

2004-2005-2006

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**MARITIME TRANSPORT AND OFFSHORE FACILITIES SECURITY
AMENDMENT (SECURITY PLANS AND OTHER MEASURES) BILL 2006**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and Regional Services,
the Honourable Warren Truss, MP)

MARITIME TRANSPORT AND OFFSHORE FACILITIES SECURITY AMENDMENT (SECURITY PLANS AND OTHER MEASURES) BILL 2006

OUTLINE

The purpose of the Bill is:

- To amend the *Maritime Transport and Offshore Facilities Security Act 2003* (the Act):
 - To simplify the procedures for making changes to maritime, ship and offshore facilities security plans;
 - To clarify measures relating to the plan approval process; and
 - To make a number of technical amendments to clarify the intent of the Act;
- To make amendments to various Acts consequential to the enactment of the Legislative Instruments Act 2003; and
- To make a technical amendment to the *Customs Act 1901*.

The Act implements the international maritime security framework, which has been in place since 1 July 2004. The Act establishes a regulatory framework to safeguard against unlawful interference with maritime transport or offshore facilities, by developing security plans for ships, other maritime transport operations and offshore facilities.

The Bill has three schedules.

Schedule 1: Schedule 1 contains the following provisions:

- A maritime, ship or offshore security plan for a maritime industry participant must designate by name or reference to a position, all security officers responsible for implementing or maintaining security plans;
- A maritime industry participant may submit a variation to a maritime, ship or offshore security plan that is currently in force;
- Merely giving a copy of a security plan to the Secretary does not constitute giving a revised plan. A maritime industry participant may, by written notice to the Secretary, request the Secretary approve another security plan (the revised plan);
- The Secretary may request further information from the maritime industry participant before the security plan is approved;
- The consideration period for the Secretary to approve a maritime, ship or offshore security plan is 60 days commencing on the day the Secretary receives the security plan, extendable by up to 45 days to accommodate the receipt of further information that may be requested;
- Where a port or offshore security zone has not yet been established by the Secretary, a maritime security plan must be accompanied by a map, and an offshore security plan must be accompanied by information, that shows each zone that the participant proposes;
- Where the Secretary has given a notice to a maritime industry participant approving a maritime or offshore security plan, and that security plan is accompanied by a map or information showing the security zones proposed to be established, the Secretary is taken to have given the participant a notice establishing the maritime or offshore security zones as proposed in the plans; and

- A person appointed by the Secretary who is engaged by a recognised security organisation for a security regulated Australian ship or an Australian ship regulated as an offshore facility, has a responsibility to report maritime transport or offshore facility security incidents to the Department.

Schedule 2: The *Legislative Instruments Act 2003* ('LIA') commenced on 1 January 2005. It establishes a comprehensive regime for the registration, tabling, scrutiny and sunseting of Commonwealth legislative instruments.

The majority of provisions in this Schedule are amendments that are consequential to the enactment of the LIA. The majority of the amendments make it clear on the face of the legislation being amended that instruments that were disallowable before the enactment of the LIA are legislative instruments. Provisions dealing with disallowance of legislative instruments are now contained in the LIA. Where a legislative instruments that forms part of these consequential amendments has already been granted exemption from certain provisions of the LIA, the text of the amendments contain an express statement to that effect, so as to clarify the status of the instrument. No new exemptions are contained in these amendments. There are also a number of technical corrections that involve no change in policy.

Schedule 3: Schedule 3 contains an amendment to the *Customs Act 1901*.

Financial impact statement

There is no financial impact.

The Commonwealth receives no direct financial benefit however the Australian economy will benefit from the enhancement of security arrangements under the Act.

Industry will benefit from a simpler and clearer plan variation process.

MARITIME TRANSPORT AND OFFSHORE FACILITIES SECURITY AMENDMENT (SECURITY PLANS AND OTHER MEASURES) BILL 2006

NOTES ON CLAUSES

Clause 1: Short Title

Clause 1 is a formal provision specifying the title of the proposed Act. The Bill, once enacted, will be known as the *Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006*.

Clause 2: Commencement

Subclause 2(1) provides that the provisions specified in column 1 of the commencement table commence, or are taken to have commenced, in accordance with column 2 of the table.

Column 2 of the table provides that:

1. Clauses 1 to 3 and anything in the Bill that is not covered elsewhere by the commencement table, commences on the day after the Bill receives Royal Assent.
2. Schedule 1 commences on a day to be determined, but at the latest 6 months after the Act receives Royal Assent.
3. Items 1 to 30 in Schedule 2 commence on the day the Bill receives Royal Assent.
4. Items 31 and 32 in Schedule 2 commence immediately after sections 34 and 35 of the *Interstate Road Transport Act 1985* commence.
5. Items 33 to 100 in Schedule 2 commence on the day the Bill receives Royal Assent.
6. Schedule 3 commences immediately after the commencement of Item 1 of Schedule 1 to the *Maritime Transport Security Amendment Act 2005*.

Subclause 2(2) provides that information contained in column 3 of the table does not form part of the Bill.

Clause 3: Schedules

Clause 3 is the formal enabling provision providing that the Act is amended as set out in Schedules 1 to 3 to the Bill.

Schedule 1 – Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Part 1 – Amendments

Item 1 – Paragraph 47(1)(c)

Item 1 repeals the existing paragraph 47(1)(c) that requires a maritime security plan to include the contact details for the maritime industry participant's security officer. The new paragraph replaces the requirement to include contact details with the requirement for the participant to designate by name or reference to a position, all security officers responsible for

implementing or maintaining the maritime security plan. This provision is similar to requirements in regulations 1.10 to 1.34 that require the nomination of security officers, but the requirement in the regulations doesn't relate directly to security plans. Since international law, specifically the International Ship and Port Facility Security Code, requires the designation of various security officers, the Act makes provision for reference to security officers in security plans.

By removing the reference to 'contact details' in the paragraph, a participant will not be required to vary the maritime security plan in accordance with Item 8 (which inserts a new section 52A that allows a participant to vary a maritime security plan) when, for example, a security officer's mobile phone number has changed.

Item 2 – Subsection 49(2)

The existing subsection 49(2) presupposes the existence of an established port security zone, and does not provide for circumstances where a port security zone has not yet been established. There are circumstances where a participant may require a new port security zone to be established. Item 2 allows for a new port security zone to be established. Item 2 repeals subclause 49(2) and replaces it with a new subsection that allows for circumstances where port security zones have not yet been established by the Secretary. Subclause 49(2) requires that a maritime security plan must be accompanied by one of three types of maps, depending on the status of the port security zones in consideration.

If the Secretary has not established port security zones within the area covered by the plan, then the participant's maritime security plan must be accompanied by a map that shows the zones that are proposed by the participant to be established in that area (subclause 49(2)(a)). If the Secretary has not established any port security zones and the participant doesn't propose to establish any security zones no map is required.

If the Secretary has established port security zones within the area covered by the plan, then the participant's maritime security plan must be accompanied by a map that shows each established zone (subclause 49(2)(b)), as well as any proposed changes to port security zones established within the area covered by the plan if any.

Item 3 – Division 5 of Part 3 (heading)

Item 3 repeals the heading of Division 5 of Part 3 and replaces it with a new heading to reflect the amendment proposed in Item 8 below, that a minor variation may be made to a plan without submitting a revised plan. The new heading now reads, "Division 5 – Approving, varying, revising and cancelling maritime security plans".

Item 4 – Section 50

Item 4 repeals section 50 and replaces it with a new section which clarifies the process by which a maritime industry participant may request the Secretary to approve a maritime security plan.

Clause 50 Providing maritime security plans for approval

Subclause 50(1) provides that if the participant requests that the Secretary approve a maritime security plan, the participant should give the Secretary a written notice requesting that the Secretary approve the accompanying maritime security plan.

Subclause 50(2) provides that the written notice must be accompanied by a copy of the plan. The written notice requirement formalises the plan approval process and clarifies that the participant is requesting that the Secretary approve the maritime security plan.

Item 5 – Paragraph 51(4)(b)

Item 5 is a consequential amendment following the amendments made in Item 6 below.

Item 6 – At the end of section 51 (after the note)

Item 6 inserts a new provision that enables the Secretary to request further information from the participant during the plan approval period. This period is referred to as the “consideration period”.

Subclause 51(5) provides that the Secretary may, by written notice given to the participant within the consideration period, request the participant to give the Secretary specified information relevant to the approval of the plan. The subclause enables the Secretary to seek further information or clarification on material submitted by the participant, which the Secretary requires before being satisfied that the maritime security plan can be approved.

Subclause 51(6) provides that the written notice given to the participant must specify a period, no longer than 45 days within which the information that the Secretary has requested must be given to the Secretary.

Subclause 51(7) provides a definition of the “consideration period” which is referred to in Item 5 above. The consideration period for the Secretary to approve a maritime security plan is the period of 60 days commencing on the day on which the Secretary receives the security plan. The 60 day period can be extended if the Secretary requests further information from the participant, as outlined in subclause 51(5) above. The period is extended by the number of days that the participant is given to provide the requested information under subclause 51(6), or if the participant provides the information in a shorter timeframe the number of days the participant took to respond.

The note at the end of Item 6 inserts the following heading to subsection 51(4), “*Failure to approve plan within consideration period*”.

Item 7 – Paragraph 52(3)(a)

Item 7 makes a consequential amendment to reflect the amendments made in items 9 and 12 below.

Item 8 – After section 52

Item 8 amends Division 5 of Part 3 by adding clause 52A which enables a participant to make changes to a maritime security plan that is in force without submitting a revised plan. Any proposed variations to an existing plan are to be set out in a written notice given to the Secretary. A variation to a maritime security plan will not affect the 5 year life of an existing plan that is in force under Item 13 below. The clause aims to introduce a simpler process for making minor changes to security plans.

Clause 52A Participants may submit variations to maritime security plans

Subclause 52A(1) provides that a maritime industry participant may by written notice to the Secretary request the Secretary to vary a maritime security plan that is in force.

Subclause 52A(2) provides that the participant must set out the proposed variation in the notice. The participant will not be required to submit the entire existing plan with the variations proposed.

Subclause 52A(3) provides that a variation of a maritime security plan that affects port security zone boundaries must be accompanied by certain maps to illustrate the affected area. Note that there is no provision for establishing a security zone if one doesn't already exist as this would be a change that would warrant undergoing the existing full plan revision process.

Subclause 52A(4) provides that if the Secretary is satisfied that the plan, as varied would continue to adequately address the relevant requirements under Division 4, the Secretary must approve the variation and give the participant written notice of the approval.

Subclause 52A(5) provides that if the Secretary is not satisfied that the plan, as varied would adequately address the relevant requirements under Division 4, the Secretary must refuse to approve the variation and give the participant written notice of the refusal including reasons for the refusal.

Subclause 52A(6) provides that in determining whether the plan, as varied, would adequately address the relevant requirements under Division 4, the Secretary may take account of existing circumstances as they relate to maritime transport, and offshore facility, security. The test for approving, or refusing to approve, the variation is the same as for a revised plan, and the nature of the variation will determine the level of scrutiny needed to be given to the plan as a whole in order for the Secretary to approve, or refuse to approve, the variation.

Subclause 52A(7) provides that if the Secretary does not approve, or refuses to approve, the variation proposed by the participant within the consideration period, then the Secretary is taken to have refused to approve the variation.

The note under subclause 52A(7) enables the participant to apply to the Administrative Appeals Tribunal for a review of a decision to refuse to approve a variation under subclause (5) or (7), in accordance with section 201 (see Item 44 below).

Subclause 52A(8) provides that the Secretary may, by written notice given to the participant within the consideration period, request the participant to give the Secretary specified information relevant to the approval of the variation. The subclause enables the Secretary to seek further information or clarification on material submitted by the participant, which the Secretary requires before being satisfied that the variation can be approved.

Subclause 52A(9) provides that the written notice given to the participant must specify a period of no longer than 45 days within which the information that the Secretary has requested must be given to the Secretary.

Subclause 52A(10) provides a definition of the “consideration period”. The consideration period for the Secretary to approve the variation is the period of 60 days commencing on the day on which the Secretary receives the notice that sets out the proposed variation. This 60 day period can be extended if the Secretary requests further information from the participant, as outlined in subclause 52A(7) above. The period is extended by the number of days that the participant is given to provide the requested information under subclause 52A(9), or if the participant provides the information in a shorter timeframe the number of days the participant took to respond.

Item 9 – Section 54

Item 9 repeals the section and replaces it with a new section 54.

Clause 54 Participants may revise maritime security plans

Subclauses 54(1) and 54(2) provide clarification of the process by which a participant may seek to have a plan revised.

Subclause 54(1) provides that a participant must provide a written notice to the Secretary requesting that the Secretary approve the revised plan.

Subclause 54(2) provides that the notice must be accompanied by a copy of the revised plan.

Subclause 54(3) provides the machinery that allows a revised plan to be approved under section 51, and to come into force under section 52 in place of the old plan. The subclause provides that if the request is made in accordance with clause 54 (that is, a participant gives the Secretary written notice that is accompanied by a copy of the revised plan, requesting the Secretary to approve the revised plan), then the Secretary must approve the revised plan in accordance with the requirements set out in sections 51, and the approved revised plan comes into force in accordance with the requirements set out in section 52.

Subclause 54(4) provides that if the revised plan comes into force, it replaces any other plan for the participant in force at that time, and will remain in force until it is cancelled after 5 years in accordance with the amendment in Item 13 below, or unless it is replaced by another revised plan (under section 54 or 55) or the plan is cancelled (see for example, section 57, 58 and 59).

Item 10 – Subsection 55(1)

Item 10 is a consequential amendment to reflect the amendment made in subclause 54(1) in Item 9 above.

Item 11 – After subsection 55(2)

The Secretary may direct a participant to revise a maritime security plan in accordance with the requirements in section 55. Item 11 inserts subclause 55(2A) that provides if a participant gives the Secretary the revised plan within the specified period, or within any further period allowed by the Secretary, sections 51 and 52 apply in relation to the revised plan. It provides the machinery to allow a revised plan to be approved under section 51, to come into force under section 52 and to replace the old plan. This means that the Secretary must approve the revised plan in accordance with the requirements set out in section 51, and the approved revised plan comes into force in accordance with the requirements set out in section 52.

Item 12 – At the end of section 55

Item 12 inserts subclause 55(4) and provides that if the revised plan comes into force, it replaces any other plan for the participant in force at that time. It will remain in force until it is cancelled after 5 years in accordance with the amendment in Item 13 below, or unless it is replaced by another revised plan (under section 54 or 55) or the plan is cancelled (see for example, section 57, 58 and 59).

Item 13 – Section 56

Item 13 repeals section 56 and replaces it with a new section that gives effect to subsection 52(3) which specifies when a maritime security plan is in force.

Clause 56 Cancelling maritime security plans

A maritime security plan for a maritime industry participant is cancelled 5 years after it comes into force, if it has not already ceased to be in force during that period.

Plans are to be cancelled after 5 years to ensure that the plan that is in force is current, by requiring an updated plan to be submitted to replace the cancelled one.

The note under clause 56 clarifies the meaning of subsection 52(3) stating that a plan ceases to be in force if it is replaced (see sections 54 and 55) or is cancelled (see, for example, sections 57, 58 and 59).

Item 14 – Paragraph 66(1)(c)

Item 14 repeals the existing paragraph 66(1)(c) that requires a ship security plan to include the contact details for the ship's security officer. The new paragraph replaces the requirement to include contact details with the requirement for the participant to designate by name or by reference to a position, all security officers responsible for implementing or maintaining the ship security plan. This provision is similar to requirements in regulations 1.10 to 1.34 that require the nomination of security officers, but the requirement in the regulations doesn't relate directly to security plans. Since international law, specifically the International Ship and Port Facility Security Code, requires the designation of various security officers, the Act makes provision for reference to security officers in security plans.

By removing the reference to 'contact details' in the paragraph, a participant will not be required to vary the ship security plan in accordance with Item 20 (which inserts a new section 71A that allows a ship operator to vary a ship security plan) when, for example, a security officer's mobile phone number has changed. Regulation 4.30 provide for the form and manner of submission of a security officer's contact details as a separate document to the security plan. This facilitates the updating of these details when required without varying the security plan.

Item 15 – Division 5 of Part 4 (heading)

Item 15 repeals the heading of Division 5 of Part 4 and replaces it with a new heading to reflect the amendment proposed in Item 20 below that a minor variation may be made to a plan without submitting a revised plan.. The new heading now reads, "Division 5 – Approving, varying, revising and cancelling ship security plans".

Item 16 – Section 69

Item 16 repeals section 69 and replaces it with a new section which clarifies the process by which a ship operator for a regulated Australian ship may request the Secretary to approve a ship security plan.

Clause 69 Providing ship security plans for approval

Subclause 69(1) provides that if the ship operator requests that the Secretary approve a ship security plan, the operator should give the Secretary a written notice requesting that the Secretary approve the accompanied ship security plan.

Subclause 69(2) provides that the written notice must be accompanied by a copy of the plan. The written notice requirement formalises the plan approval process and clarifies that the ship operator is requesting that the Secretary approve the ship security plan.

Item 17 – Paragraph 70(4)(b)

Item 17 is a consequential amendment following the amendments made in Item 18 below.

Item 18 – At the end of section 70 (after the note)

Item 18 inserts a new provision that enables the Secretary to request further information from the ship operator during the plan approval period. This period is referred to as the “consideration period”.

Subclause 70(5) provides that the Secretary may, by written notice given to the ship operator within the consideration period, request the operator to give the Secretary specified information relevant to the approval of the plan. The subclause enables the Secretary to seek further information or clarification on material submitted by the ship operator, which the Secretary requires before being satisfied that the ship security plan can be approved.

Subclause 70(6) provides that the written notice given to the ship operator must specify a period no longer than 45 days within which the information that the Secretary has requested must be given to the Secretary.

Subclause 70(7) provides a definition of the “consideration period”. The consideration period for the Secretary to approve a ship security plan is the period of 60 days commencing on the day on which the Secretary receives the security plan. This 60 day period can be extended if the Secretary requests further information from the ship operator, as outlined in subclause 70(5) above. The period is extended by the number of days that the participant is given to provide the requested information under subclause 70(5), or if the participant provides the information in a shorter timeframe the number of days the participant took to respond..

The note at the end of Item 18 inserts the following heading to subsection 70(4), “*Failure to approve plan within consideration period*”.

Item 19 – Paragraph 71(3)(a)

Item 19 makes a consequential amendment to reflect the amendments made in items 21 and 24 below.

Item 20 – After section 71

Item 20 amends Division 5 of Part 4 by adding clause 71A which enables the ship operator for a regulated Australian ship to make changes to the ship security plan that is in force, without submitting a revised plan. Any proposed variations to an existing plan are to be set out in a written notice given to the Secretary; the plan is not required to be submitted in a request for variation by the ship operator. A variation to a ship security plan will not affect the 5 year life of an existing plan that is in force. The clause aims to introduce a simpler process for making minor changes to security plans.

Clause 71A Participants may submit variations to ship security plans

Subclause 71A(1) provides that a ship operator for a regulated Australian ship may by written notice to the Secretary request the Secretary to vary a ship security plan that is in force.

Subclause 71A(2) provides that the ship operator must set out the proposed variation in the notice. The ship operator will not be required to submit the entire existing plan with the variations proposed.

Subclause 71A(3) provides that if the Secretary is satisfied that the plan, as varied, would continue to adequately address the relevant requirements under Division 4, the Secretary must approve the variation and give the ship operator written notice of the approval.

Subclause 71A(4) provides that if the Secretary is not satisfied that the plan, as varied, would adequately address the relevant requirements under Division 4, the Secretary must refuse to approve the variation and give the ship operator written notice of the refusal including reasons for the refusal.

Subclause 71A(5) provides that in determining whether the plan, as varied, would adequately address the relevant requirements under Division 4, the Secretary may take account of existing circumstances as they relate to maritime transport, and offshore facility, security. The test for approving, or refusing to approve, the variation is the same as for a revised plan, and the nature of the variation will determine the level of scrutiny needed to be given to the plan as a whole in order for the Secretary to approve, or refuse to approve, the variation.

Subclause 71A(6) provides that if the Secretary does not approve, or refuses to approve, the variation proposed by the ship operator within the consideration period, then the Secretary is taken to have refused to approve the variation.

The note under subclause 71A(6) enables the ship operator to apply to the Administrative Appeals Tribunal for a review of a decision to refuse to approve a variation under subclause (4) or (6), in accordance with section 201 (see Item 44 below).

Subclause 71A(7) provides that the Secretary may, by written notice given to the ship operator within the consideration period, request the ship operator to give the Secretary specified information relevant to the approval of the variation. The subclause enables the Secretary to seek further information or clarification on material submitted by the ship operator, which the Secretary requires before being satisfied that the variation can be approved.

Subclause 71A(8) provides that the written notice given to the ship operator must specify a period of up to 45 days within which the information that the Secretary has requested must be given to the Secretary.

Subclause 71A(9) provides a definition of the “consideration period”. The consideration period for the Secretary to approve the variation is the period of 60 days commencing on the day on which the Secretary receives the notice that sets out the proposed variation. This 60 day period can be extended if the Secretary requests further information from the ship operator, as outlined in subclause 71A(7) above. The period is extended by the number of days that the participant is given to provide the requested information under subclause 51A(8), or if the participant provides the information in a shorter timeframe the number of days the participant took to respond.

Item 21 – Section 73

Item 21 repeals the section and replaces it with a new section 73.

Clause 73 Ship operator may revise ship security plans

Subclause 73(1) provides that merely giving a copy of a ship security plan to the Secretary does not, of itself, constitute giving the Secretary a revised plan to approve. The subclause clarifies that if a ship operator has given the Secretary a ship security plan, and the ship operator requests the Secretary to approve another ship security plan (not the existing plan that is currently in force), then the ship operator should give written notice to the Secretary, requesting the Secretary to approve another ship security plan for the ship (the *revised plan*).

Subclause 73(2) provides that the notice must be accompanied by a copy of the revised plan.

Subclause 73(3) provides the machinery that allows a revised plan to be approved under section 70, and to come into force under section 71 in place of the old plan. The subclause provides that if the request is made in accordance with clause 73 (that is, a ship operator gives the Secretary written notice that is accompanied by a copy of the revised plan, requesting the Secretary to approve the revised plan), then the Secretary must approve the revised plan in accordance with the requirements set out in section 70, and the approved revised plan comes into force in accordance with the requirements set out in section 71.

Subclause 73(4) provides that if the revised plan comes into force, it replaces any other plan for the ship in force at that time, and will remain in force until it is cancelled after 5 years in accordance with Item 25 below, or unless it is replaced by another revised plan (under section 73 or 74) or the plan is cancelled (see for example, section 76, 77 and 78).

Item 22 – Subsection 74(1)

Item 22 is a consequential amendment to reflect the amendment made in subclause 73(1) in Item 21 above.

Item 23 – After subsection 74(2)

The Secretary may direct a ship operator to revise a ship security plan in accordance with the requirements in section 74. Item 23 inserts subclause 74(2A) that provides if a ship operator gives the Secretary the revised plan within the specified period, or within any further period allowed by the Secretary, sections 70 and 71 apply in relation to the revised plan. It provides the machinery to allow a revised plan to be approved under section 70, to come into force under section 71 and to replace the old plan. This means that the Secretary must approve the

revised plan in accordance with the requirements set out in section 70, and the approved revised plan comes into force in accordance with the requirements set out in section 71.

Item 24 – At the end of section 74

Item 24 inserts subclause 74(4) and provides that if the revised plan comes into force, it replaces any other plan for the ship in force at that time. It remains in force until it is cancelled after 5 years in accordance with the amendment in Item 25 below, or unless it is replaced by another revised plan (under section 73 or 74) or the plan is cancelled (see for example, section 76, 77 and 78).

Item 25 – Section 75

A ship security plan is cancelled 5 years after it comes into force, if it has not already ceased to be in force during that period.

Plans are to be cancelled after 5 years to ensure that the plan that is in force is current, by requiring an updated plan to be submitted to replace the cancelled one.

Item 26 – Paragraph 100G(1)(c)

Item 26 repeals the existing paragraph 100G(1)(c) that requires an offshore security plan to include the contact details for the participant’s security officer. The new paragraph replaces the requirement to include contact details with the requirement for the participant to designate by name or by reference to a position, all security officers responsible for implementing or maintaining the offshore security plan. This provision standardises the procedure for nominating security officers with proposed paragraph 47(1)(c) in Item 1 above, and paragraph 66(1)(c) in Item 14 above.

By removing the reference to ‘contact details’ in the paragraph, a participant will not be required to vary the offshore security plan in accordance with Item 33 (which inserts a new section 100LA that allows an offshore industry participant to vary an offshore security plan) when, for example, a security officer’s mobile phone number has changed.

Item 27 – Subsection 100I(2)

There are circumstances in which the Secretary establishes offshore security zones in accordance with subsection 113A(1) following proposals made to the Secretary in an offshore security plan. Item 27 repeals subsection 100I(2) and replaces it with a new subsection that allows for circumstances where offshore security zones have not yet been established by the Secretary. Subclause 100I(2) requires that an offshore security plan must be accompanied by certain information, depending on the status of the offshore security zones in consideration:

- i. information on the location of the facility; and
- ii. if the Secretary has not established any offshore security zones under subsection 113A(1) within or around the facility, then the participant’s offshore security plan must be accompanied by information on each of the zones that are proposed by the participant to be established within or around the facility (subclause 100I(2)(a));
- iii. if the Secretary has established any offshore security zones under subsection 113A(1) within or around the facility, then the participant’s offshore security plan must be accompanied information on each established zone covered by the plan (subclause 100I(2)(b)); and
- iv. if the participant is proposing changes to any offshore security zones established within or around the facility, then the participant’s offshore security zone must be accompanied by information on the proposed changes (subclause 100I(2)(c)).

Item 28 – Division 5 of Part 5A (heading)

Item 28 repeals the heading of Division 5 of Part 5A and replaces it with a new heading to reflect the amendment proposed in Item 33 below, that a minor variation may be made to a plan without submitting a revised plan. The new heading now reads, “Division 5 – Approving, varying, revising and cancelling offshore security plans”.

Item 29 – Section 100J

Item 29 repeals section 100J and replaces it with a new section which clarifies the process by which an offshore industry participant may request the Secretary to approve an offshore security plan.

Clause 100J Providing offshore security plans for approval

Subclause 100J(1) provides that if the participant requests that the Secretary approve an offshore security plan, the participant should give the Secretary a written notice requesting that the Secretary approve the accompanied offshore security plan.

Subclause 100J(2) provides that the written notice must be accompanied by a copy of the plan. The written notice requirement formalises the plan approval process and clarifies that the participant is requesting that the Secretary approve the offshore security plan.

Item 30 – Paragraph 100K(4)(b)

Item 30 is a consequential amendment following the amendments made in Item 31 below.

Item 31 – At the end of section 100K (after the note)

Item 31 inserts a new provision that enables the Secretary to request further information from an offshore industry participant during the plan approval period. This period is referred to as the “consideration period”.

Subclause 100K(5) provides that the Secretary may, by written notice given to the participant within the consideration period, request the participant to give the Secretary specified information relevant to the approval of the plan. It enables the Secretary to seek further information or clarification on material submitted by the participant, which the Secretary requires before being satisfied that the offshore security plan can be approved.

Subclause 100K(6) provides that the written notice given to the participant must specify a reasonable period within which the information that the Secretary has requested must be given to the Secretary.

Subclause 100K(7) provides a definition of the “consideration period”. The consideration period for the Secretary to approve an offshore security plan is the period of 90 days commencing on the day on which the Secretary receives the security plan. This 90 day period can be extended if the Secretary requests further information from the participant, as outlined in subclause 100K(5) above. The period is extended by the number of days that the participant is given to provide the requested information under subclause 100K(6), or if the participant provides the information in a shorter timeframe the number of days the participant took to respond.

The note at the end of Item 31 inserts the following heading to subsection 100K(4), “*Failure to approve plan within consideration period*”.

Item 32 – Paragraph 100L(3)(a)

Item 32 makes a consequential amendment to reflect the amendments made in items 34 and 37 below.

Item 33 – After section 100L

Item 33 amends Division 5 of Part 5A by adding a new provision. The provision enables an offshore industry participant to make changes to the offshore security plan that is in force, without submitting a revised plan. Any proposed variations to an existing plan are to be set out in a written notice given to the Secretary; the plan is not required to be submitted in a request for variation by the participant. A variation to an offshore security plan will not affect the 5 year life of an existing plan that is in force. The clause aims to introduce a simpler process for making minor changes to security plans.

Clause 100LA Offshore industry participant may submit variations to offshore security plans

Subclause 100LA(1) provides that an offshore industry participant may by written notice to the Secretary request the Secretary to vary an offshore security plan that is in force.

Subclause 100LA(2) provides that the participant must set out the proposed variation in the notice. The participant will not be required to submit the entire existing plan with the variations proposed.

Subclause 100LA(3) provides that a variation of an offshore security plan that affects offshore security zone boundaries must be accompanied by certain maps to illustrate the affected area. Note that there is no provision for establishing a security zone if one doesn't already exist as this would be a change that would warrant undergoing the existing full plan revision process

Subclause 100LA(4) provides that if the Secretary is satisfied that the plan, as varied, would continue to adequately address the relevant requirements under Division 4, the Secretary must approve the variation and give the participant written notice of the approval.

Subclause 100LA(5) provides that if the Secretary is not satisfied that the plan, as varied, would adequately address the relevant requirements under Division 4, the Secretary must refuse to approve the variation and give the participant written notice of the refusal including reasons for the refusal.

Subclause 100LA(6) provides that in determining whether the plan, as varied, would adequately address the relevant requirements under Division 4, the Secretary may take account of existing circumstances as they relate to the security of maritime transport and offshore facilities. The test for approving, or refusing to approve, the variation is the same as for a revised plan, and the nature of the variation will determine the level of scrutiny needed to be given to the plan as a whole in order for the Secretary to approve, or refuse to approve, the variation.

Subclause 100LA(7) provides that if the Secretary does not approve, or refuses to approve, the variation proposed by the offshore industry participant within the consideration period, then the Secretary is taken to have refused to approve the variation.

The note under subclause 100LA(7) enables the offshore industry participant to apply to the Administrative Appeals Tribunal for a review of a decision to refuse to approve a variation under subclause (5) or (7), in accordance with section 201 (see Item 44 below).

Subclause 100LA(8) provides that the Secretary may, by written notice given to the participant within the consideration period, request the participant to give the Secretary specified information relevant to the approval of the variation. The provision enables the Secretary to seek further information or clarification on material submitted by the participant, which the Secretary requires before being satisfied that the variation can be approved.

Subclause 100LA(9) provides that the written notice given to the participant must specify a period of up to 45 days within which the information that the Secretary has requested must be given to the Secretary.

Subclause 100LA(10) provides a definition of the “consideration period”. The consideration period for the Secretary to approve the variation is the period of 60 days commencing on the day on which the Secretary receives the notice that sets out the proposed variation. This 60 day period can be extended if the Secretary requests further information from the participant, as outlined in subclause 100LA(8) above. The period is extended by the number of days that the participant is given to provide the requested information under subclause 100LA(9), or if the participant provides the information in a shorter timeframe the number of days the participant took to respond.

Item 34 – Section 100N

Item 34 repeals the section and replaces it with a new section 100N.

Clause 100N Participants may revise offshore security plans

Subclause 100N(1) provides that merely giving a copy of an offshore security plan to the Secretary does not, of itself, constitute giving the Secretary a revised plan to approve. The subclause clarifies that if a participant has given the Secretary an offshore security plan, and the participant requests the Secretary to approve another offshore security plan (not the existing plan that is currently in force), then the participant should give written notice to the Secretary, requesting the Secretary to approve another offshore security plan (the *revised plan*).

Subclause 100N(2) provides that the notice must be accompanied by a copy of the revised plan.

Subclause 100N(3) provides the machinery that allows a revised plan to be approved under section 100K, and to come into force under section 100L in place of the old plan. It provides that if the request is made in accordance with clause 100N (that is, a participant gives the Secretary written notice that is accompanied by a copy of the revised plan, requesting the Secretary to approve the revised plan), then the Secretary must approve the revised plan in accordance with the requirements set out in section 100K, and the approved revised plan comes into force in accordance with the requirements set out in section 100L.

Subclause 100N(4) provides that if the revised plan comes into force, it replaces any other plan in force at that time, and will remain in force until it is cancelled after 5 years in accordance with Item 38 below, or unless it is replaced by another revised plan (under section 100N or 100O) or the plan is cancelled (see for example, sections 100Q, 100R, 100S and 100T).

Item 35 – Subsection 100O(1)

Item 35 is a consequential amendment to reflect the amendment made in subclause 100N(1) in Item 34 above.

Item 36 – After subsection 100O(2)

The Secretary may direct a participant to revise an offshore security plan in accordance with the requirements in section 100O. Item 36 inserts subclause 100O(2A) that provides if a participant gives the Secretary the revised plan within the specified period, or within any further period allowed by the Secretary, sections 100K and 100L apply in relation to the revised plan. The subsection provides the machinery to allow a revised plan to be approved under section 100K, to come into force under section 100L and to replace the old plan. This means that the Secretary must approve the revised plan in accordance with the requirements set out in section 100K, and the approved revised plan comes into force in accordance with the requirements set out in section 100L.

Item 37 – At the end of section 100O

Item 37 inserts subclause 100O(4) and provides that if the revised plan comes into force, it replaces any other plan in force at that time. It will remain in force until it is cancelled after 5 years in accordance with the amendment in Item 38 below, or unless it is replaced by another revised plan (under section 100N or 100O) or the plan is cancelled (see for example, sections 100Q, 100R, 100S and 100T).

Item 38 – Clause 100P

A maritime security plan for a maritime industry participant is cancelled 5 years after it comes into force, if it has not already ceased to be in force during that period.

Plans are to be cancelled after 5 years to ensure that the plan that is in force is current, by requiring an updated plan to be submitted to replace the cancelled one.

Item 39 – After subsection 102(2)

The Secretary establishes port security zones following proposals made to the Secretary in a maritime security plan. Item 39 inserts subclause 102(2A) to provide that if the Secretary has given a notice to a maritime industry participant approving a maritime security plan under paragraph 51(1)(b), and that security plan is accompanied by a map showing the port security zones proposed to be established, the Secretary is taken to have given the port operator a notice establishing the port security zones as proposed in the plan.

Item 40 – After subsection 113A(2)

The Secretary establishes offshore security zones following proposals made to in an offshore security plan or in a notice requesting a plan variation. Item 40 inserts subclauses 113A(2A) to provide that if the Secretary has given a notice to an offshore industry participant approving an offshore security plan under paragraph 100K(1)(b), and that security plan is accompanied by information on the offshore security zones proposed to be established within

or around the facility, the Secretary is taken to have given the offshore facility operator a notice establishing the offshore security zones as proposed in the plan.

Item 40 also inserts subclause 113A(2B) to provide that if the Secretary has given a notice to an offshore industry participant approving a plan variation under paragraph 100LA(4)(b), and the notice requesting the variation is accompanied by information on the offshore security zones proposed to be established within or around the facility, the Secretary is taken to have given the offshore facility operator a notice establishing the offshore security zones as proposed in the information accompanying the notice to the Secretary.

Item 41 – After paragraph 201(a)

Item 41 inserts a new paragraph 201(aa) as a consequential amendment to items 8, 20 and 33 above. A maritime industry participant may apply to the Administrative Appeals Tribunal for a review of a decision by the Secretary to refuse to approve a variation to a maritime security plan under subclause 52A(4) or (6) in Item 8 above, a ship security plan under subclause 71A(4) or (6) in Item 20 above, or an offshore security plan under subclause 100LA(4) or (6) in Item 33 above.

Part 2 – Application

Item 42 – Application

Item 42 sets out in detail the commencement of certain provisions as they apply to maritime, ship and offshore security plans.

1. The amendments made by items 1, 2, 5 and 6 apply to a maritime security plan for a maritime industry participant given to the Secretary under section 50, 54 or 55 after the commencement of this item.
2. The amendments made by items 14, 17 and 18 apply to a ship security plan for a regulated Australian ship given to the Secretary under section 69, 73 or 74 after the commencement of this item.
3. The amendments made by items 26, 27, 30 and 31 apply to an offshore security plan for an offshore industry participant given to the Secretary under section 100J, 100N or 100O after the commencement of this item.
4. The amendments made by item 39 applies to a maritime security plan in relation to which a notice is given approving the plan under paragraph 51(1)(b) after the commencement of this item.
5. The amendment made by item 40 applies to an offshore security plan in relation to which a notice is given approving the plan under paragraph 100K(1)(b) after the commencement of this item.
6. The amendment made by item 41 applies in relation to a maritime transport security incident that occurs after the commencement of this item.

Schedule 2 – Technical amendments relating to legislative instruments

Air Navigation Act 1920

Item 1 – Subsection 15A(3)

The removal of the words ‘by writing’ is intended to create consistency with the language of the LIA. The determination made by the Secretary under this provision is a legislative instrument and would be subject to the requirement for registration of all legislative instruments on the Federal Register of Legislative Instrument (‘FRLI’).

Item 2 – Subsection 15A(8)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA. This item also makes it clear that a determination under this provision is a legislative instrument.

Part 6 of the LIA provides for sunseting or automatic ceasing of all non-exempt legislative instruments. Exemptions to sunseting are provided for by section 54 of the LIA. This provision is exempt from sunseting as it is included in the table in subsection 54(2) of the LIA. The amendment to this provision, to explicitly state that Part 6 of the LIA does not apply, is merely clarificatory of the existing status of the instrument.

Airports Act 1996

Item 3 – Section 191

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

This item also makes it clear that a determination under this provision is a legislative instrument. All legislative instruments are subject to the requirement for registration on FRLI.

Item 4 – Subsection 198(2)

This item provides that a declaration by the Minister under this provision is made by legislative instrument. As the declaration is a legislative instrument, there is a requirement for registration on FRLI.

Item 5 – After subsection 198(2)

For this particular legislative instrument it was considered that there would be value in retaining the requirement of gazettal. Therefore this provision has been inserted to specify that publication in the *Gazette* is required in addition to registration.

Item 6 – Subsection 198(4)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 7 – Subsection 201(2)

The removal of the word ‘written’ is intended to create consistency with the language of the LIA.

This item also makes it clear that a scheme formulated by the Minister under this provision is a legislative instrument. All legislative instruments are subject to the requirement for registration on FRLI.

Item 8 – Subsection 201(4)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Australian Capital Territory (Self-Government) Act 1988

Item 9 – Section 32

This item is a technical amendment to remove references to the *Statutory Rules Publication Act 1903* which has been repealed.

Item 10 – Subsection 35(2)

The removal of the words ‘by written instrument’ is intended to create consistency with the language of the LIA.

This item also makes it clear that a disallowance of an enactment by the Governor-General under this provision is a legislative instrument. All legislative instruments are subject to the requirement for registration on FRLI.

Item 11 – Subsection 35(3)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Australian Capital Territory Tax (Transfers of Marketable Securities) Act 1986

Item 12 – Subsection 7(1)

This item is a technical amendment and removes the numbering of this sub-paragraph because it will remain the only paragraph within section 7.

Item 13 – Subsection 7(2)

This item removes the requirement that references to a date specified in subsection 48(1)(b) of the *Acts Interpretation Act 1901*, be applied to decisions under section 7 as including references to a time. The requirement is no longer needed as section 12 of the LIA which succeeds paragraph 47(1)(b) of the *Acts Interpretation Act 1901*, provides for references to time as well as dates.

Aviation Transport Security Act 2004

Item 14 – Subsection 107(1)

This item provides that a determination by the Secretary under this provision is made by legislative instrument. As the determination is a legislative instrument, there is a requirement for registration on FRLI.

Item 15 – Subsection 107(2)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Carriage of Goods by Sea Act 1991**Item 16 – Section 9A**

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

This item also makes it clear that a determination under this provision is a legislative instrument. All legislative instruments are subject to the requirement for registration on FRLI.

Part 6 of the LIA provides for sunseting or automatic ceasing of all non-exempt legislative instruments. Exemptions to sunseting are provided for by section 54 of the LIA. Determinations under section 9A are exempt from sunseting as they are included in the table in subsection 54(2) of the LIA. The amendment to this provision, to explicitly state that Part 6 of the LIA does not apply, is merely clarificatory of the existing status of the instrument.

Civil Aviation Act 1988**Item 17 – Subsection 98(4A)**

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA. The Civil Aviation Orders made by the Civil Aviation Safety Authority under this provision are legislative instruments and are subject to the requirement for registration of all legislative instruments on FRLI.

Item 18 – Subsection 98(4A)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 19 – After subsection 98(4A)

This item makes it clear that an order under this provision is a legislative instrument. All legislative instruments are subject to the requirement for registration on FRLI.

This item also clarifies the status of subordinate instruments mentioned in section 98 that are already not subject to sunseting. Part 6 of the LIA provides for sunseting or automatic ceasing of all non-exempt legislative instruments. Exemptions to sunseting are provided for by section 54 of the LIA. These subordinate instruments are exempt from sunseting as they are included in the table in subsection 54(2) of the LIA. The amendment to this provision, to explicitly state that Part 6 of the LIA does not apply, is merely clarificatory of the existing status of the instrument.

Item 20 – Subsection 98(5)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

This item also makes it clear that an order under this provision is a legislative instrument. All legislative instruments are subject to the requirement for registration on FRLI.

Part 6 of the LIA provides for sunseting or automatic ceasing of all non-exempt legislative instruments. Exemptions to sunseting are provided for by section 54 of the LIA. These subordinate instruments are exempt from sunseting as they are included in the table in subsection 54(2) of the LIA. The amendment to this provision, to explicitly state that Part 6 of the LIA does not apply, is merely clarificatory of the existing status of the instrument.

Item 21 – Subsection 98(5A)

The removal of the word ‘written’ is intended to create consistency with the language of the LIA. The instruments issued by the Civil Aviation Safety Authority under this provision are legislative instruments and are subject to the requirement for registration of all legislative instruments on FRLI.

Item 22 – Subsection 98(5B)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

This item also makes it clear that an instrument issued under subsection 98(5A) is a legislative instrument. All legislative instruments are subject to the requirement for registration on FRLI.

Part 6 of the LIA provides for sunseting or automatic ceasing of all non-exempt legislative instruments. Exemptions to sunseting are provided for by section 54 of the LIA. Instruments issued under subsection 98(5A) are exempt from sunseting as they are included in the table in subsection 54(2) of the LIA. The amendment to this provision, to explicitly state that Part 6 of the LIA does not apply, is merely clarificatory of the existing status of the instrument.

International Air Services Commission Act 1992

Item 23 – Subsection 11(1)

The removal of the words ‘instrument in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that policy statements formulated by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 24 – Subsection 11(5)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 25 – Subsection 54(2)

The removal of the words ‘instrument in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that declarations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 26 – Subsection 54(6)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 27 – Subsection 54A(2)

The removal of the words ‘declare in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that declarations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 28 – Subsection 54A(5)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 29 – Subsection 54B(2)

The removal of the words ‘instrument in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that declarations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 30 – Subsection 54B(5)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Interstate Road Transport Act 1985

Item 31 – Section 34

The removal of the words ‘by order in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that declarations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 32 – Section 35

This item is a technical amendment to remove references to the *Statutory Rules Publication Act 1903* which has been repealed.

This item also removes references to section 48, 48(A), 48(B), 4, 49A and 50 of the *Acts Interpretation Act 1901*.

Local Government (Financial Assistance) Act 1995

Item 33 – Subsection 6(1)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA. The national principles formulated by the Minister under this provision are legislative instruments and are subject to the requirement for registration of all legislative instruments on FRLI.

Item 34 – Subsection 6(4)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA. The national principles as varied or revoked by the Minister are legislative instruments and are subject to the requirement for registration of all legislative instruments on FRLI.

Item 35 – Subsection 6(6)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

This item also makes it clear that a national principle under this provision is a legislative instrument. All legislative instruments are subject to the requirement for registration on FRLI.

Part 6 of the LIA provides for sunseting or automatic ceasing of all non-exempt legislative instruments. Exemptions to sunseting are provided for by section 54 of the LIA. National principles and variations and revocations of national principles under subsection 6(1) and subsection 6(4) are exempt from sunseting as they fall within the exemption provided by 54(1) of the LIA. The amendment to this provision, to explicitly state that Part 6 of the LIA does not apply, is merely clarificatory of the existing status of the instrument.

Section 42 in Part 5 of the LIA provides for disallowance of legislative instruments. National principles and variations and revocations of national principles under subsection 6(1) and subsection 6(4) are exempt from disallowance because of subsection 44(1) of the LIA. The amendment to this provision, to explicitly state that section 42 does not apply, is merely clarificatory of the existing status of the instrument.

Maritime Transport and Offshore Facilities Security Act 2003

Item 36 – Subsection 182(1)

This item provides that a determination by the Secretary under this provision is made by legislative instrument. As the determination is a legislative instrument, there is a requirement for registration on FRLI.

Item 37 – Subsection 182(2)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Motor Vehicle Standards Act 1989

Item 38 – Subsection 5B(1)

The removal of the words ‘determine in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 39 – Subsection 5B(3)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 40 – Subsection 5B(4)

This item has been added to clarify that declarations under subsection 5B(2) are not legislative instruments but the requirements of notice by publication in the *Gazette* have been retained.

Item 41 – Subsection 7(1)

The removal of the words ‘The Minister may determine, in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 42 – At the end of subsection 7(1)

This item introduces a note to clarify the existing status of determinations made by the Minister under subsection 7(1) as not being subject to sunseting. Part 6 of the LIA provides for sunseting or automatic ceasing of all non-exempt legislative instruments. Exemptions to sunseting are provided for by section 54 of the LIA. These determinations are exempt from sunseting as they are included in the table in subsection 54(2) of the LIA.

Item 43 – Subsection 7(2)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 44 – Subsection 7A(1)

This item is a technical amendment and removes the numbering of this sub-paragraph as it will remain the only paragraph within section 7A.

Item 45 – Paragraph 7A(1)(a)

This item is a technical amendment and replaced the reference to Standards Association of Australia with a reference to Standards Australia International Limited. This amendment is intended to reflect the change in name that occurred on 1 July 1999, when Standards Association of Australia (trading as Standard Australia) became registered as a company limited by guarantee, and at that time had its name changed to Standards Australia International Limited.

Item 46 – Subsection 7A(2)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 47 – Subsection 9(1)

The removal of the words ‘(T)he Minister may determine, in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 48 – At the end of subsection 9(1)

This item introduces a note to clarify the existing status of determinations made by the Minister under subsection 9(1) as not being subject to sunseting. Part 6 of the LIA provides for sunseting or automatic ceasing of all non-exempt legislative instruments. Exemptions to sunseting are provided for by section 54 of the LIA. These determinations are exempt from sunseting as they are included in the table in subsection 54(2) of the LIA.

Item 49 – Subsection 9(2)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 50 – Subsection 10(1)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA. Determinations made by the Minister under this provision are legislative instruments and are subject to the requirement for registration of all legislative instruments on FRLI.

Item 51 – Subsection 10(2)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA. Determinations made by the Minister under this provision are legislative instruments and are subject to the requirement for registration of all legislative instruments on FRLI.

Item 52 – Subsection 10(3)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

This item also makes it clear that determinations under section 10 are a legislative instrument. All legislative instruments are subject to the requirement for registration on FRLI.

Item 53 – Subsection 13B(1)

The removal of the word ‘writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 54 – Subsection 13B(4)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 55 – Subsection 13D(2)

The removal of the words ‘by writing’ is intended to create consistency with the language of the LIA. Determinations made by the Minister under this provision are legislative instruments and would be subject to the requirement for registration of all legislative instruments on FRLI.

Item 56 – Subsection 13D(3)

The removal of the word ‘writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 57 – Subsection 13D(8)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 58 – Subsection 21B(2)

The removal of the words ‘writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 59 – Subsection 21B(5)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Navigation Act 1912

Item 60 – Paragraph 138(3)(b)

This item is a technical amendment to remove references to the *Statutory Rules Publication Act* 1903 which has been repealed.

Item 61 – Subsection 267ZC(3)

This item is a technical amendment to remove references to section 426 of the *Navigation Act* 1912 which has been repealed.

Item 62 – Subsection 425(1AA)

This item requires that orders made by the Authority be made by way of legislative instrument. Legislative instruments are required to be registered on the FRLI and therefore the orders made by the Authority are subject to the requirement of registration.

Item 63 – At the end of subsection 425(1AA)

This item introduces a note to clarify the existing status of orders made by the Authority under subsection 425(1AA) as not being subject to sunseting. Part 6 of the LIA provides for sunseting or automatic ceasing of all non-exempt legislative instruments. Exemptions to sunseting are provided for by section 54 of the LIA. These orders are exempt from sunseting as they are included in the table in subsection 54(2) of the LIA.

Item 64 – Subsections 425(1A) and (6)

This item removes subsection 425(1A) on the basis that the provision is no longer necessary because section 12 of the LIA provides for references to time as well as dates.

This item also removes subsection 425(6) so as to remove references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 65 – Subsection 425(6A)

This item replaces references to section 49A of the Acts Interpretation Act 1901, with references to section 14 of the LIA.

Item 66 – Subsection 425(6A)

This item is a technical amendment to remove references to section 426 of the *Navigation Act 1912* which has been repealed.

Item 67 – Subsection 425(7)

This item replaces references to section 49A of the Acts Interpretation Act 1901, with references to section 14 of the LIA.

Protection of the Sea (Prevention of Pollution from Ships) Act 1983

Item 68 – Subsection 34(1)

This item requires that orders made by the Authority be made by way of legislative instrument. Legislative instrument are required to be registered on FRLI and therefore the orders are subject to the requirement of registration.

Item 69 – At the end of subsection 34(1)

This item introduced a note to clarify the status of orders made by the Authority under subsection 34(1) as not being subject to sunseting. Part 6 of the LIA provides for sunseting or automatic ceasing of all non-exempt legislative instruments. Exemptions to sunseting are provided for by section 54 of the LIA. These orders are exempt from sunseting as they are included in the table in subsection 54(2) of the LIA.

Item 70 – Subsections 34(2) and (7)

This item removes references to sections 46A and 49A of the *Acts Interpretation Act 1901*. Section 46A provided for the disallowance of delegated legislation and provisions dealing with disallowance are now contained in the LIA. Section 49A provided that regulations may not ordinarily provide for a matter by incorporating an external document as in force from time to time.

Item 71 – Subsections 34(8)

This item replaces references to section 49A of the Acts Interpretation Act 1901, with references to section 14 of the LIA.

Ships (Capital Grants) Act 1987

Item 72 – Subsection 18(8)

The removal of the word ‘writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 73 – Subsection 18(9)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Sydney Airport Curfew Act 1995

Item 74 – Subsection 15(1)

This item is a technical amendment to reflect the amendment to subsection 15(2). Subsection 15(2) requires that instead of by notice published in the *Gazette*, the Minister is to specify types of aircrafts by legislative instrument.

Item 75 – Subsection 15(2)

This item replaces the requirement of a notification by publication in the *Gazette* with a requirement that a legislative instrument be made when the Minister specifies types of aircrafts under this subsection. Legislative instrument are required to be registered on FRLI and therefore this item replaces the requirement of gazettal with a requirement of registration.

Item 76 – Subsection 15(5)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 77 – Subsection 15(6)

This item is a technical amendment to reflect the amendment to subsection 15(2). Subsection 15(2) requires that instead of by notice published in the *Gazette*, the Minister is to specify types of aircrafts by legislative instrument.

Item 78 – Subsection 15(7)

This item is a technical amendment to reflect the amendment to subsection 15(2). Subsection 15(2) requires that instead of by notice published in the *Gazette*, the Minister is to specify types of aircrafts by legislative instrument.

Item 79 – Subsection 20(5)

This item is a technical amendment to remove references to subsection (6) and (7) because of the proposed repeal of subsection (6) and the duplication of subsection (7) with paragraph 1(a) of the schedule.

The removal of the words ‘The Minister must, in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that guidelines made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 80 – Subsection 20(6)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 81 – Paragraph 1(a) of the Schedule

This item is a technical amendment to reflect the amendment to subsection 15(2). Subsection 15(2) requires that instead of by notice published in the Gazette, the Minister is to specify types of aircrafts by legislative instrument.

Item 82 – Clause 7 of the Schedule

This item is a technical amendment to reflect the amendments to subsection 15(2) and 20(5). 15(2) requires that instead of by notice published in the Gazette, the Minister is to specify types of aircrafts by legislative instrument and subsection 20(5) would require that guidelines are made by legislative instrument.

Sydney Airport Demand Management Act 1997

Item 83 – Subsection 7(1)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 84 – Subsection 7(2)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 85 – Subsection 36(1)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 86 – Subsection 36(3)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 87 – Subsection 40(2)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 88 – Subsection 40(3)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 89 – Subsection 44(2)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 90 – Subsection 44(3)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 91 – Subsection 50(1)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 92 – Subsection 50(3)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 93 – Subsection 54(2)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 94 – Subsection 54(3)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 95 – Subsection 58(2)

The removal of the words ‘in writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 96 – Subsection 58(3)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Trade Practices Act 1974

Item 97 – Subsection 10.02A(1)

The removal of the word ‘writing’ is intended to create consistency with the language of the LIA.

This item also makes it clear that declarations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 98 – Subsection 10.02A(6)

This item removes references to section 46A of the *Acts Interpretation Act* 1901, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Item 99 – Subsections 10.03(1), (2), (2A), (2B) and (5)

This item requires that declarations made under subsections 10.03(1), (2), (2A) and (2B) and guidelines made under subsections 10.03(5) by the Minister be made by way of legislative instrument. Legislative instrument are required to be registered on FRLI and therefore the orders are subject to the requirement of registration.

Item 100 – Subsection 10.03(7)

This subsection is being repealed as the requirement that the declarations be legislative instruments, which are disallowable, is now provided for in subsections 10.03(1), (2), (2A) (2B) and (5) as amended.

Item 101 – Subsection 10.72A(1)

The removal of the words ‘make a written order’ is intended to create consistency with the language of the LIA.

This item also makes it clear that determinations made by the Minister under this provision are legislative instruments. All legislative instruments are subject to the requirement for registration on FRLI.

Item 102 – Subsection 10.72A(1) (note)

This item replaces references to section 46(2) of the *Acts Interpretation Act* 1901, with references to section 13(3) of the LIA.

Item 103 – Subsection 10.72A(3)

This item removes references to section 46A of the *Acts Interpretation Act 1901*, which provided for the disallowance of delegated legislation, as provisions dealing with disallowance are now contained in the LIA.

Schedule 3 – Amendment of the Customs Act 1901

Customs Act 1901

Item 1 – Paragraphs 15(1A)(a) and (b)

The reference to the Maritime Transport Security Act 2003 in paragraphs 15(1A)(a) and (b) were not updated when the short title of the Act changed in 2005. Item 1 provides an update to those references so that the relevant paragraphs refer to the “*Maritime Transport and Offshore Facilities Security Act 2003*”