

EXPLANATORY STATEMENT

Issued by Authority of the Delegate of the Secretary of the Department of Home Affairs

Subject - *Maritime Transport and Offshore Facilities Security (Incident Reporting) Instrument 2018*

Maritime Transport and Offshore Facilities Security Act 2003

The *Maritime Transport and Offshore Facilities Security Act 2003* (the Act) establishes a regulatory framework to safeguard against unlawful interference with maritime transport and offshore facilities. A part of that regulatory framework is the requirement (set out in Part 9 of the Act) to report maritime transport or offshore facility security incidents. Section 170 of the Act provides that:

(1) If a threat of unlawful interference with maritime transport or offshore facilities is made and the threat is, or is likely to be, a terrorist act, the threat is a *maritime transport or offshore facility security incident*.

(2) If an unlawful interference with maritime transport or offshore facilities is, or is likely to be, a terrorist act, the unlawful interference is a *maritime transport or offshore facility security incident*.

Subsection 177(1) of the Act provides that port operators must report maritime transport or offshore facility security incidents in accordance with section 177. In particular, paragraph 177(2)(a) provides that a maritime transport or offshore facility security incident that relates to the port of the port operator must be reported to the Secretary of the Department of Home Affairs (the Secretary).

Subsection 178(1) provides that the master of a security regulated ship or a ship regulated as an offshore facility must report maritime transport or offshore facility security incidents in accordance with section 178. In particular, paragraph 178(2)(a) provides that a maritime transport or offshore facility security incident that relates to the master's ship must be reported to the Secretary.

Subsection 179(1) provides that the ship operator for a security regulated ship must report maritime transport or offshore facility security incidents in accordance with section 179. In particular, paragraph 179(2)(a) provides that a maritime transport or offshore facility security incident that relates to a security regulated ship of the ship operator must be reported to the Secretary.

Subsection 179A(1) provides that the offshore facility operator for a security regulated offshore facility must report maritime transport or offshore facility security incidents in accordance with section 179A. In particular, paragraph 179A(2)(a) provides that a maritime transport or offshore facility security incident that relates to a security regulated offshore facility of the offshore facility operator must be reported to the Secretary.

Subsection 180(1) provides that a port facility operator for a port facility within a

security regulated port must report maritime transport or offshore facility security incidents in accordance with section 180. In particular, paragraph 180(2)(a) provides that a maritime transport or offshore facility security incident that relates to the port facility operator's port facility must be reported to the Secretary.

Subsection 181(1) provides that other persons with incident reporting responsibilities (identified in subsection 175(4)) must also report maritime transport or offshore facility security incidents to the Secretary.

Section 182 of the Act sets out how reports are to be made. In particular, subsection 182(1) of the Act provides that the Secretary may, by legislative instrument, specify either or both of the following:

- (a) information that must be included in a report required by Part 9 of the Act;
- (b) the way in which the report must be made.

Subsection 182(3) of the Act provides, in effect, that if a report is made under Part 9 of the Act and the report does not comply with the requirements of the legislative instrument made under subsection 182(1), then that report is taken not to have been made.

Subsection 202(1) of the Act enables the Secretary to delegate all or any of the Secretary's powers and functions under the Act to, among others, a Senior Executive Service (SES) employee of the Department of Home Affairs (the Department). On 9 April 2018, the Secretary delegated the power under subsection 182(1) of the Act to, among others, the SES Band 2 of the Aviation and Maritime Security Division of the Department.

In accordance with the *Legislation Act 2003*, the *Maritime Transport and Offshore Facilities Security Act 2003 Notice About How Incident Reports Are to be Made (No. 3)* (the Principal Notice) will automatically repeal on 1 October 2018. The Principal Notice will be replaced by the *Maritime Transport and Offshore Facilities Security (Incident Reporting) Instrument 2018* (the Instrument).

The Instrument sets out the information that must be included in a report to the Secretary under Part 9 of the Act. The information includes, for example, the date, time and location of the maritime transport or offshore facility security incident; the name of the person reporting the incident; the maritime industry participant to which the incident directly relates; and a description of the incident, including an indication of whether the incident was a threat of unlawful interference with maritime transport or offshore facilities or an unlawful interference with maritime transport or offshore facilities.

The Instrument also states that a report is to be made to the Department in writing, or orally and followed up in writing, within 24 hours. Information contained in such reports allows the Department to capture and efficiently monitor maritime transport or offshore facility security incidents.

The Department of Home Affairs engages in regular dialogue with industry in order to ensure that our national interests are secure. A focus of the Department is to ensure that maritime security laws are effective and enable the facilitation of trade and travel activities. Through this ongoing dialogue the Department regularly receives feedback on proposed legislation change and it takes that feedback into account before legislation is changed.

In this case, the Department consulted with maritime industry participants through the Maritime Industry Security Consultative Forum (MISCF). MISCF has a wide range of regulated maritime industry participants including peak industry organisations, port authorities, port facility operators and maritime service providers. The Department advised that this instrument would be made in substantially the same form as the previous instrument and that the only notable changes were to address administrative issues such as out-of-date contact information following machinery of government changes. With the nature of the instrument and the close relationship the Department has with industry is considered, the consultation undertaken for this instrument is appropriate and reasonably practicable to undertake.

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the making of the Instrument. OBPR has advised that a Regulation Impact Statement is not required to remake the sunseting notice as it is machinery in nature and does not substantially alter existing arrangements (OBPR ID: 23791).

A Statement of Compatibility with Human Rights is set out in the Attachment.

The Act does not specify any conditions that need to be satisfied before the power to make the Instrument may be exercised.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*

The Instrument commences on the day after it is registered on the Federal Register of Legislation.

Authority: Subsection 182(1) and section 202 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 (Incident Reporting) Instrument 2018

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 is a new Instrument setting out what is to be included in maritime transport or offshore facility security incident reports made under the *Maritime Transport and Offshore Facilities Security Act 2003* and how those reports are to be made. The Legislative Instrument substantially replicates the *Maritime Transport and Offshore Facilities Security Act 2003 Notice About How Incident Reports Are to Be Made (No. 3)*.

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.

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