offshore facility or maritime security zones within a port or around and on a facility.

The Act and the Principal Regulations provide for various maritime security zones, including port security zones, ship security zones, on-board security zones, and offshore security zones. The purpose of these zones is to subject those zones to additional security requirements, such as controlling the movement of people and things, restricting access to areas, providing for screening and clearing of people and things, and requiring people to properly display a valid Maritime Security Identification Card while in a zone that is in force.

Maps are, therefore, important tools to define the extent of security regulated port boundaries, the location and boundaries of security regulated offshore facilities, and the location and extent of any maritime security zones, established under the Act and the Principal Regulations. Clear and consistent mapping standards provide certainty for maritime industry participants and other maritime users.

In addition, the Principal Regulations outline a number of measures that must be undertaken in order to ensure the achievement of the maritime security outcomes, including requirements for access to maritime security zones and requirements for passenger security screening.

The purpose of the Regulation is to amend the Principal Regulations to:

- extend current standards applicable to maps that are required to be submitted as part of the maritime security plans for port operators, to maps required to be provided by port facility operators and port service providers as part of their maritime security plan; and
- prescribe being continuously supervised by security personnel and/or continuously monitored by Closed Circuit Television (CCTV) as the supervision and control measures (allowed to be prescribed by the Principal Regulations under paragraph 119(2)(m) of the Act) for ensuring that persons and baggage that have received clearance remain cleared on vessels that are not cleared vessels or in areas that are not cleared areas.

Details of the Regulation are set out in the Attachment.

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

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Department of Infrastructure and Transport conducted extensive consultation with maritime industry participants and other government agencies in relation to these amendments, primarily through the Maritime Industry Security Consultative Forum, which includes representatives from port operators, port facility operators, shipping companies, unions and peak maritime industry bodies.

The proposals were also presented during Passenger Ship Working Group meetings that have been undertaken on a regular basis since February 2011, with full support from industry participants.

Sections 1, 2 and 3, and Schedule 1 (relating to mapping standards) commence on the day after registration.

Schedule 2 (relating to supervision and control measures) commences on 1 February 2013.

The Minute recommends that the Regulation be made in the form proposed

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

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Maritime Transport and Offshore Facilities Security Amendment Regulation 2012 (No. 3)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Legislative Instrument amends the *Maritime Transport and Offshore Facilities Security Regulations 2003* to extend current port operator mapping standards to maps required to be provided by port facility operators and port service providers, and to prescribe being continuously supervised by security personnel and/or continuously monitored by Closed Circuit Television (CCTV) as the supervision and control measures for ensuring that persons and baggage that have received clearance remain cleared on vessels that are not cleared vessels or in areas that are not cleared areas.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

ANTHONY ALBANESE

Minister for Infrastructure and Transport

## **Details of the *Maritime Transport and Offshore Facilities Security Amendment Regulation 2012 (No. 3)***

### **Section 1 – Name of Regulation**

Section 1 provides that the Regulation is to be referred to as the *Maritime Transport and Offshore Facilities Security Amendment Regulation 2012 (No. 3)*.

### **Section 2 – Commencement**

Section 2 sets out the commencement date for the Regulation.

Sections 1, 2 and 3, and Schedule 1 commence on the day after registration.

Schedule 2 commences on 1 February 2013.

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

Section 3 provides that Schedules 1 and 2 amend the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Principal Regulations).

### **Schedule 1 – Amendments commencing on day after registration**

#### **Item [1] – After regulation 3.10**

Item [1] inserts regulation 3.11 and regulation 3.12 after regulation 3.10.

Regulation 3.11 states that a map mentioned in sections 49 or 52A of the Act must be A3 or A4 size, or in an electronic format, and include the following:

- a) a title;
- b) a linear scale;
- c) a north point;
- d) a legend;
- e) if the map contains map projections—details of the projections;
- f) if the maritime security plan to which the map relates details security regulated port boundaries—coordinates to clearly define those boundaries;
- g) if the maritime security plan to which the map relates details port security zone boundaries—coordinates to clearly define those boundaries;
- h) if inserts are used on the map—a numbered map for each insert corresponding to the number for the insert on the main map;
- i) the date the map was produced; and
- j) the name of the person who created the map.

Regulation 3.11 also states that each map for a maritime security plan must be a separate map.

Regulation 3.11 replaces existing regulations 3.90, 3.165, and 3.240, and is consequential to the amendments at items [3] and [5]. This extends current port operator mapping standards to maps required to be provided by port facility operators and port service providers.

Regulation 3.11 does not specify mapping standards for maps used by the Secretary in a Gazette Notice, maps provided for the establishment of maritime security zones (other than by incorporation in a maritime security plan), or maps provided by offshore industry participants for any purpose.

Regulation 3.12 states that a port operator, port facility operator and port service provider must ensure that the maritime security plan for the operator or provider is protected against unauthorised access, amendment and disclosure.

Regulation 3.12 replaces existing regulations 3.95, 3.170, and 3.245, and is consequential to the amendments at items [3] and [5].

Regulation 3.12 also brings the Principal Regulations in line with current drafting conventions.

#### **Item [2] – Subdivision 3.2.1, heading**

Item 2 omits the heading in subdivision 3.2.1. This is consequential to the amendment at items [1] and [3].

With the omission of subdivision 3.2.2 at item 3, there is no requirement to further divide Division 3.2 into subdivisions with headings.

#### **Item [3] – Subdivision 3.2.2**

Item 3 omits subdivision 3.2.2. This is consequential to the amendment at items [1] and [2].

Existing regulation 3.90 has been replaced by regulation 3.11 and existing regulation 3.95 has been replaced by regulation 3.12.

#### **Item [4] – Subdivision 3.3.1, heading**

Item 4 omits the heading in subdivision 3.3.1. This is consequential to the amendment at item [5].

With the omission of subdivision 3.3.2 at item 5, there is no requirement to further divide Division 3.3 into subdivisions with headings.

#### **Item [5] – Subdivisions 3.3.2 and 3.4.3**

Item 5 omits subdivisions 3.3.2 and 3.4.3. This is consequential to the amendment at items [1] and [4].

Existing regulations 3.165 and 3.240 have been replaced by regulation 3.11 and existing regulations 3.170 and 3.245 have been replaced by regulation 3.12.

#### **Item [6] – After Part 13**

Item 6 inserts Part 14 Transitional arrangements.

Regulation 14.01 states that Schedule 2 makes transitional arrangements in relation to amendments of these Regulations.

### **Item [7] – After Schedule 1**

Item 7 inserts Schedule 2 after Schedule 1 to the Principal Regulations that specifies transitional arrangements for the Schedule 1.

### **Schedule 2 Transitional arrangements (regulation 14.01)**

#### **Part 1 Amendments made by *Maritime Transport and Offshore Facilities Security Amendment Regulation 2012 (No. 3)***

##### **Clause 101 - Operation of Schedule 1**

Clause 101 provides transitional arrangements for Schedule 1 to the Regulation.

Clause 101 states that the amendments of these Regulations made by Schedule 1 to the *Maritime Transport and Offshore Facilities Security Amendment Regulation 2012 (No. 3)* ('the amending regulation') do not apply to:

- a) an application under section 50 of the Act by a port facility operator or a port service provider for an approval of a maritime security plan made, but not determined, before the commencement of the amending regulation; or
- b) an application under section 52A of the Act by a port facility operator or a port service provider for a variation of a maritime security plan made, but not determined, before the commencement of the amending regulation; or
- c) for a maritime security plan approved before the commencement of the amending regulation—an application under section 52A of the Act by a port facility operator or a port service provider for a variation of the maritime security plan made after the commencement of the amending regulation.

This ensures that the mapping standards apply only to maritime security plans that are yet to be made.

The change does not apply to maritime security plans that have been submitted for regulatory approval or for a variation, but not determined; or to maritime security plans that are already in force.

### **Schedule 2 – Amendments commencing on 1 February 2013**

#### **Item [1] – After regulation 7.33**

Item [1] inserts regulation 7.34.

Regulation 7.34 states that for paragraph 119(2)(m) of the Act, either or both of the following are supervision and control measures to ensure that a person or baggage that has received clearance remains cleared on a vessel that is not a cleared vessel or in an area that is not a cleared area:

- a) the person or baggage is continuously supervised by security personnel while on the vessel or in the area;

- b) the person or baggage is continuously monitored by security personnel through closed circuit television while on the vessel or in the area.

Regulation 7.34 also provides a note that subsections 115(4) and 116(4) of the Act provide that a person is, or goods are, taken to be in a cleared area if the person is, or goods are, under the supervision or control prescribed in the regulations.

Regulation 7.34 provides flexibility for a port facility operator in screening and clearing people and baggage at its port facility, which need not be contiguous. As long as the screening point is located, and the ship moored, at the same port facility, the persons and baggage are able to move around, or outside, a security regulated port while under the prescribed supervision and control measures and still remain 'cleared' under the Act. This allows persons and baggage to be screened and cleared at a screening point in one area, and then board a security regulated passenger ship located in a different area without needing to be screened again.

Security personnel include but are not limited to any of the persons with existing security responsibilities under the Act. Security personnel can therefore include maritime security guards, screening officers, and port facility security officers, but also licensed security guards or any other personnel with a security role.

Regulation 7.34 does not prescribe supervision and control measures for vehicles or vessels or goods other than baggage. As the term goods has its natural meaning and includes cargo, baggage and stores, baggage is a type of goods.