



Maritime Transport Security Act 2003

No. 131, 2003

**An Act to safeguard against unlawful interference
with maritime transport, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
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Contents

Part 1—Preliminary	2
Division 1—Short title and commencement	2
1 Short title.....	2
2 Commencement.....	2
Division 2—Purpose and simplified overview of this Act	5
3 Purpose of this Act	5
4 Simplified overview of this Act.....	5
Division 3—Application	8
5 Extension to Territories	8
6 Geographical jurisdiction	8
7 Act to bind Crown	8
8 Operation of State and Territory laws.....	8
9 Act not to apply to state ships etc.	8
Division 4—Definitions	10
10 Definitions.....	10
Division 5—Unlawful interference with maritime transport	19
11 Meaning of <i>unlawful interference with maritime transport</i>	19
Division 6—Security regulated ports and port operators	20
12 Meaning of <i>port</i>	20
13 Security regulated ports	20
14 Port operators	20
Division 7—Security regulated ships	22
15 Meaning of <i>security regulated ship</i>	22
16 Meaning of <i>regulated Australian ship</i>	22
17 Meaning of <i>regulated foreign ship</i>	22
Division 8—General defences	24
18 General defences	24
Division 9—Communicating with ship operators	26
19 Communicating with ship operators.....	26
Part 2—Maritime security levels and security directions	27
Division 1—Simplified overview of Part	27
20 Simplified overview of Part.....	27
Division 2—Maritime security levels 1, 2 and 3	28
21 Default security level—maritime security level 1	28

22	Secretary may declare maritime security level 2 or 3	28
23	When a maritime security level is in force	29
24	Maritime security level declaration for a port covers all port operations	29
25	Security levels and complying with plans	29
26	Maritime security level 1, 2 or 3 applies with security directions	30
Division 3—Notifying maritime security level 2 and 3 declarations and revocations		31
27	Notifying declarations covering security regulated ports	31
28	Notifying declarations covering security regulated ships	32
29	Notifying declarations covering areas within security regulated ports	32
30	Notifying declarations covering maritime industry participants	32
31	Notifying revocations	32
32	Requirements for giving notice	33
Division 4—Security directions		34
33	Secretary may give security directions	34
34	Confidentiality requirements	34
35	Persons to whom security directions may be given	34
36	Secretary may give security directions to security regulated ships.....	35
37	When a security direction is in force	36
38	Revoking security directions	36
39	Failure to comply with security directions.....	37
40	Failure to comply with confidentiality requirements	38
Part 3—Maritime security plans		39
Division 1—Simplified overview of Part		39
41	Simplified overview of Part.....	39
Division 2—Maritime industry participants required to have maritime security plans		40
42	Who must have maritime security plans.....	40
43	Offence—operating without a maritime security plan.....	40
44	Offence—failing to comply with maritime security plan	40
Division 3—Complying with other plans		42
45	Complying with maritime security plans of other participants	42
46	Australian regulated ships must not hinder or obstruct compliance with maritime security plans	43

Division 4—Content and form of maritime security plans	44
47 Content of maritime security plans	44
48 Prescribed content for maritime security plans	44
49 Form of maritime security plans	44
Division 5—Approving, revising and cancelling maritime security plans	46
50 Providing maritime security plans for approval	46
51 Approval of maritime security plans	46
52 When a maritime security plan is in force	47
53 Secretary may direct variations of maritime security plans	47
54 Participants may revise maritime security plans	48
55 Secretary may direct participants to revise maritime security plans	48
56 Maritime security plans must be revised every 5 years	49
57 Cancelling inadequate maritime security plans	49
58 Cancelling for failure to comply with maritime security plans	49
59 Cancelling maritime security plans on request	50
Part 4—Ship security plans and ISSCs	51
Division 1—Simplified overview of Part	51
60 Simplified overview of Part	51
Division 2—Ships required to have ship security plans	52
61 Which ships must have ship security plans	52
62 Offence—operating without a ship security plan	52
63 Offence—failing to comply with ship security plan	52
Division 3—Complying with other plans	54
64 Complying with ship security plans of other ships	54
65 Maritime industry participants must not hinder or obstruct compliance with ship security plans	54
Division 4—Content and form of ship security plans	55
66 Content of ship security plans	55
67 Prescribed content for ship security plans	55
68 Form of ship security plans	55
Division 5—Approving, revising and cancelling ship security plans	56
69 Providing ship security plans for approval	56
70 Approval of ship security plans	56
71 When a ship security plan is in force	57
72 Secretary may direct variations of ship security plans	57

73	Ship operator may revise ship security plan	58
74	Secretary may direct operator to revise ship security plan.....	58
75	Ship security plans must be revised every 5 years.....	59
76	Cancelling inadequate ship security plans	59
77	Cancelling for failure to comply with ship security plan.....	59
78	Cancelling ship security plans on request.....	60
Division 6—International ship security certificates		61
79	Which ships must have ISSCs	61
80	Offence—operating without an ISSC	61
81	Applying for an ISSC	61
82	Conditions for giving an ISSC.....	61
83	ISSC verification	62
84	When an ISSC is in force	62
85	Cancelling ISSCs.....	62
86	Interim ISSCs	63
87	Offence—false or misleading statements in relation to having an ISSC.....	63
Division 7—Recognised security organisations		65
88	Secretary may delegate powers and functions under this Part	65
89	Recognised security organisations may conduct ISSC inspections.....	65
Part 5—Regulated foreign ships		66
Division 1—Simplified overview of Part		66
90	Simplified overview of Part.....	66
Division 2—Obligations on regulated foreign ships		67
91	Regulated foreign ships must have ISSCs	67
92	Regulated foreign ships must provide pre-arrival information	67
93	Regulated foreign ships must allow inspections etc.	68
94	Regulated foreign ships must comply with security levels	68
95	Meaning of <i>ISPS level 1, 2 and 3 measures</i>	69
96	Regulated foreign ships must comply with security directions	70
97	Complying with maritime and ship security plans.....	70
98	Acknowledging level notifications and directions.....	70
Division 3—Control directions		72
99	Secretary may give control directions	72
100	Enforcing control directions	73

Part 6—Maritime security zones	74
Division 1—Simplified overview of Part	74
101 Simplified overview of Part.....	74
Division 2—Port security zones	75
102 Establishing port security zones	75
103 Types of port security zones.....	75
104 Matters to be considered in establishing port security zones	76
105 Requirements for port security zones	76
Division 3—Ship security zones	78
106 Declaring ship security zones	78
107 Types of ship security zones.....	78
108 Matters to be considered in declaring ship security zones	79
109 Requirements for ship security zones	79
Division 4—On-board security zones	81
110 Establishing on-board security zones	81
111 Types of on-board security zones	81
112 Matters to be considered in establishing on-board security zones.....	81
113 Requirements for on-board security zones	82
Part 7—Other security measures	83
Division 1—Simplified overview of Part	83
114 Simplified overview of Part.....	83
Division 2—Screening and clearing	84
115 Screening and clearing people	84
116 Screening and clearing goods	85
117 Screening and clearing vehicles.....	86
118 Screening and clearing vessels	87
119 Requirements for screening and clearing.....	88
Division 3—Weapons	91
120 Weapons in maritime security zones	91
121 Carrying weapons through a screening point.....	92
122 Weapons on board regulated Australian ships—strict liability.....	92
123 Weapons on board regulated Australian ships—general	93
124 Failure to comply with conditions	93
125 Secretary may permit by class	94
126 Other weapons requirements	94

Division 4—Prohibited items	96
127 Prohibited items in maritime security zones	96
128 Carrying prohibited items through a screening point.....	97
129 Prohibited items on board regulated Australian ships—strict liability	98
130 Prohibited items on board regulated Australian ships—general	98
131 Failure to comply with conditions	99
132 Secretary may permit by class	99
133 Other prohibited items requirements	99
Part 8—Powers of officials	101
Division 1—Simplified overview of Part	101
134 Simplified overview of Part.....	101
Division 2—Maritime security inspectors	102
135 Simplified overview of Division	102
136 Appointment.....	102
137 Identity cards	102
138 Maritime security inspector powers—ISSC verifications.....	103
139 Maritime security inspector powers—ships.....	103
140 When powers may be exercised—ships	104
141 Maritime security inspector powers—participants	105
142 When powers may be exercised—participants	106
143 Offence—hindering or obstructing a maritime security inspector	106
144 Ship inspection warrants.....	106
145 Ship inspection warrants by telephone, fax etc.....	107
Division 3—Duly authorised officers	110
146 Simplified overview of Division	110
147 Secretary may appoint duly authorised officers.....	110
148 Duly authorised officer powers—operational areas of ships	110
149 Offence—hindering or obstructing a duly authorised officer	111
Division 4—Law enforcement officers	112
150 Simplified overview of Division	112
151 Law enforcement officers.....	112
152 Access to ports by law enforcement officers	113
153 Stopping and searching people	113
154 Stopping and searching vehicles.....	114
155 Stopping and searching vessels	114
156 Requests to leave ships or zones.....	115

157	Removing people from ships or zones.....	116
158	Removing vehicles from zones.....	116
159	Removing vessels from zones	117
160	Other law enforcement powers not affected	117
Division 5—Maritime security guards		118
161	Simplified overview of Division	118
162	Maritime security guards	118
163	Maritime security guards’ power to physically restrain persons.....	118
Division 6—Screening officers		120
164	Simplified overview of Division	120
165	Screening officers	120
166	Screening powers.....	120
167	Screening officers’ power to physically restrain persons.....	121
168	Exercise of powers by screening officers	122
Part 9—Reporting maritime transport security incidents		123
Division 1—Simplified overview of Part		123
169	Simplified overview of Part.....	123
Division 2—Meaning of maritime transport security incident		124
170	Meaning of <i>maritime transport security incident</i>	124
Division 3—Certain people must report incidents		125
171	Port operators	125
172	Ship masters	125
173	Ship operators.....	126
174	Port facility operators	126
175	Persons with incident reporting responsibilities	127
176	Employees	128
Division 4—Reporting requirements		129
177	Reporting by port operators	129
178	Reporting by ship masters	130
179	Reporting by ship operators.....	130
180	Reporting by port facility operators.....	131
181	Reporting by persons with incident reporting responsibilities.....	131
Division 5—Form and content of reports		133
182	How reports are to be made.....	133

Part 10—Information-gathering	134
Division 1—Simplified overview of Part	134
183 Simplified overview of Part.....	134
Division 2—Secretary may require security compliance information	135
184 Secretary may require security compliance information.....	135
185 Self-incrimination.....	135
Part 11—Enforcement	137
Division 1—Simplified overview of Part	137
186 Simplified overview of Part.....	137
Division 2—Infringement notices	138
187 Infringement notices.....	138
Division 3—Enforcement orders for maritime industry participants	139
188 Simplified overview of Division	139
189 Secretary may make enforcement orders	139
190 Commencement and duration of enforcement orders	140
191 Reviews of enforcement orders	140
192 Notice of enforcement orders	140
193 Complying with enforcement orders	141
Division 4—Ship enforcement orders for regulated Australian ships	142
194 Simplified overview of Division	142
195 Ship enforcement orders—regulated Australian ships.....	142
196 Enforcing ship enforcement orders.....	143
Division 5—Injunctions	144
197 Injunctions.....	144
Division 6—Demerit points system	146
198 Demerit points system	146
199 Demerit points—maritime security plans	146
200 Demerit points—ship security plans.....	146
Part 12—Review of decisions	148
201 Review of decisions by Administrative Appeals Tribunal.....	148
Part 13—Miscellaneous	149
202 Delegation	149
203 Compensation for damage to electronic equipment.....	149

204	Compensation for acquisition of property	150
205	Compensation for unnecessary delay—paid by the Commonwealth	150
206	Compensation for inspection and detention—paid by ship operators or other persons.....	151
207	Saving of other laws	152
208	Severability—additional effect of Act.....	152
209	Regulations.....	153



Maritime Transport Security Act 2003

No. 131, 2003

**An Act to safeguard against unlawful interference
with maritime transport, and for related purposes**

[Assented to 12 December 2003]

The Parliament of Australia enacts:

Part 1 Preliminary

Division 1 Short title and commencement

Section 1

Part 1—Preliminary

Division 1—Short title and commencement

1 Short title

This Act may be cited as the *Maritime Transport Security Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Part 1 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 December 2003
2. Part 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 July 2004 (s 2(1); <i>Gazette</i> 2004, GN11)
3. Division 1 of Part 3	The day on which this Act receives the Royal Assent.	12 December 2003
4. Divisions 2 and 3 of Part 3	At the same time as the provision(s) covered by table item 2.	1 July 2004
5. Divisions 4 and 5 of Part 3	The day on which this Act receives the Royal Assent.	12 December 2003
6. Division 1 of Part 4	The day on which this Act receives the Royal Assent.	12 December 2003

Section 2

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
7. Divisions 2 and 3 of Part 4	At the same time as the provision(s) covered by table item 2.	1 July 2004
8. Divisions 4 and 5 of Part 4	The day on which this Act receives the Royal Assent.	12 December 2003
9. Sections 79 and 80	At the same time as the provision(s) covered by table item 2.	1 July 2004
10. Sections 81 to 87	The day on which this Act receives the Royal Assent.	12 December 2003
11. Division 7 of Part 4	The day on which this Act receives the Royal Assent.	12 December 2003
12. Part 5	At the same time as the provision(s) covered by table item 2.	1 July 2004
13. Sections 101 to 104	The day on which this Act receives the Royal Assent.	12 December 2003
14. Section 105	At the same time as the provision(s) covered by table item 2.	1 July 2004
15. Sections 106 to 108	The day on which this Act receives the Royal Assent.	12 December 2003
16. Section 109	At the same time as the provision(s) covered by table item 2.	1 July 2004
17. Sections 110 to 112	The day on which this Act receives the Royal Assent.	12 December 2003
18. Section 113	At the same time as the provision(s) covered by table item 2.	1 July 2004
19. Part 7	At the same time as the provision(s) covered by table item 2.	1 July 2004
20. Sections 134 to 138	The day on which this Act receives the Royal Assent.	12 December 2003
21. Section 139	At the same time as the provision(s) covered by table item 2.	1 July 2004
22. Section 140	The day on which this Act receives the Royal Assent.	12 December 2003

Part 1 Preliminary

Division 1 Short title and commencement

Section 2

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
23. Sections 141 and 142	At the same time as the provision(s) covered by table item 2.	1 July 2004
24. Sections 143 to 145	The day on which this Act receives the Royal Assent.	12 December 2003
25. Divisions 3 to 6 of Part 8	At the same time as the provision(s) covered by table item 2.	1 July 2004
26. Parts 9 to 11	At the same time as the provision(s) covered by table item 2.	1 July 2004
27. Parts 12 and 13	The day on which this Act receives the Royal Assent.	12 December 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

Division 2—Purpose and simplified overview of this Act

3 Purpose of this Act

- (1) The purpose of this Act is to safeguard against unlawful interference with maritime transport.
- (2) To achieve this purpose, this Act establishes a regulatory framework centred around the development of security plans for ships and other maritime transport operations.
- (3) The implementation of a security plan should make an appropriate contribution to the achievement of the maritime security outcomes.
- (4) The *maritime security outcomes* are as follows:
 - (a) Australia's obligations under Chapter XI-2 of the SOLAS Convention and the ISPS Code, including those with regard to the rights, freedoms and welfare of seafarers, are met;
 - (b) the vulnerability to terrorist attack of Australian ships, ports and other ships within Australia is reduced without undue disruption to trade;
 - (c) the risk that maritime transport is used to facilitate terrorist or other unlawful activities is reduced;
 - (d) security information is communicated effectively among maritime industry participants and government agencies with maritime transport security responsibilities.
- (5) It is not the purpose of this Act to prevent lawful advocacy, protest, dissent or industrial action that does not compromise maritime security.

4 Simplified overview of this Act

This Act establishes a scheme to safeguard against unlawful interference with maritime transport.

Part 2 provides for maritime security levels. The security measures to be implemented when different maritime security levels are in

Part 1 Preliminary

Division 2 Purpose and simplified overview of this Act

Section 4

force are set out in maritime security plans and ship security plans. Part 2 also provides for the Secretary to give security directions in special circumstances.

Part 3 deals with maritime security plans. Maritime industry participants who are required to have plans must comply with their plans.

Part 4 deals with ship security plans and ISSCs (International Ship Security Certificates). Regulated Australian ships must have both a ship security plan and an ISSC. These ships must be operated in compliance with their ship security plans and must continue to meet ISSC standards.

Part 5 puts obligations on regulated foreign ships. The Secretary can give control directions to regulated foreign ships to ensure that security standards are maintained.

Part 6 provides for the establishment of maritime security zones. Additional security requirements apply in these zones which can be established within ports, and on and around ships.

Part 7 deals with screening, weapons and prohibited items.

Part 8 sets out the powers of officials under this Act. These officials are maritime security inspectors, duly authorised officers, law enforcement officers, maritime security guards and screening officers.

Part 9 sets out reporting obligations in relation to certain maritime transport security incidents.

Part 10 allows the Secretary to require security compliance information from maritime industry participants.

Part 11 provides a range of enforcement mechanisms. These are infringement notices, enforcement orders, ship enforcement orders, injunctions and a demerit points system.

Part 12 provides for review of certain decisions by the Administrative Appeals Tribunal.

Part 13 deals with miscellaneous matters.

Division 3—Application

5 Extension to Territories

This Act extends to every external Territory.

6 Geographical jurisdiction

Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against this Act.

7 Act to bind Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown in right of the Commonwealth liable to be prosecuted for an offence.

8 Operation of State and Territory laws

This Act is not intended to exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

9 Act not to apply to state ships etc.

- (1) Unless the contrary intention appears, this Act does not apply to, or in relation to:
 - (a) a warship or other ship operated for naval, military, customs or law enforcement purposes by Australia or by a foreign state; or
 - (b) a ship (other than a ship covered by paragraph (a)) that is:
 - (i) owned, leased or chartered by, or otherwise in the operational control of, the Commonwealth, a State or a Territory; and
 - (ii) being used wholly for non-commercial activities; or

Section 9

- (c) a security regulated port, or a part of a port, at any time that the port, or the part of the port, is under the exclusive control of the Australian Defence Force.
- (2) A reference in this Act to a maritime industry participant does not include a reference to:
- (a) the Australian Defence Force; or
 - (b) the Australian Customs Service; or
 - (c) an Agency of the Commonwealth prescribed in the regulations.

Division 4—Definitions

10 Definitions

In this Act, unless the contrary intention appears:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

ADF member means a Member within the meaning of the *Defence Act 1903*.

Agency has the same meaning as in the *Public Service Act 1999*.

AMSA surveyor means a person appointed under section 190 of the *Navigation Act 1912*.

approved ISSC equivalent has the meaning given by subsection 91(3).

Australian ship has the same meaning as in the *Shipping Registration Act 1981*.

Australian waters means:

- (a) the territorial sea of Australia; and
- (b) the waters of the sea on the landward side of the territorial sea of Australia; and
- (c) the territorial sea of each external Territory; and
- (d) the waters of the sea on the landward side of the territorial sea of each external Territory; and
- (e) inland waters prescribed in regulations.

baggage means:

- (a) possessions of a passenger or crew member:
 - (i) that are carried, or intended to be carried, on board a ship; and
 - (ii) to which the passenger or crew member will have general access while on board the ship; and
- (b) possessions of a visitor to a ship:

- (i) that are taken, or intended to be taken, on board the ship; and
- (ii) to which the visitor will have general access while on board the ship.

cargo means goods, other than baggage or stores, that are transported, or intended to be transported, by ship.

cargo ship includes a tanker.

Note: A cargo ship may also be a passenger ship.

cleared:

- (a) in relation to a person, has the meaning given by subsection 115(3); and
- (b) in relation to goods, has the meaning given by subsection 116(3); and
- (c) in relation to a vehicle, has the meaning given by subsection 117(3); and
- (d) in relation to a vessel, has the meaning given by subsection 118(3).

cleared area means an area that, under regulations made under Part 6 or 7, may be entered only by persons who have received clearance.

confidentiality requirements has the meaning given by subsection 34(2).

control direction has the meaning given by subsection 99(2).

crew, in relation to a ship, includes any person employed on the ship.

critical installation has the meaning given by subsection 103(3).

customs officer means an Officer within the meaning of the *Customs Act 1901*.

damage, in relation to data, includes damage by erasure of data or addition of other data.

Section 10

declaration of security means an agreement reached between a ship and another party (a ship or person), that identifies the security activities or measures that each party will undertake or implement in specified circumstances.

duly authorised officer means a person appointed under section 147.

employee, in relation to a maritime industry participant, means an individual:

- (a) employed by the maritime industry participant; or
- (b) engaged under a contract for services between the individual and the maritime industry participant.

enforcement order means an order made under section 189.

engage in conduct has the same meaning as in the *Criminal Code*.

Federal Court means the Federal Court of Australia.

foreign ship means a ship that is not an Australian ship.

frisk search has the same meaning as in the *Crimes Act 1914*.

immigration officer means an officer within the meaning of the *Migration Act 1958*.

inland waters means waters within Australia other than waters of the sea.

interim ISSC means an interim ISSC given under section 86.

inter-State voyage has the same meaning as in the *Navigation Act 1912*.

ISPS Code means the International Ship and Port Facility Security (ISPS) Code (as amended from time to time) as mentioned in Chapter XI-2 of the SOLAS Convention.

ISPS level 1 measures has the meaning given by subsection 95(1).

ISPS level 2 measures has the meaning given by subsection 95(2).

ISPS level 3 measures has the meaning given by subsection 95(3).

Section 10

ISSC means an international ship security certificate within the meaning of the ISPS Code.

ISSC verified has the meaning given by subsections 83(1) and (3).

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

law enforcement officer has the meaning given by section 151.

maritime industry participant means:

- (a) a port operator; or
- (b) a port facility operator; or
- (c) the ship operator for a regulated Australian ship; or
- (d) the ship operator for a regulated foreign ship; or
- (e) a person (other than a maritime security inspector or a duly authorised officer) appointed by the Secretary under this Act to perform a maritime transport security function; or
- (f) a contractor who provides services to a person mentioned in paragraphs (a) to (d); or
- (g) a person who:
 - (i) conducts a maritime-related enterprise; and
 - (ii) is prescribed in the regulations.

Note: Neither the Australian Defence Force nor the Australian Customs Service can be a maritime industry participant. The regulations may also exclude other Commonwealth Agencies from being maritime industry participants: see subsection 9(2).

maritime security guard has the meaning given by subsection 162(1).

maritime security inspector means a person appointed under subsection 136(1).

maritime security level means:

- (a) maritime security level 1; or
- (b) maritime security level 2; or
- (c) maritime security level 3.

maritime security level 1 means the maritime security level in force under section 21.

Section 10

maritime security level 2 means maritime security level 2 as in force under section 23.

maritime security level 3 means maritime security level 3 as in force under section 23.

maritime security outcomes has the meaning given by subsection 3(4).

maritime security plan means a plan prepared for the purposes of Part 3.

maritime security zone means:

- (a) a port security zone; or
- (b) a ship security zone; or
- (c) an on-board security zone.

maritime transport security incident has the meaning given by subsections 170(1) and (2).

master, in relation to a ship, means the person who has command or charge of the ship.

mobile offshore drilling unit means a ship capable of engaging in drilling operations for the purposes of exploring or exploiting resources beneath the seabed.

on-board security zone means an on-board security zone established under subsection 110(1).

operational area, in relation to a ship, has the meaning given by subsection 140(5).

ordinary search has the same meaning as in the *Crimes Act 1914*.

overseas voyage has the same meaning as in the *Navigation Act 1912*.

passenger:

- (a) means a passenger travelling by maritime transport; and
- (b) includes an intending passenger.

passenger ship means a ship that carries more than 12 passengers.

Note: A passenger ship may also be a cargo ship.

person with incident reporting responsibilities has the meaning given by subsection 175(4).

port has the meaning given by section 12.

port facility means an area of land or water, or land and water, within a security regulated port (including any buildings, installations or equipment in or on the area) used either wholly or partly in connection with the loading or unloading of ships.

port facility operator means a person who operates a port facility.

port operator has the meaning given by subsection 14(1).

port security zone means a port security zone established under subsection 102(1).

pre-arrival information has the meaning given by subsection 92(3).

private living area, in relation to a ship, has the meaning given by subsection 140(4).

prohibited item means an item that:

- (a) could be used for unlawful interference with maritime transport; and
- (b) is prescribed in the regulations for the purposes of this definition.

quarantine officer means an Officer within the meaning of the *Quarantine Act 1908*.

receive clearance:

- (a) in relation to a person, has the meaning given by subsection 115(2); and
- (b) in relation to goods, has the meaning given by subsection 116(2); and
- (c) in relation to a vehicle, has the meaning given by subsection 117(2); and

Section 10

(d) in relation to a vessel, has the meaning given by subsection 118(2).

recognised security organisation has the meaning given by subsection 88(2).

regulated Australian ship has the meaning given by section 16.

regulated foreign ship has the meaning given by section 17.

screened:

- (a) in relation to a person, has the meaning given by subsection 115(1); and
- (b) in relation to goods, has the meaning given by subsection 116(1); and
- (c) in relation to a vehicle, has the meaning given by subsection 117(1); and
- (d) in relation to a vessel, has the meaning given by subsection 118(1).

screening officer has the meaning given by subsection 165(1).

screening point means a place where screening occurs.

Secretary means the Secretary of the Department.

security compliance information has the meaning given by subsection 184(1).

security direction has the meaning given by subsection 33(2).

security officer means a person designated by a maritime industry participant to implement and maintain:

- (a) the participant's maritime security plan; or
- (b) the ship security plan for a ship operated by the participant.

security regulated port has the meaning given by subsection 13(1).

security regulated ship has the meaning given by section 15.

ship means a vessel that is capable of navigating the high seas but does not include a vessel that is not self-propelled.

ship enforcement order has the meaning given by subsection 195(2).

ship operator means:

- (a) unless paragraph (b) applies—the owner of a security regulated ship; or
- (b) if, under an agreement between the owner of the security regulated ship and another person, the other person is to be the ship operator for the security regulated ship for the purposes of this Act—that other person.

Note: Paragraph (b) means that a ship manager or bareboat charterer (or any other person) who has assumed responsibility for the operation of a ship, can, on assuming such responsibility, also agree to take over responsibility for meeting the obligations that are imposed on the ship operator for the ship under this Act.

ship security plan means a plan prepared for the purposes of Part 4.

ship security record, in relation to a particular kind of security regulated ship, means a document or information relating to maritime security prescribed in regulations as a document or information to be kept on, by or for a ship of that kind.

ship security zone means a ship security zone declared under subsection 106(1).

SOLAS Convention means the International Convention for the Safety of Life at Sea, done at London on 1 November 1974, as amended from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1983 No. 22. In 2003 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

stores means items that are to be carried on board a ship for use, sale or consumption on the ship.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

terrorist act has the same meaning as in Part 5.3 of the *Criminal Code*.

Section 10

this Act includes the regulations.

threaten: a person is taken to *threaten* to do an act if the person makes a statement, or does anything else, showing, or from which it could reasonably be inferred, that it is his or her intention to do the act.

unlawful interference with maritime transport has the meaning given by section 11.

valid ISSC, for a ship at a particular time, means an ISSC for the ship that is in force at that time.

vessel means any craft or structure capable of navigation.

weapon means:

- (a) a firearm of any kind; or
- (b) a thing prescribed by the regulations to be a weapon; or
- (c) a device that, except for the absence of, or a defect in, a part of the device, would be a weapon of a kind mentioned in paragraph (a) or (b); or
- (d) a device that is reasonably capable of being converted into a weapon of a kind mentioned in paragraph (a) or (b).

Division 5—Unlawful interference with maritime transport

11 Meaning of *unlawful interference with maritime transport*

- (1) Any of the following done without lawful authority is an *unlawful interference with maritime transport*:
 - (a) committing an act, or causing any interference or damage, that puts the safe operation of a port, or the safety of any person or property at the port, at risk;
 - (b) taking control of a ship by force, or threat of force, or any other form of intimidation;
 - (c) destroying a ship that is being used for maritime transport;
 - (d) causing damage to a ship that is being used for maritime transport that puts the safety of the ship, or any person or property on board or off the ship, at risk;
 - (e) doing anything on board a ship that is being used for maritime transport that puts the safety of the ship, or any person or property on board or off the ship, at risk;
 - (f) placing, or causing to be placed, on board a ship that is being used for maritime transport anything that puts the safety of the ship, or any person or property on board or off the ship, at risk;
 - (g) putting the safety of ships at risk by interfering with, damaging or destroying navigational aids, communication systems or security systems;
 - (h) putting the safety of ships at risk by communicating false information.
- (2) However, *unlawful interference with maritime transport* does not include lawful advocacy, protest, dissent or industrial action that does not result in, or contribute to, an action of a kind mentioned in paragraphs (1)(a) to (h).

Division 6—Security regulated ports and port operators

12 Meaning of *port*

- (1) A *port* is an area of water, or land and water (including any buildings, installations or equipment situated in or on that land or water) intended for use either wholly or partly in connection with the movement, loading, unloading, maintenance or provisioning of ships.
- (2) A *port* includes:
 - (a) areas of water, between the land of the port and the open waters outside the port, intended for use by ships to gain access to loading, unloading or other land-based facilities; and
 - (b) areas of open water intended for anchoring or otherwise holding ships before they enter areas of water described in paragraph (a); and
 - (c) areas of open water between the areas of water described in paragraphs (a) and (b).

13 Security regulated ports

- (1) The Secretary may, by notice published in the *Gazette*, declare that areas of a port intended for use either wholly or partly in connection with the movement, loading, unloading, maintenance or provisioning of security regulated ships comprise a *security regulated port*.
- (2) The notice must include a map of the port that shows the boundaries of the security regulated port.
- (3) An area controlled exclusively by the Australian Defence Force must not be included as part of a security regulated port.

14 Port operators

- (1) The Secretary may, by notice published in the *Gazette*, designate a person as the *port operator* for a security regulated port.

- (2) In designating a person as a port operator, the Secretary must take into account:
- (a) the ability of the person to undertake the functions of a port operator; and
 - (b) the physical and operational features of the port; and
 - (c) the views of the person, or persons, responsible for managing the operations of the port.

Division 7—Security regulated ships

15 Meaning of *security regulated ship*

Each of the following is a *security regulated ship*:

- (a) a regulated Australian ship;
- (b) a regulated foreign ship.

Note: Certain government-controlled ships (both Australian and foreign) are exempt from the operation of this Act: see section 9.

16 Meaning of *regulated Australian ship*

- (1) A ship is a *regulated Australian ship* if the ship is an Australian ship that is:
 - (a) a passenger ship that is used for overseas or inter-State voyages; or
 - (b) a cargo ship of 500 or more gross tonnes that is used for overseas or inter-State voyages; or
 - (c) a mobile offshore drilling unit that is on an overseas or inter-State voyage (other than a unit that is attached to the seabed); or
 - (d) a ship of a kind prescribed in the regulations.
- (2) However, the regulations may provide that a ship covered by subsection (1) is not a *regulated Australian ship*.

17 Meaning of *regulated foreign ship*

- (1) A ship is a *regulated foreign ship* if the ship:
 - (a) is a foreign ship; and
 - (b) is one of the following:
 - (i) a passenger ship;
 - (ii) a cargo ship of 500 or more gross tonnes;
 - (iii) a mobile offshore drilling unit (other than a unit that is attached to the seabed);
 - (iv) a ship of a kind prescribed in the regulations; and
 - (c) is in Australian waters; and

- (d) is in, or is intending to proceed to, a port in Australia.
- (2) However, the regulations may provide that a ship covered by subsection (1) is not a *regulated foreign ship*.

Division 8—General defences

18 General defences

Ship master's decisions

- (1) A person does not commit an offence against this Act if:
- (a) a physical element of the offence exists (whether directly or indirectly) because the master of a ship engaged in conduct in the operation or control of the ship; and
 - (b) without the existence of that physical element the person would not commit the offence; and
 - (c) the master engaged in the conduct to protect the safety or security of:
 - (i) the ship; or
 - (ii) the ship's cargo; or
 - (iii) a person (whether on board the ship or not); or
 - (iv) another ship; or
 - (v) a port, or a port facility or other installation within a port; and
 - (d) the conduct was reasonable in the circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1) (see subsection 13.3(3) of the *Criminal Code*).

Security directions

- (2) If:
- (a) a person is required to comply with a security direction; and
 - (b) compliance with the direction would mean that the person commits an offence against, or otherwise contravenes a requirement of, this Act;
- the person, in complying with the security direction, is taken not to have committed the offence or contravened the requirement.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Control directions

- (3) If:
- (a) a person is required to comply with a control direction; and
 - (b) compliance with the direction would mean that the person commits an offence against, or otherwise contravenes a requirement of, this Act;

the person, in complying with the control direction, is taken not to have committed the offence or contravened the requirement.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Part 1 Preliminary

Division 9 Communicating with ship operators

Section 19

Division 9—Communicating with ship operators

19 Communicating with ship operators

For the purposes of this Act, a person may give a notice or direction to, or otherwise communicate with, a ship operator for a ship by giving the notice or direction to, or communicating with, the shipping agent for the ship.

Part 2—Maritime security levels and security directions

Division 1—Simplified overview of Part

20 Simplified overview of Part

Maritime security level 1 is in force for each security regulated port, each maritime industry participant and each regulated Australian ship unless the Secretary declares that maritime security level 2 or 3 is in force for the port, participant or ship.

If maritime security level 2 or 3 is in force for a port, that maritime security level is in force for every maritime industry participant and security regulated ship within the port.

The Secretary may also declare that maritime security level 2 or 3 is in force for a regulated foreign ship. A regulated foreign ship may also be directed by its flag state to operate at a higher security level.

Division 3 sets out requirements for notifying maritime security level declarations.

In special circumstances the Secretary is able to give security directions to maritime industry participants, employees of such participants, passengers and persons within the boundaries of a security regulated port. Security directions may include confidentiality requirements.

Division 2—Maritime security levels 1, 2 and 3

21 Default security level—maritime security level 1

Unless a declaration under subsection 22(1) provides otherwise, maritime security level 1 is in force for each:

- (a) security regulated port; and
- (b) regulated Australian ship; and
- (c) area within a security regulated port; and
- (d) maritime industry participant.

Note: For obligations on foreign ships, see Division 2 of Part 5.

22 Secretary may declare maritime security level 2 or 3

- (1) The Secretary may, by writing, declare that maritime security level 2 or maritime security level 3 is in force for one or more of the following as specified in the declaration:
 - (a) a security regulated port;
 - (b) a regulated Australian ship;
 - (c) an area within a security regulated port;
 - (d) a maritime industry participant;
 - (e) operations conducted by a maritime industry participant within, or in connection with, a security regulated port.
- (2) The Secretary may also, by writing, declare that maritime security level 2 or maritime security level 3 is in force for a regulated foreign ship.
- (3) However, the Secretary must not make a declaration under subsection (1) or (2) unless it is appropriate for a higher level of security to be put into place for the port, ship, area or participant concerned because a heightened risk to maritime transport has been identified.

Note: Maritime security plans and ship security plans (see Parts 3 and 4) will set out security activities and measures to be undertaken or implemented when different maritime security levels are in force.

23 When a maritime security level is in force

If a declaration is made under subsection 22(1) or (2), the maritime security level declared in the declaration is in force for the port, ship, area, participant or operations covered by the declaration until either of the following occurs:

- (a) the period (if any) specified in the declaration expires;
- (b) the declaration is revoked, in writing, by the Secretary.

24 Maritime security level declaration for a port covers all port operations

If the Secretary declares that a maritime security level is in force for a security regulated port, that maritime security level is in force for:

- (a) every area and security regulated ship; and
- (b) any operations conducted by a maritime industry participant; within the boundaries of the security regulated port.

25 Security levels and complying with plans

Maritime security plans

- (1) For the purposes of subsection 44(1), if:
 - (a) a maritime industry participant is required to comply with a maritime security plan; and
 - (b) the Secretary makes a declaration under subsection 22(1); and
 - (c) the effect of the declaration is that maritime security level 2 or 3 is in force for:
 - (i) the participant; or
 - (ii) an area controlled by the participant; or
 - (iii) particular operations of the participant;the participant does not comply with the plan unless the participant implements the measures set out in the plan for the participant, area or operations, as required, for that maritime security level.

Section 26

Ship security plans

- (2) For the purposes of subsection 63(1), if:
- (a) a ship security plan is in force for a regulated Australian ship;
and
 - (b) the Secretary makes a declaration under subsection 22(1);
and
 - (c) the effect of the declaration is that maritime security level 2
or 3 is in force for the ship;

the ship security plan for the ship is not complied with unless the measures set out in the plan for that maritime security level are implemented.

Note: Obligations on regulated foreign ships to comply with security levels are set out in section 94.

26 Maritime security level 1, 2 or 3 applies with security directions

To avoid doubt, if maritime security level 1, 2 or 3 (the *existing security level*) is in force for:

- (a) a security regulated port; or
- (b) a regulated Australian ship; or
- (c) an area within a security regulated port; or
- (d) a maritime industry participant; or
- (e) the operations of a maritime industry participant;

and a security direction is given to, or in relation to, the port, ship, area, participant or operation, the existing security level continues in force.

Division 3—Notifying maritime security level 2 and 3 declarations and revocations

27 Notifying declarations covering security regulated ports

- (1) If the Secretary declares that a maritime security level is in force for a security regulated port, the Secretary must, as soon as practicable, notify:
 - (a) the port operator; and
 - (b) each maritime industry participant who is required to have a maritime security plan and who:
 - (i) controls an area within the boundaries of the security regulated port; or
 - (ii) operates within the boundaries of the security regulated port.
- (2) If the Secretary gives a port operator notice of a declaration under subsection (1), the port operator must, as soon as practicable, give notice of the declaration to:
 - (a) every maritime industry participant who is covered by the port operator's maritime security plan and who:
 - (i) controls an area within the boundaries of the security regulated port; or
 - (ii) operates within the boundaries of the security regulated port; and
 - (b) the master of every security regulated ship that is within the port or about to enter the port.

Penalty: 10 penalty units

- (3) Subsection (2) does not apply if the port operator has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) is an offence of strict liability.

Section 28

28 Notifying declarations covering security regulated ships

If the Secretary declares that a maritime security level is in force for a regulated Australian ship or a regulated foreign ship, the Secretary must, as soon as practicable, notify:

- (a) the ship operator for the ship; or
- (b) the master of the ship.

29 Notifying declarations covering areas within security regulated ports

If the Secretary declares that a maritime security level is in force for an area within a security regulated port, the Secretary must, as soon as practicable, notify:

- (a) the maritime industry participant who controls the area; and
- (b) if the maritime industry participant is not the port operator—the port operator.

30 Notifying declarations covering maritime industry participants

If the Secretary declares that a maritime security level is in force for a maritime industry participant or for particular operations of an industry participant, the Secretary must, as soon as practicable, notify:

- (a) the maritime industry participant; and
- (b) if the maritime industry participant conducts operations covered by the declaration within a security regulated port and is not the port operator—the port operator.

31 Notifying revocations

(1) If:

- (a) the Secretary has notified a person under section 27, 28, 29 or 30 that a maritime security level is in force; and
- (b) the Secretary revokes the declaration concerned;

the Secretary must, as soon as practicable, notify the person of the revocation.

(2) If:

Section 32

- (a) a port operator has notified a person under subsection 27(2) that a maritime security level is in force; and
 - (b) the Secretary revokes the declaration concerned;
- the port operator must, as soon as practicable, notify the person of the revocation.

Penalty: 10 penalty units

- (3) Subsection (2) does not apply if the port operator has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) is an offence of strict liability.

32 Requirements for giving notice

The regulations may prescribe requirements in relation to notifying declarations, and revocations of declarations, under this Division.

Division 4—Security directions

33 Secretary may give security directions

- (1) The Secretary may direct that additional security measures be implemented or complied with.
- (2) A direction under subsection (1) is a *security direction*.
- (3) The Secretary must not give a security direction unless it is appropriate to do so because an unlawful interference with maritime transport is probable or imminent.
- (4) A security direction has no effect until the Secretary commits the direction to writing.

Note: This requires the Secretary to have a written record of a direction that is given orally.
- (5) The regulations may prescribe requirements for, or in relation to, the giving of security directions.

34 Confidentiality requirements

- (1) A security direction may include restrictions in relation to the disclosure of the direction.
- (2) Such restrictions are *confidentiality requirements*.

35 Persons to whom security directions may be given

- (1) A security direction may be given by the Secretary to one or more of the following:
 - (a) a maritime industry participant or an employee of a maritime industry participant;
 - (b) passengers;
 - (c) persons, other than persons mentioned in paragraphs (a) and (b), who are within the boundaries of a security regulated port.

- (2) For the purposes of giving a security direction to persons mentioned in paragraph (1)(b) or (c), the Secretary is taken to have given a direction to the persons if the direction is clearly displayed at a place where the direction is to be complied with by those persons.
- (3) The Secretary may, in a security direction given to the port operator for a security regulated port, require the port operator to communicate all or a part of the direction to specified maritime industry participants who operate within the port.
- (4) If the Secretary gives a port operator a direction under subsection (1) that requires the port operator to communicate all or a part of the direction to specified maritime industry participants who operate within the port, the port operator must, as soon as practicable, communicate the direction, or the part of the direction, to the specified maritime industry participants.

Penalty: 50 penalty units

- (5) Subsection (4) does not apply if the port operator has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) Subsection (4) is an offence of strict liability.
- (7) If a direction is given to a maritime industry participant by a port operator as mentioned in subsection (3), the direction is taken to have been given to the participant by the Secretary.

36 Secretary may give security directions to security regulated ships

- (1) The Secretary may give a security direction to a security regulated ship by giving the direction to:
 - (a) the ship operator for the ship; or
 - (b) the master of the ship.
- (2) If the Secretary gives a ship operator a direction under subsection (1), the ship operator must, as soon as practicable, communicate the direction to the master of the ship covered by the direction.

Section 37

Penalty: 50 penalty units

- (3) Subsection (2) does not apply if the ship operator has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) is an offence of strict liability.
- (5) If a direction is given to a master by a ship operator as mentioned in subsection (2), the direction is taken to have been given to the master by the Secretary.

37 When a security direction is in force

- (1) A security direction comes into force at the time specified in the direction.
- (2) However:
- (a) if:
- (i) there is no time specified; or
- (ii) the specified time is before the time when the direction is given;
- the direction comes into force 24 hours after it is given; or
- (b) if the specified time is later than the beginning of the seventh day after the direction is given, the direction comes into force at the start of that day.
- (3) A security direction remains in force until either of the following occurs:
- (a) the direction is revoked in writing by the Secretary;
- (b) the direction has been in force for a continuous period of 3 months.

38 Revoking security directions

- (1) The Secretary must revoke a security direction if the unlawful interference with maritime transport in relation to which the direction was given is no longer probable or imminent.
- (2) If:

- (a) the Secretary gives a security direction to a person (including a direction given to the ship operator for, or the master of, a security regulated ship under section 36); and
 - (b) the Secretary revokes the direction; and
 - (c) the direction has not been displayed under subsection 35(2); the Secretary must notify the person of the revocation.
- (3) If the Secretary has displayed a security direction under subsection 35(2) and the Secretary revokes the direction, the Secretary must remove the displayed direction.

39 Failure to comply with security directions

- (1) A person commits an offence if:
- (a) a security direction is given to, or communicated to, the person; and
 - (b) the direction is in force; and
 - (c) the person fails to comply with the direction; and
 - (d) the failure is not a failure to comply with confidentiality requirements.

Penalty: For a port operator, ship operator or port facility operator—200 penalty units.

For a maritime industry participant other than a port operator, ship operator or port facility operator—100 penalty units.

For any other person—50 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

Section 40

40 Failure to comply with confidentiality requirements

- (1) A person (including the ship operator for, or the master of, a security regulated ship when a direction has been given to the ship under section 36) commits an offence if:
- (a) a security direction is given to the person; and
 - (b) the person fails to comply with confidentiality requirements in the direction; and
 - (c) the failure is not due to a disclosure made to a court or a tribunal, or to an authority or person that has the power to require the production of documents or the answering of questions.

Penalty: 20 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Part 3—Maritime security plans

Division 1—Simplified overview of Part

41 Simplified overview of Part

Maritime security plans identify security measures to be implemented when different maritime security levels are in force.

Various maritime industry participants are required to have, and comply with, maritime security plans. This is dealt with in Division 2.

Various other persons and ships are required to comply with maritime security plans. This is dealt with in Division 3.

The content and form of maritime security plans is dealt with in Division 4.

The approval of maritime security plans by the Secretary is dealt with in Division 5. That Division also deals with the variation and revision of plans, and with the cancellation of the approval of plans.

Division 2—Maritime industry participants required to have maritime security plans

42 Who must have maritime security plans

The following maritime industry participants are required to have a maritime security plan:

- (a) a port operator;
- (b) a port facility operator;
- (c) a participant of a kind prescribed in the regulations;
- (d) a particular participant prescribed in the regulations.

Note: Part 4 deals with security plans for regulated Australian ships.

43 Offence—operating without a maritime security plan

- (1) A maritime industry participant commits an offence if:
 - (a) the participant is required under section 42 to have a maritime security plan; and
 - (b) the participant operates as a participant of that kind; and
 - (c) there is no maritime security plan in force for the participant.

Penalty: For a port operator or port facility operator—200 penalty units.

For any other maritime industry participant—100 penalty units.

- (2) Subsection (1) does not apply if the participant has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

44 Offence—failing to comply with maritime security plan

- (1) A maritime industry participant commits an offence if:

Section 44

- (a) the participant is required under section 42 to have a maritime security plan; and
- (b) there is a maritime security plan for the participant in force; and
- (c) the participant fails to comply with the plan.

Penalty: For a port operator or port facility operator—200 penalty units.

For any other maritime industry participant—100 penalty units.

- (2) Subsection (1) does not apply if the participant has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

Division 3—Complying with other plans

45 Complying with maritime security plans of other participants

- (1) A maritime industry participant must not engage in conduct that hinders or obstructs compliance with the maritime security plan of another maritime industry participant.
- (2) If:
 - (a) a maritime security plan (the *covering plan*) for a maritime industry participant covers the activities of another maritime industry participant; and
 - (b) the other participant:
 - (i) is not required to have a maritime security plan; and
 - (ii) has been given the relevant parts of the covering plan;the other maritime industry participant must take all reasonable steps to comply with the covering plan.
- (3) If:
 - (a) a maritime security plan (the *covering plan*) for a maritime industry participant covers the activities of another maritime industry participant; and
 - (b) the other participant:
 - (i) is required to have a maritime security plan; and
 - (ii) has been given the relevant parts of the covering plan; and
 - (iii) has agreed in writing to those activities being covered by the covering plan;the other maritime industry participant must take all reasonable steps to comply with the covering plan.
- (4) If a maritime industry participant contravenes subsection (1), (2) or (3), the participant does not commit an offence but may be subject to an enforcement order (see section 189) or an injunction under section 197.

46 Australian regulated ships must not hinder or obstruct compliance with maritime security plans

- (1) The operations of a regulated Australian ship must not hinder or obstruct compliance with a maritime security plan.
- (2) If the operations of a regulated Australian ship hinder or obstruct compliance with a maritime security plan, either or both of the following may be subject to an enforcement order (see section 189) or an injunction under section 197:
 - (a) the ship operator for the ship;
 - (b) the master of the ship.

Note: Obligations on regulated foreign ships are set out in Division 2 of Part 5.

Division 4—Content and form of maritime security plans

47 Content of maritime security plans

- (1) A maritime security plan for a maritime industry participant must:
- (a) include a security assessment for the participant's operation; and
 - (b) set out the security activities or measures to be undertaken or implemented by the participant for maritime security levels 1, 2 and 3; and
 - (c) include contact details for the participant's security officer; and
 - (d) make provision for the use of declarations of security; and
 - (e) demonstrate that the implementation of the plan will make an appropriate contribution towards the achievement of the maritime security outcomes.

Note: The maritime security outcomes are set out in subsection 3(4).

- (2) The security assessment under paragraph (1)(a) must:
- (a) take into account any documents required in writing by the Secretary to be taken into account; and
 - (b) address any matters prescribed in the regulations.

48 Prescribed content for maritime security plans

The regulations may prescribe specific matters that are to be dealt with in one or more of the following:

- (a) each maritime security plan;
- (b) each maritime security plan for a particular kind of maritime industry participant;
- (c) each maritime security plan for a particular class of a particular kind of maritime industry participant.

49 Form of maritime security plans

- (1) A maritime security plan must be:
- (a) in writing; and

- (b) prepared in accordance with any requirements set out in the regulations.
- (2) A maritime security plan must be accompanied by:
 - (a) a map that shows any port security zones established within the area covered by the plan; and
 - (b) if the participant proposes changes to port security zones—a map that shows the proposed changes.
- (3) The map that accompanies a maritime security plan for a port operator must cover the whole security regulated port.

Division 5—Approving, revising and cancelling maritime security plans

50 Providing maritime security plans for approval

A maritime industry participant may give the Secretary a maritime security plan for the participant and request the Secretary to approve the plan.

51 Approval of maritime security plans

- (1) If the Secretary is satisfied that the plan adequately addresses the relevant requirements under Division 4, the Secretary must:
 - (a) approve the plan; and
 - (b) give the participant written notice of the approval.
- (2) If the Secretary is not satisfied that the plan adequately addresses the relevant requirements under Division 4, the Secretary must:
 - (a) refuse to approve the plan; and
 - (b) give the participant written notice of the refusal including reasons for the refusal.
- (3) In determining whether the plan adequately addresses the relevant requirements under Division 4, the Secretary may take account of existing circumstances as they relate to maritime transport security.
- (4) If:
 - (a) a maritime industry participant gives the Secretary a maritime security plan; and
 - (b) the Secretary does not approve, or refuse to approve, the plan within the period of 90 days after the plan was given;the Secretary is taken to have refused to approve the plan.

Note: A maritime industry participant may apply to the Administrative Appeals Tribunal for review of a decision to refuse to approve a maritime security plan under subsection (2) or (4): see section 201.

52 When a maritime security plan is in force

- (1) If the Secretary approves the maritime security plan, the plan comes into force at the time specified in the notice of approval.
- (2) However, if:
 - (a) the time specified in the notice is earlier than the time at which the notice was given; or
 - (b) no time is specified in the notice as the time when the plan comes into force;the plan comes into force when the notice is given.
- (3) The plan remains in force until:
 - (a) the plan is replaced under subsection 54(2); or
 - (b) the approval of the plan is cancelled under this Division.

53 Secretary may direct variations of maritime security plans

- (1) If:
 - (a) a maritime security plan for a maritime industry participant is in force; and
 - (b) the Secretary is no longer satisfied that the plan adequately addresses the relevant requirements under Division 4;the Secretary may, by written notice given to the participant, direct the participant to vary the plan.
- (2) However, the Secretary must not give a direction under subsection (1) unless the Secretary is satisfied that the plan, as varied, would adequately address the relevant requirements under Division 4.
- (3) In the notice, the Secretary must:
 - (a) set out the variation; and
 - (b) specify the period within which the participant must give the Secretary the plan as varied.
- (4) If the participant does not give the Secretary the plan:
 - (a) varied in accordance with the direction; and
 - (b) within the specified period, or within any further period allowed by the Secretary;

Section 54

the Secretary must, by written notice given to the participant, cancel the approval of the plan.

54 Participants may revise maritime security plans

- (1) If:
 - (a) a maritime industry participant has given the Secretary a maritime security plan; and
 - (b) the participant gives the Secretary another maritime security plan (the *revised plan*);sections 51 and 52 apply in relation to the revised plan.
- (2) If a revised plan for a maritime industry participant comes into force, it replaces any other plan for the participant in force at that time.

55 Secretary may direct participants to revise maritime security plans

- (1) If:
 - (a) a maritime security plan for a maritime industry participant (the *existing plan*) is in force; and
 - (b) the Secretary is no longer satisfied that the existing plan adequately addresses the relevant requirements under Division 4:
 - (i) because there is a change in the circumstances that relate to maritime transport security; or
 - (ii) because there is a change in circumstances that could impact on maritime transport security; or
 - (iii) for some other reason;the Secretary may, by written notice given to the participant, direct the participant to give the Secretary a revised plan under section 54.
- (2) The notice must specify the period within which the revised plan must be given.
- (3) If the participant does not give the Secretary the revised plan within the specified period, or within any further period allowed by

the Secretary, the Secretary must, by written notice given to the participant, cancel the approval of the existing plan.

56 Maritime security plans must be revised every 5 years

If:

- (a) a maritime security plan for a maritime industry participant (the *existing plan*) has been in force for a period of 5 years; and
- (b) the Secretary has not approved a revised plan for the participant under section 54 within that period;

the approval of the existing plan is cancelled by force of this section.

57 Cancelling inadequate maritime security plans

If:

- (a) a maritime security plan for a maritime industry participant is in force; and
- (b) the Secretary is no longer satisfied that the plan adequately addresses the relevant requirements under Division 4; and
- (c) the Secretary is satisfied that it is not appropriate to direct the participant to:
 - (i) vary the plan under section 53; or
 - (ii) revise the plan under section 55;

the Secretary must, by written notice given to the participant, cancel the approval of the plan.

58 Cancelling for failure to comply with maritime security plans

(1) If:

- (a) a maritime security plan for a maritime industry participant is in force; and
- (b) the participant has accumulated the number of demerit points prescribed by the regulations as the number necessary for the Secretary to be able to cancel the approval of the plan;

the Secretary may, by written notice given to the participant, cancel the approval of the plan.

Part 3 Maritime security plans

Division 5 Approving, revising and cancelling maritime security plans

Section 59

Note: For the demerit points system, see Division 6 of Part 11.

- (2) Before cancelling the approval of a plan under subsection (1), the Secretary may, by written notice given to the participant, request the participant to show cause why the approval of the plan should not be cancelled.

59 Cancelling maritime security plans on request

If:

- (a) a maritime security plan for a maritime industry participant is in force; and
- (b) the participant makes a written request to the Secretary for the approval of the plan to be cancelled;

the Secretary must, by written notice given to the participant, cancel the approval of the plan.

Part 4—Ship security plans and ISSCs

Division 1—Simplified overview of Part

60 Simplified overview of Part

Ship security plans identify the security measures to be implemented by ships when different maritime security levels are in force.

Regulated Australian ships are required to have, and comply with, ship security plans. This is dealt with in Division 2.

Various other ships and persons are required to comply with ship security plans. This is dealt with in Division 3.

The content and form of ship security plans is dealt with in Division 4.

The approval of ship security plans by the Secretary is dealt with in Division 5. That Division also deals with the variation and revision of plans, and with the cancellation of the approval of plans.

Regulated Australian ships are also required to have an ISSC (International Ship Security Certificate). Division 6 provides for the Secretary to issue ISSCs and interim ISSCs for ships.

Division 7 allows the Secretary to delegate his or her powers under this Part to registered security organisations.

Division 2—Ships required to have ship security plans

61 Which ships must have ship security plans

A regulated Australian ship must have a ship security plan.

Note: Obligations on regulated foreign ships are set out in Division 2 of Part 5.

62 Offence—operating without a ship security plan

- (1) The ship operator for a regulated Australian ship commits an offence if:
- (a) the ship is being used for maritime transport; and
 - (b) there is no ship security plan in force for the ship.

Penalty: 200 penalty units.

- (2) Subsection (1) does not apply if the operator has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

63 Offence—failing to comply with ship security plan

- (1) The ship operator for a regulated Australian ship commits an offence if:
- (a) the ship is being used for maritime transport; and
 - (b) there is a ship security plan for the ship in force; and
 - (c) the ship is not operated in accordance with the plan.

Penalty: 200 penalty units.

- (2) Subsection (1) does not apply if the operator has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) Subsection (1) is an offence of strict liability.

Division 3—Complying with other plans

64 Complying with ship security plans of other ships

- (1) The operations of a regulated Australian ship must not hinder or obstruct compliance with the ship security plan of another ship.
- (2) If the operations of a regulated Australian ship (the *first regulated ship*) hinder or obstruct compliance with the ship security plan of another ship, either or both of the following may be subject to an enforcement order (see section 189) or an injunction under section 197:
 - (a) the ship operator for the first regulated ship;
 - (b) the master of the first regulated ship.

Note: Obligations on regulated foreign ships are set out in Division 2 of Part 5.

65 Maritime industry participants must not hinder or obstruct compliance with ship security plans

- (1) A maritime industry participant must not engage in conduct that hinders or obstructs compliance with the ship security plan of a ship.
- (2) If a maritime industry participant contravenes subsection (1), the participant does not commit an offence but may be subject to an enforcement order (see section 189) or an injunction under section 197.

Division 4—Content and form of ship security plans

66 Content of ship security plans

- (1) A ship security plan for a regulated Australian ship must:
- (a) include a security assessment for the ship; and
 - (b) set out the security activities or measures to be undertaken or implemented on, or in connection with, the ship for maritime security levels 1, 2 and 3; and
 - (c) include contact details for the ship's security officer; and
 - (d) make provision for the use of declarations of security; and
 - (e) demonstrate that the implementation of the plan will make an appropriate contribution towards the achievement of the maritime security outcomes.

Note: The maritime security outcomes are set out in subsection 3(4).

- (2) The security assessment under paragraph (1)(a) must:
- (a) take into account any documents required in writing by the Secretary to be taken into account; and
 - (b) address any matters prescribed in the regulations.

67 Prescribed content for ship security plans

The regulations may prescribe specific matters that are to be dealt with in one or more of the following:

- (a) each ship security plan;
- (b) each ship security plan for a particular kind of ship;
- (c) each ship security plan for a particular class of a particular kind of ship.

68 Form of ship security plans

A ship security plan must be:

- (a) in writing; and
- (b) prepared in accordance with any requirements set out in the regulations.

Division 5—Approving, revising and cancelling ship security plans

69 Providing ship security plans for approval

The ship operator for a regulated Australian ship may give the Secretary a ship security plan for the ship and request the Secretary to approve the plan.

70 Approval of ship security plans

- (1) If the Secretary is satisfied that the plan adequately addresses the relevant requirements under Division 4, the Secretary must:
 - (a) approve the plan; and
 - (b) give the ship operator written notice of the approval.
- (2) If the Secretary is not satisfied that the plan adequately addresses the relevant requirements under Division 4, the Secretary must:
 - (a) refuse to approve the plan; and
 - (b) give the ship operator written notice of the refusal including reasons for the refusal.
- (3) In determining whether the plan adequately addresses the relevant requirements under Division 4, the Secretary may take account of existing circumstances as they relate to maritime transport security.
- (4) If:
 - (a) the ship operator for a regulated Australian ship gives the Secretary a ship security plan for the ship; and
 - (b) the Secretary does not approve, or refuse to approve, the plan within the period of 90 days after the plan was given;the Secretary is taken to have refused to approve the plan.

Note: A ship operator may apply to the Administrative Appeals Tribunal for review of a decision to refuse to approve a ship security plan under subsection (2) or (4): see section 201.

71 When a ship security plan is in force

- (1) If the Secretary approves the ship security plan, the plan comes into force at the time specified in the notice of approval.
- (2) However, if:
 - (a) the time specified in the notice is earlier than the time at which the notice was given; or
 - (b) no time is specified in the notice as the time when the plan comes into force;the plan comes into force when the notice is given.
- (3) The plan remains in force until:
 - (a) the plan is replaced under subsection 73(2); or
 - (b) the approval of the plan is cancelled under this Division.

72 Secretary may direct variations of ship security plans

- (1) If:
 - (a) a ship security plan for a regulated Australian ship is in force; and
 - (b) the Secretary is no longer satisfied that the plan adequately addresses the relevant requirements under Division 4;the Secretary may, by written notice given to the ship operator for the ship, direct the ship operator to vary the plan.
- (2) However, the Secretary must not give a direction under subsection (1) unless the Secretary is satisfied that the plan, as varied, would adequately address the relevant requirements under Division 4.
- (3) In the notice, the Secretary must:
 - (a) set out the variation; and
 - (b) specify the period within which the ship operator must give the Secretary the plan as varied.
- (4) If the ship operator does not give the Secretary the plan:
 - (a) varied in accordance with the direction; and
 - (b) within the specified period, or within any further period allowed by the Secretary;

Section 73

the Secretary must, by written notice given to the ship operator, cancel the approval of the plan.

73 Ship operator may revise ship security plan

- (1) If:
 - (a) the ship operator for a regulated Australian ship has given the Secretary a ship security plan for the ship; and
 - (b) the ship operator for the ship gives the Secretary another plan for the ship (the *revised plan*);sections 70 and 71 apply in relation to the revised plan.
- (2) If a revised plan for a regulated Australian ship comes into force, it replaces any other plan for the ship in force at that time.

74 Secretary may direct operator to revise ship security plan

- (1) If:
 - (a) a ship security plan for a regulated Australian ship (the *existing plan*) is in force; and
 - (b) the Secretary is no longer satisfied that the existing plan adequately addresses the relevant requirements under Division 4:
 - (i) because there is a change in the circumstances that relate to maritime transport security; or
 - (ii) because there is a change in circumstances that could impact on maritime transport security; or
 - (iii) for some other reason;the Secretary may, by written notice given to the ship operator for the ship, direct the ship operator to give the Secretary a revised plan under section 73.
- (2) The notice must specify the period within which the revised plan must be given.
- (3) If the ship operator does not give the Secretary the revised plan within the specified period, or within any further period allowed by the Secretary, the Secretary must, by written notice given to the ship operator, cancel the approval of the existing plan.

75 Ship security plans must be revised every 5 years

If:

- (a) a ship security plan for a regulated Australian ship (the *existing plan*) has been in force for a period of 5 years; and
- (b) the Secretary has not approved a revised plan for the ship under section 73 within that period;

the approval of the existing plan is cancelled by force of this section.

76 Cancelling inadequate ship security plans

If:

- (a) a ship security plan for a regulated Australian ship is in force; and
- (b) the Secretary is no longer satisfied that the plan adequately addresses the relevant requirements under Division 4; and
- (c) the Secretary is satisfied that it is not appropriate to direct the ship operator for the ship to:
 - (i) vary the plan under section 72; or
 - (ii) revise the plan under section 74;

the Secretary must, by written notice given to the ship operator, cancel the approval of the plan.

77 Cancelling for failure to comply with ship security plan

(1) If:

- (a) a ship security plan for a regulated Australian ship is in force; and
- (b) the number of demerit points prescribed by the regulations as the number necessary for the Secretary to be able to cancel the approval of the plan has been accumulated in respect of the ship;

the Secretary may, by written notice given to the ship operator for the ship, cancel the approval of the plan.

Note: For the demerit points system, see Division 6 of Part 11.

Part 4 Ship security plans and ISSCs

Division 5 Approving, revising and cancelling ship security plans

Section 78

- (2) Before cancelling the approval of a plan under subsection (1), the Secretary may, by written notice given to the ship operator, request the ship operator to show cause why the approval of the plan should not be cancelled.

78 Cancelling ship security plans on request

If:

- (a) a ship security plan for a regulated Australian ship is in force;
and
(b) the ship operator for the ship makes a written request to the Secretary for the approval of the plan to be cancelled;
the Secretary must, by written notice given to the ship operator, cancel the approval of the plan.

Division 6—International ship security certificates

79 Which ships must have ISSCs

A regulated Australian ship must have an ISSC.

80 Offence—operating without an ISSC

- (1) The ship operator for a regulated Australian ship commits an offence if:
 - (a) the ship is being used for maritime transport; and
 - (b) there is no ISSC or interim ISSC in force for the ship.

Penalty: 200 penalty units.

- (2) Subsection (1) does not apply if the ship operator has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

81 Applying for an ISSC

- (1) The ship operator for a regulated Australian ship may apply to the Secretary for an ISSC for the ship.
- (2) The application must be in accordance with any requirements prescribed in the regulations. The regulations may prescribe requirements in relation to the form and content of the application, and the way in which the application is made.

82 Conditions for giving an ISSC

The Secretary must give a ship operator an ISSC for a regulated Australian ship if:

- (a) the ship operator has applied for an ISSC for the ship; and
- (b) there is a ship security plan in force for the ship; and
- (c) the ship is ISSC verified.

Section 83

83 ISSC verification

- (1) A regulated Australian ship is *ISSC verified* if:
- (a) a maritime security inspector has inspected the ship; and
 - (b) the maritime security inspector has verified that the ship meets the requirements determined in writing by the Secretary; and
 - (c) the period, determined in writing by the Secretary, within which the ship must be next inspected has not ended.

Note: Sections 138 and 139 set out the ship inspection powers of maritime security inspectors.

- (2) In making a determination under subsection (1), the Secretary must have regard to the obligations set out in the ISPS Code.
- (3) If:
- (a) there is an ISSC in force for a regulated Australian ship; and
 - (b) a maritime security inspector inspects the ship; and
 - (c) the inspector finds that the ship does not meet the requirements determined under paragraph (1)(b); and
 - (d) the ship does not meet those requirements within any period allowed in writing by the inspector;
- the ship is no longer *ISSC verified*.

84 When an ISSC is in force

If the Secretary gives an ISSC to the ship operator for a regulated Australian ship, the ISSC comes into force when it is given and remains in force until any of the following occurs:

- (a) the Secretary cancels the ISSC;
- (b) the ship operator is no longer the ship operator for the ship;
- (c) the period of 5 years after the ISSC is given expires.

85 Cancelling ISSCs

The Secretary must, by written notice given to the ship operator for a regulated Australian ship, cancel the ISSC for the ship if either of the following occurs:

- (a) there is no longer a ship security plan in force for the ship;

- (b) the ship is no longer ISSC verified.

86 Interim ISSCs

- (1) If:

- (a) the ship operator for a regulated Australian ship has applied to the Secretary for an ISSC for the ship; and
- (b) there is a ship security plan in force for the ship; and
- (c) the ship is not ISSC verified; and
- (d) the Secretary reasonably believes that, were the ship to be inspected as mentioned in subsection 83(1), the ship would be ISSC verified;

the Secretary may give the ship operator an interim ISSC for the ship.

- (2) If:

- (a) the Secretary has given a ship operator an ISSC for a regulated Australian ship; and
- (b) while the ISSC is in force, another ship operator becomes the ship operator for the ship;

the Secretary may give the other ship operator an interim ISSC for the ship.

- (3) An interim ISSC is in force for the period, not exceeding 6 months, specified in the interim ISSC.

87 Offence—false or misleading statements in relation to having an ISSC

- (1) The master of a regulated Australian ship commits an offence if:

- (a) the master makes a statement (whether orally, in a document or in any other way); and
- (b) the master does so knowing that the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in connection with whether an ISSC or interim ISSC is in force for the ship; and

Section 87

- (d) any of the following subparagraphs applies:
- (i) the statement is made to a maritime industry participant;
 - (ii) the statement is made to a person who is authorised by a Contracting state to the SOLAS Convention to request information about, or in connection with, whether a valid ISSC or interim ISSC is in force for the ship;
 - (iii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
 - (iv) the statement is made in compliance or purported compliance with a law of the Commonwealth.

Penalty: 50 penalty units.

- (2) Absolute liability applies to each of the subparagraph (1)(d)(i), (ii), (iii) and (iv) elements of the offence.
- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Division 7—Recognised security organisations

88 Secretary may delegate powers and functions under this Part

- (1) The Secretary may, by writing, delegate all or any of his or her powers and functions under Part 4 to a person who:
 - (a) satisfies the criteria prescribed in the regulations; and
 - (b) is engaged by a recognised security organisation.
- (2) The Secretary may determine, in writing, that an organisation is a *recognised security organisation*.
- (3) In exercising powers or functions delegated under subsection (1), the delegate must comply with any directions of the Secretary.

89 Recognised security organisations may conduct ISSC inspections

- (1) The Secretary may, by writing, authorise a person to whom powers and functions can be delegated under subsection 88(1) to conduct inspections of ships for the purposes of verifying that ships meet the requirements necessary for ISSC verification.
- (2) If a person authorised under subsection (1) conducts a ship inspection, the person is taken to be a maritime security inspector for the purposes of subsection 83(1).

Part 5—Regulated foreign ships

Division 1—Simplified overview of Part

90 Simplified overview of Part

Division 2 sets out requirements to be met by regulated foreign ships and requires the ship operators for, and the masters of, those ships to acknowledge certain communications.

Division 3 provides for the Secretary to give control directions to regulated foreign ships to ensure that security standards are maintained.

Division 2—Obligations on regulated foreign ships

91 Regulated foreign ships must have ISSCs

- (1) The ship operator for a regulated foreign ship must:
 - (a) have a valid ISSC, or an approved ISSC equivalent, for the ship; and
 - (b) ensure that the ship carries the required ship security records.

Note: A ship is only a regulated foreign ship when it is in Australian waters: see section 17.

- (2) If the ship operator for a regulated foreign ship contravenes subsection (1), the ship operator or the master of the ship may be given a control direction under Division 3.
- (3) An *approved ISSC equivalent* is a kind of certification approved in writing by the Secretary as an alternative to an ISSC.

92 Regulated foreign ships must provide pre-arrival information

- (1) The master of a regulated foreign ship, or a ship intending to enter Australian waters that would, once it had done so, be a regulated foreign ship, must provide pre-arrival information in accordance with the regulations.
- (2) The regulations may prescribe:
 - (a) the person or persons to whom pre-arrival information must be given; and
 - (b) the circumstances in which pre-arrival information must be given; and
 - (c) the form and manner in which pre-arrival information must be given.
- (3) *Pre-arrival information* is information of a kind prescribed in the regulations that must be provided by a ship before the ship enters one or more of the following:
 - (a) Australian waters;
 - (b) a security regulated port;

Part 5 Regulated foreign ships

Division 2 Obligations on regulated foreign ships

Section 93

- (c) a maritime security zone within a security regulated port;
 - (d) a port that is not a security regulated port.
- (4) The regulations may provide that different pre-arrival information is to be provided before entering different places or areas as mentioned in paragraphs (3)(a) to (d).
- (5) If the master of a ship contravenes subsection (1), the master or the ship operator for the ship may be given a control direction under Division 3.

93 Regulated foreign ships must allow inspections etc.

- (1) The master of a regulated foreign ship must allow a maritime security inspector to board and inspect the ship in accordance with Division 2 of Part 8.

Note: A ship is only a regulated foreign ship when it is in Australian waters: see section 17.

- (2) The master of a regulated foreign ship must provide a maritime security inspector with any ship security records kept on the ship when requested by the maritime security inspector to do so.
- (3) If the master of a ship contravenes subsection (1) or (2), the master or the ship operator for the ship may be given a control direction under Division 3.

94 Regulated foreign ships must comply with security levels

- (1) This section sets out security measures that must be implemented by a regulated foreign ship.

Note: A ship is only a regulated foreign ship when it is in Australian waters: see section 17.

- (2) Unless subsections (3) to (7) provide otherwise, the ship must, at all times, implement ISPS level 1 measures.
- (3) If maritime security level 2 is in force for the ship because the ship is in a security regulated port where maritime security level 2 is in force (see section 24), the ship must implement ISPS level 2 measures.

- (4) If maritime security level 3 is in force for the ship because the ship is in a security regulated port where maritime security level 3 is in force (see section 24), the ship must implement ISPS level 3 measures.
- (5) If the Secretary declares under subsection 22(2) that maritime security level 2 is in force for the ship, the ship must implement ISPS level 2 measures.
- (6) If the Secretary declares under subsection 22(2) that maritime security level 3 is in force for the ship, the ship must implement ISPS level 3 measures.
- (7) If:
 - (a) the ship is registered in another country (the *flag state*); and
 - (b) the ship is directed by the flag state to implement a higher level of security than would otherwise apply under this section;the ship must comply with the direction.
- (8) If a regulated foreign ship does not implement security measures in accordance with subsections (2) to (7), the ship operator for, or the master of, the ship may be given a control direction under Division 3.

95 Meaning of ISPS level 1, 2 and 3 measures

- (1) **ISPS level 1 measures** are the measures that should, under the ISPS Code, be implemented when maritime security level 1 is in force.
- (2) **ISPS level 2 measures** are the measures that should, under the ISPS Code, be implemented when maritime security level 2 is in force.
- (3) **ISPS level 3 measures** are the measures that should, under the ISPS Code, be implemented when maritime security level 3 is in force.

Section 96

96 Regulated foreign ships must comply with security directions

- (1) If the Secretary gives a security direction to a regulated foreign ship under section 36, the ship must comply with the direction.

Note: A ship is only a regulated foreign ship when it is in Australian waters: see section 17.

- (2) If a regulated foreign ship does not comply with a security direction, the ship operator for, or the master of, the ship may be given a control direction under Division 3.

Note: In addition, the ship operator for, or the master of, a security regulated ship may commit an offence if the ship fails to comply with a security direction: see subsection 39(1).

97 Complying with maritime and ship security plans

- (1) The operations of a regulated foreign ship must not hinder or obstruct compliance with the maritime security plan of a maritime industry participant in a way that compromises the security of the operations of the participant.
- (2) The operations of a regulated foreign ship must not hinder or obstruct compliance with the ship security plan of a regulated Australian ship in a way that compromises the security of the regulated Australian ship.
- (3) If the operations of a regulated foreign ship compromise the security of:
- (a) the operations of a maritime industry participant; or
 - (b) a ship;
- as mentioned in subsection (1) or (2), the ship operator for, or the master of, the regulated foreign ship may be given a control direction under Division 3.

98 Acknowledging level notifications and directions

Masters of ships

- (1) The master of a regulated foreign ship commits an offence if:
- (a) the master is notified by the Secretary or a port operator that maritime security level 2 or 3 is in force for the ship; and

- (b) the master fails to acknowledge the notification to the Secretary.

Penalty: 25 penalty units.

- (2) The master of a regulated foreign ship commits an offence if:
 - (a) the master is given:
 - (i) a security direction by the Secretary that relates to the operations of the ship; or
 - (ii) a control direction that relates to the ship; and
 - (b) the master fails to acknowledge the direction to the Secretary.

Penalty: 25 penalty units.

Ship operators

- (3) The ship operator for a regulated foreign ship commits an offence if:
 - (a) the ship operator is notified by the Secretary that maritime security level 2 or 3 is in force for the ship; and
 - (b) the ship operator fails to acknowledge the notification to the Secretary.

Penalty: 100 penalty units.

- (4) The ship operator for a regulated foreign ship commits an offence if:
 - (a) the ship operator is given:
 - (i) a security direction by the Secretary that relates to the operations of the ship; or
 - (ii) a control direction that relates to the ship; and
 - (b) the ship operator fails to acknowledge the direction to the Secretary.

Penalty: 100 penalty units.

- (5) Subsections (1) to (4) are offences of strict liability.

Division 3—Control directions

99 Secretary may give control directions

- (1) The Secretary may give a direction to:
 - (a) the ship operator for a regulated foreign ship; or
 - (b) the master of the ship;requiring the ship operator or master to take specified action, or refrain from taking specified action, in relation to the ship.
- (2) A direction under subsection (1) is a *control direction*.
- (3) However, the Secretary must not give a control direction unless the direction is:
 - (a) necessary for ensuring compliance with Division 2 of this Part; or
 - (b) a direction of a kind that can be given, under Chapter XI-2 of the SOLAS Convention or the ISPS Code, by a port state to a foreign flagged ship.
- (4) The action that a ship operator or master may be directed to take under subsection (1) includes, but is not limited to, the following:
 - (a) removing the ship from Australian waters;
 - (b) removing the ship from a security regulated port;
 - (c) moving the ship within a security regulated port;
 - (d) holding the ship in a particular position for a specified period or until a specified event occurs;
 - (e) taking particular actions, or ensuring that particular actions are taken, on board the ship;
 - (f) allowing a maritime security inspector on board the ship to inspect the ship or ship security records carried by the ship.
- (5) A control direction has no effect until the Secretary commits the direction to writing.

Note: This requires the Secretary to have a written record of a direction that is given orally.

Section 100

- (6) The direction must not require the payment of money to the Secretary (or any other person) other than an amount of money that is already recoverable at law.
- (7) The regulations may prescribe requirements for, or in relation to, the giving of control directions.

100 Enforcing control directions

- (1) The ship operator for a regulated foreign ship must not engage in conduct that contravenes a control direction that relates to the ship.
- (2) If a ship operator contravenes subsection (1), the ship operator may be subject to an injunction under section 197.
- (3) The master of a regulated foreign ship must not engage in conduct that contravenes a control direction that relates to the ship.
- (4) If the master of a ship contravenes subsection (3), the master may be subject to an injunction under section 197.

Part 6—Maritime security zones

Division 1—Simplified overview of Part

101 Simplified overview of Part

Maritime security zones are used to subject areas within ports and on ships to additional security requirements.

Division 2 allows the Secretary to establish one or more port security zones within a security regulated port.

Division 3 allows the Secretary to declare that a ship security zone is to operate around a security regulated ship while it is in a security regulated port.

Division 4 allows the Secretary to establish one or more on-board security zones on a regulated Australian ship.

The regulations may prescribe different types of port, ship and on-board security zones and the requirements to be met in relation to each type of zone.

Division 2—Port security zones

102 Establishing port security zones

- (1) The Secretary may, by written notice given to the port operator for a security regulated port, establish one or more *port security zones* within the port. Each port security zone must be of a type prescribed under section 103.
- (2) The notice must include a map of the port that shows the boundaries of the port security zones.
- (3) If the Secretary establishes a port security zone under subsection (1), the Secretary must, by writing, notify the establishment to each maritime industry participant (other than the port operator) who controls an area included within the zone. The notice must include a map that shows the boundaries of the zone.
- (4) The purpose of port security zones is to subject those zones to additional security requirements.

103 Types of port security zones

- (1) The regulations may prescribe different types of port security zones.
- (2) The purposes for which different types of port security zones may be prescribed include, but are not limited to, the following:
 - (a) controlling the movement of people or ships or any other thing within security regulated ports;
 - (b) restricting access to areas within security regulated ports;
 - (c) providing cleared areas within security regulated ports;
 - (d) preventing interference with ships;
 - (e) preventing interference with people or goods that have been, or are to be, transported by ship;
 - (f) ensuring the security of the following:
 - (i) fuel storage areas;
 - (ii) cargo and baggage handling facilities;

Section 104

- (iii) navigational aids;
 - (iv) critical installations.
- (3) An installation is a *critical installation* if interference with, or damage to, the installation could put the operation of a port or a ship at risk.

104 Matters to be considered in establishing port security zones

In establishing a port security zone, the Secretary must have regard to the purpose of the zone, and take into account:

- (a) the existing physical features of the port; and
- (b) the existing operational features of the port; and
- (c) the views of:
 - (i) the port operator; and
 - (ii) each person who controls an area of land (including any buildings on the land) that is to be included within the boundaries of the zone.

105 Requirements for port security zones

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to each type of port security zone.
- (2) The following matters may be dealt with by regulations made under subsection (1):
 - (a) access to port security zones (including conditions of access, the issue and use of security passes and other identification systems);
 - (b) the identification or marking of port security zones;
 - (c) the movement, management or operation of ships and other vessels and vehicles and other things in port security zones;
 - (d) the maintenance of the integrity of port security zones;
 - (e) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in port security zones;

Section 105

- (f) the management (including the sale or disposal) of ships, other vessels, vehicles or goods abandoned in port security zones;
 - (g) when prescribed requirements are to be met.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
- (a) for an offence committed by a port operator, ship operator or port facility operator—200 penalty units; or
 - (b) for an offence committed by a maritime industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
 - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

Division 3—Ship security zones

106 Declaring ship security zones

- (1) The Secretary may, by written notice given to:
 - (a) the ship operator for, or the master of, a security regulated ship; and
 - (b) the port operator for a security regulated port;declare that a *ship security zone* is to operate around the ship while the ship is within the port. The ship security zone must be of a type prescribed under section 107.
- (2) The purpose of ship security zones is to protect ships within those zones from unlawful interference with maritime transport.
- (3) To avoid doubt, if:
 - (a) a ship security zone is operating around a ship; and
 - (b) a person or thing is on board the ship;the person or thing is not in the ship security zone.

Note: The Secretary may establish on-board security zones on regulated Australian ships: see subsection 110(1).

107 Types of ship security zones

- (1) The regulations may prescribe different types of ship security zones.
- (2) The purposes for which different types of ship security zones may be prescribed include, but are not limited to, the following:
 - (a) limiting contact with security regulated ships;
 - (b) controlling the movement of ships and other things in the vicinity of a security regulated ship;
 - (c) providing cleared areas around security regulated ships;
 - (d) preventing interference with security regulated ships;
 - (e) preventing interference with people or goods that have been, or are to be, transported by security regulated ships.

108 Matters to be considered in declaring ship security zones

In declaring that a ship security zone is to operate around a security regulated ship, the Secretary must have regard to the purpose of the zone, and take into account:

- (a) the operational features of the ship; and
- (b) the existing physical features of the port or ports, and related port services, to be used by the ship; and
- (c) the existing operational features of the port or ports, and related port services, to be used by the ship.

109 Requirements for ship security zones

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to each type of ship security zone.
- (2) The following matters may be dealt with by regulations made under subsection (1):
 - (a) access to ship security zones (including conditions of access, the issue and use of security passes and other identification systems);
 - (b) the identification or marking of ship security zones;
 - (c) the movement, management or operation of ships and other vessels and vehicles and other things in ship security zones;
 - (d) the maintenance of the integrity of ship security zones;
 - (e) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in ship security zones;
 - (f) the management (including the sale or disposal) of things abandoned in ship security zones;
 - (g) when prescribed requirements are to be met.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
 - (a) for an offence committed by a port operator, ship operator or port facility operator—200 penalty units; or

Part 6 Maritime security zones

Division 3 Ship security zones

Section 109

- (b) for an offence committed by a maritime industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
- (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

Division 4—On-board security zones

110 Establishing on-board security zones

- (1) The Secretary may, by written notice given to the ship operator for a regulated Australian ship, establish one or more *on-board security zones* on the ship. Each on-board security zone must be of a type prescribed under section 111.
- (2) The notice must identify the areas or parts of the ship to be covered by the on-board security zone or zones.
- (3) The purpose of on-board security zones is to subject those zones to additional security requirements.

111 Types of on-board security zones

- (1) The regulations may prescribe different types of on-board security zones.
- (2) The purposes for which different types of on-board security zones may be prescribed include, but are not limited to, the following:
 - (a) controlling access to areas or parts of regulated Australian ships;
 - (b) maintaining the security of areas or parts of regulated Australian ships;
 - (c) providing cleared areas on regulated Australian ships;
 - (d) preventing interference with the operation of regulated Australian ships;
 - (e) preventing interference with people or goods that are being, have been, or are to be, transported by regulated Australian ships.

112 Matters to be considered in establishing on-board security zones

In establishing an on-board security zone on a regulated Australian ship, the Secretary must:

- (a) have regard to the purpose of the zone; and

Section 113

- (b) take into account:
 - (i) the operational features of the ship; and
 - (ii) the views of the ship operator for the ship.

113 Requirements for on-board security zones

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to each type of on-board security zone.
- (2) The following matters may be dealt with by regulations made under subsection (1):
 - (a) access to on-board security zones (including conditions of access, the issue and use of security passes and other identification systems);
 - (b) the identification or marking of on-board security zones;
 - (c) the movement, management or operation of vehicles and other things in on-board security zones;
 - (d) the maintenance of the integrity of on-board security zones;
 - (e) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in on-board security zones;
 - (f) the management (including the sale or disposal) of things abandoned in on-board security zones;
 - (g) when prescribed requirements are to be met.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
 - (a) for an offence committed by a port operator, ship operator or port facility operator—200 penalty units; or
 - (b) for an offence committed by a maritime industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
 - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

Part 7—Other security measures

Division 1—Simplified overview of Part

114 Simplified overview of Part

This Part imposes requirements in relation to screening and clearing, weapons and prohibited items.

A person may be required to receive clearance to enter certain areas, use certain vehicles or board certain vessels. This will usually involve screening. Vehicles, goods and vessels may also be screened. Division 2 deals with screening and clearing.

Divisions 3 and 4 impose requirements in relation to the carriage and possession of weapons and prohibited items in maritime security zones and on board regulated Australian ships. There are also prohibitions on carrying weapons and prohibited items through screening points.

Division 2—Screening and clearing

115 Screening and clearing people

- (1) A person is *screened* when the person undergoes screening in accordance with regulations made under section 119 in preparation for:

- (a) boarding a vessel; or
- (b) entering an area within a security regulated port.

Note: Division 6 of Part 8 deals with the screening officers.

- (2) A person *receives clearance* if:

- (a) after being screened, the person is allowed, by a screening officer, to pass through the screening point; or
- (b) the person passes through the screening point and the regulations provide, or the Secretary by written notice provides, that the person may pass through that screening point without being screened; or
- (c) the person enters a cleared area or boards a cleared vessel other than through a screening point and the regulations provide, or the Secretary by written notice provides, that the person may enter the area or board the vessel that way.

- (3) A person is *cleared* at a particular time if:

- (a) the person has received clearance; and
- (b) since receiving clearance, the person has at all times been in a cleared area or on a cleared vessel.

- (4) For the purposes of paragraph (3)(b), a person is taken to be in a cleared area if the person is under the supervision or control prescribed in the regulations.

- (5) To avoid doubt:

- (a) a notice under paragraph (2)(b) may provide that a class of persons may pass through a screening point without being screened; and

- (b) a notice under paragraph (2)(c) may provide that a class of persons may enter a cleared area or board a cleared vessel other than through a screening point.

116 Screening and clearing goods

- (1) Goods are *screened* when the goods undergo screening in accordance with regulations made under section 119 in preparation for:
 - (a) being taken on board a vessel; or
 - (b) being taken into an area within a security regulated port.
- (2) Goods *receive clearance* if:
 - (a) after being screened, the goods are allowed, by a screening officer, to pass through the screening point; or
 - (b) the goods pass through the screening point and the regulations provide, or the Secretary by written notice provides, that the goods may pass through that screening point without being screened; or
 - (c) the goods enter a cleared area or are taken on board a cleared vessel other than through a screening point and the regulations provide, or the Secretary by written notice provides, that the goods may enter the area or be taken on board the vessel that way.
- (3) Goods are *cleared* at a particular time if:
 - (a) the goods have received clearance; and
 - (b) since receiving clearance, the goods have at all times been in a cleared area or on a cleared vessel.
- (4) For the purposes of paragraph (3)(b), goods are taken to be in a cleared area if the goods are under the supervision or control prescribed in the regulations.
- (5) To avoid doubt:
 - (a) a notice under paragraph (2)(b) may provide that a class of goods may pass through a screening point without being screened; and

Section 117

- (b) a notice under paragraph (2)(c) may provide that a class of goods may enter a cleared area or be taken on board a cleared vessel other than through a screening point.

117 Screening and clearing vehicles

- (1) A vehicle is *screened* when the vehicle undergoes screening in accordance with regulations made under section 119 in preparation for:
 - (a) being taken on board a vessel; or
 - (b) entering an area within a security regulated port.
- (2) A vehicle *receives clearance* if:
 - (a) after being screened, the vehicle is allowed, by a screening officer, to pass through the screening point; or
 - (b) the vehicle passes through the screening point and the regulations provide, or the Secretary by written notice provides, that the vehicle may pass through that screening point without being screened; or
 - (c) the vehicle enters a cleared area or goes on board a cleared vessel other than through a screening point and the regulations provide, or the Secretary by written notice provides, that the vehicle may enter the area or be taken on board the vessel that way.
- (3) A vehicle is *cleared* at a particular time if:
 - (a) the vehicle has received clearance; and
 - (b) since receiving clearance, the vehicle has at all times been in a cleared area or on a cleared vessel.
- (4) For the purposes of paragraph (3)(b), a vehicle is taken to be in a cleared area if the vehicle is under the supervision or control prescribed in the regulations.
- (5) To avoid doubt:
 - (a) a notice under paragraph (2)(b) may provide that a class of vehicles may pass through a screening point without being screened; and

- (b) a notice under paragraph (2)(c) may provide that a class of vehicles may enter a cleared area or be taken on board a cleared vessel other than through a screening point.

118 Screening and clearing vessels

- (1) A vessel is *screened* when the vessel undergoes screening in accordance with regulations made under section 119 in preparation for:
 - (a) being taken on board another vessel; or
 - (b) entering an area within a security regulated port.
- (2) A vessel *receives clearance* if:
 - (a) after being screened, the vessel is allowed, by a screening officer, to pass through the screening point; or
 - (b) the vessel passes through the screening point and the regulations provide, or the Secretary by written notice provides, that the vessel may pass through that screening point without being screened; or
 - (c) the vessel enters a cleared area or is taken on board a cleared vessel other than through a screening point and the regulations provide, or the Secretary by written notice provides, that the vessel may enter the area or be taken on board the other vessel that way.
- (3) A vessel is *cleared* at a particular time if:
 - (a) the vessel has received clearance; and
 - (b) since receiving clearance, the vessel has at all times been in a cleared area or on a cleared vessel.
- (4) For the purposes of paragraph (3)(b), a vessel is taken to be in a cleared area if the vessel is under the supervision or control prescribed in the regulations.
- (5) To avoid doubt:
 - (a) a notice under paragraph (2)(b) may provide that a class of vessels may pass through a screening point without being screened; and

Section 119

- (b) a notice under paragraph (2)(c) may provide that a class of vessels may enter a cleared area or be taken on board a cleared vessel other than through a screening point.

119 Requirements for screening and clearing

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to one or more of the following:
 - (a) screening;
 - (b) receiving clearance;
 - (c) the circumstances in which persons, goods, vehicles or vessels are required to be cleared.
- (2) The following matters may be dealt with by regulations made under subsection (1):
 - (a) the persons who are authorised or required to conduct screening;
 - (b) the things to be detected by screening;
 - (c) the procedures for dealing with things detected by screening;
 - (d) the circumstances in which persons must be cleared in order to:
 - (i) board a vessel; or
 - (ii) enter an area within a security regulated port;
 - (e) the circumstances in which stores must be cleared in order to be taken:
 - (i) on board a vessel; or
 - (ii) into an area within a security regulated port;
 - (f) the circumstances in which baggage must be cleared in order to be taken:
 - (i) on board a vessel; or
 - (ii) into an area within a security regulated port;
 - (g) the circumstances in which cargo must be cleared in order to be taken:
 - (i) on board a vessel; or
 - (ii) into an area within a security regulated port;

- (h) the circumstances in which vehicles must be cleared in order to be taken:
 - (i) on board a vessel; or
 - (ii) into an area within a security regulated port;
- (i) the circumstances in which vessels must be cleared in order to be taken:
 - (i) on board another vessel; or
 - (ii) into an area within a security regulated port;
- (j) the places where screening is to be conducted;
- (k) the methods, techniques and equipment to be used for screening;
- (l) the notices that are to be displayed in places where screening is to be conducted;
- (m) the supervision and control measures for ensuring that persons, goods, vehicles and vessels that have received clearance remain cleared on vessels that are not cleared vessels or in areas that are not cleared areas.

Note: Regulations made under subsection 165(2) must prescribe training and qualification requirements for screening officers and set out requirements in relation to the form, issue and use of identity cards.

- (3) Regulations made under paragraph (2)(a) or (2)(k) may provide that some or all of the matters set out in that paragraph are to be specified in written notices made by the Secretary. Such a notice may provide that the notice is only to be given to the persons, or classes of persons, specified in the notice.
- (4) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
 - (a) for an offence committed by a port operator, ship operator or port facility operator—200 penalty units; or
 - (b) for an offence committed by a maritime industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
 - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914*

Part 7 Other security measures
Division 2 Screening and clearing

Section 119

allows a court to impose fines of up to 5 times the penalties stated above.

Division 3—Weapons

120 Weapons in maritime security zones

Strict liability

- (1) A person commits an offence if:
- (a) the person is in a maritime security zone; and
 - (b) the person has a weapon in his or her possession; and
 - (c) the person is not:
 - (i) a law enforcement officer; or
 - (ii) a member of the Australian Defence Force who is on duty; or
 - (iii) authorised by the regulations, or permitted in writing by the Secretary, to have the weapon in his or her possession in the maritime security zone.

Penalty: 100 penalty units.

- (2) Subsection (1) is an offence of strict liability.

General

- (3) A person commits an offence if:
- (a) the person is in a maritime security zone; and
 - (b) the person has a weapon in his or her possession; and
 - (c) the person is not:
 - (i) a law enforcement officer; or
 - (ii) a member of the Australian Defence Force who is on duty; or
 - (iii) authorised by the regulations, or permitted in writing by the Secretary, to have the weapon in his or her possession in the maritime security zone.

Penalty: Imprisonment for 7 years.

Section 121

121 Carrying weapons through a screening point

Strict liability

- (1) A person commits an offence if:
- (a) the person passes through a screening point; and
 - (b) the person has a weapon in his or her possession when he or she passes through the screening point; and
 - (c) the person is not:
 - (i) a law enforcement officer; or
 - (ii) authorised by the regulations, or permitted in writing by the Secretary, to pass through the screening point with the weapon in his or her possession.

Penalty: 100 penalty units.

- (2) Subsection (1) is an offence of strict liability.

General

- (3) A person commits an offence if:
- (a) the person passes through a screening point; and
 - (b) the person has a weapon in his or her possession when he or she passes through the screening point; and
 - (c) the person is not:
 - (i) a law enforcement officer; or
 - (ii) authorised by the regulations, or permitted in writing by the Secretary, to pass through the screening point with the weapon in his or her possession.

Penalty: Imprisonment for 7 years.

122 Weapons on board regulated Australian ships—strict liability

- (1) A person commits an offence if:
- (a) the person is on board a regulated Australian ship; and
 - (b) the person:
 - (i) carries a weapon; or

Section 123

- (ii) otherwise has in his or her possession a weapon that is located at a place that is accessible to the person; and
- (c) the person is not a law enforcement officer; and
- (d) the carriage or possession of the weapon is not authorised by the regulations or permitted in writing by the Secretary; and
- (e) the weapon is not under the control of the master of the ship.

Penalty: 100 penalty units.

- (2) Subsection (1) is an offence of strict liability.

123 Weapons on board regulated Australian ships—general

A person commits an offence if:

- (a) the person is on board a regulated Australian ship; and
- (b) the person:
 - (i) carries a weapon; or
 - (ii) otherwise has in his or her possession a weapon that is located at a place that is accessible to the person; and
- (c) the person is not a law enforcement officer; and
- (d) the carriage or possession of the weapon is not authorised by the regulations or permitted in writing by the Secretary; and
- (e) the weapon is not under the control of the master of the ship.

Penalty: Imprisonment for 7 years.

124 Failure to comply with conditions

- (1) A person commits an offence if:
- (a) the person is in a maritime security zone or on board a regulated Australian ship; and
 - (b) the person is authorised or permitted to have a weapon in his or her possession or under his or her control; and
 - (c) the person fails to comply with any conditions relating to the authorisation or permission.

Penalty: 50 penalty units.

Section 125

- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- (3) Subsection (1) is an offence of strict liability.

125 Secretary may permit by class

To avoid doubt, for the purposes of this Division, the Secretary may give permission in relation to particular conduct by giving permission to a class of persons.

126 Other weapons requirements

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to the carriage and use of weapons in a maritime security zone or on board a regulated Australian ship.
- (2) The following matters may be dealt with by regulations made under subsection (1):
 - (a) authorising the carriage of weapons in a maritime security zone or on board a regulated Australian ship;
 - (b) dealing with a person in a maritime security zone or on board a regulated Australian ship who carries or uses a weapon, or is suspected of carrying or using a weapon, unlawfully;
 - (c) dealing with a weapon surrendered by a person in a maritime security zone or on board a regulated Australian ship.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
 - (a) for an offence committed by a port operator, ship operator or port facility operator—200 penalty units; or
 - (b) for an offence committed by a maritime industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
 - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914*

Section 126

allows a court to impose fines of up to 5 times the penalties stated above.

Division 4—Prohibited items

127 Prohibited items in maritime security zones

Strict liability

- (1) A person commits an offence if:
- (a) the person is in a maritime security zone; and
 - (b) the maritime security zone is of a kind prescribed in the regulations for the purposes of this paragraph; and
 - (c) the person has a prohibited item in his or her possession; and
 - (d) the person is not:
 - (i) a law enforcement officer, a maritime security guard or a maritime security inspector; or
 - (ii) a member of the Australian Defence Force who is on duty; or
 - (iii) authorised by the regulations, or permitted in writing by the Secretary, to have the prohibited item in his or her possession in the maritime security zone.

Penalty: 20 penalty units.

- (2) Subsection (1) is an offence of strict liability.

General

- (3) A person commits an offence if:
- (a) the person is in a maritime security zone; and
 - (b) the maritime security zone is of a kind prescribed in the regulations for the purposes of this paragraph; and
 - (c) the person has a prohibited item in his or her possession; and
 - (d) the person is not:
 - (i) a law enforcement officer, a maritime security guard or a maritime security inspector; or
 - (ii) a member of the Australian Defence Force who is on duty; or

- (iii) authorised by the regulations, or permitted in writing by the Secretary, to have the prohibited item in his or her possession in the maritime security zone.

Penalty: Imprisonment for 2 years.

128 Carrying prohibited items through a screening point

Strict liability

- (1) A person commits an offence if:
 - (a) the person passes through a screening point; and
 - (b) the person has a prohibited item in his or her possession when he or she passes through the screening point; and
 - (c) the person is not:
 - (i) a law enforcement officer, a maritime security guard or a maritime security inspector; or
 - (ii) authorised by the regulations, or permitted in writing by the Secretary, to pass through the screening point with the prohibited item in his or her possession.

Penalty: 20 penalty units.

- (2) Subsection (1) is an offence of strict liability.

General

- (3) A person commits an offence if:
 - (a) the person passes through a screening point; and
 - (b) the person has a prohibited item in his or her possession when he or she passes through the screening point; and
 - (c) the person is not:
 - (i) a law enforcement officer, a maritime security guard or a maritime security inspector; or
 - (ii) authorised by the regulations, or permitted in writing by the Secretary, to pass through the screening point with the prohibited item in his or her possession.

Penalty: Imprisonment for 2 years.

129 Prohibited items on board regulated Australian ships—strict liability

- (1) A person commits an offence if:
- (a) the person is on board a regulated Australian ship; and
 - (b) the person:
 - (i) carries a prohibited item; or
 - (ii) otherwise has in his or her possession a prohibited item that is located at a place that is accessible to the person; and
 - (c) the person is not a law enforcement officer, a maritime security guard or a maritime security inspector; and
 - (d) the carriage or possession of the prohibited item is not authorised by the regulations or permitted in writing by the Secretary; and
 - (e) the prohibited item is not under the control of the master of the ship.

Penalty: 20 penalty units.

- (2) Subsection (1) is an offence of strict liability.

130 Prohibited items on board regulated Australian ships—general

- A person commits an offence if:
- (a) the person is on board a regulated Australian ship; and
 - (b) the person:
 - (i) carries a prohibited item; or
 - (ii) otherwise has in his or her possession a prohibited item that is located at a place that is accessible to the person; and
 - (c) the person is not a law enforcement officer, a maritime security guard or a maritime security inspector; and
 - (d) the carriage or possession of the prohibited item is not authorised by the regulations or permitted in writing by the Secretary; and
 - (e) the prohibited item is not under the control of the master of the ship.

Penalty: Imprisonment for 2 years.

131 Failure to comply with conditions

- (1) A person commits an offence if:
 - (a) the person is in a maritime security zone or on board a regulated Australian ship; and
 - (b) the person is authorised or permitted to have a prohibited item in his or her possession or under his or her control; and
 - (c) the person fails to comply with any conditions relating to the authorisation or permission.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

132 Secretary may permit by class

To avoid doubt, for the purposes of this Division, the Secretary may give permission in relation to particular conduct by giving permission to a class of persons.

133 Other prohibited items requirements

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to the carriage and use of prohibited items in a maritime security zone or on board a regulated Australian ship.
- (2) The following matters may be dealt with by regulations made under subsection (1):
 - (a) authorising the carriage of prohibited items in a maritime security zone or on board a regulated Australian ship;
 - (b) dealing with a person in a maritime security zone or on board a regulated Australian ship who carries or uses a prohibited

Section 133

item, or is suspected of carrying or using a prohibited item, unlawfully;

- (c) dealing with a prohibited item surrendered by a person in a maritime security zone or on board a regulated Australian ship.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
- (a) for an offence committed by a port operator, ship operator or port facility operator—200 penalty units; or
 - (b) for an offence committed by a maritime industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
 - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

Part 8—Powers of officials

Division 1—Simplified overview of Part

134 Simplified overview of Part

This Part sets out the powers of the following:

- (a) maritime security inspectors;
- (b) duly authorised officers;
- (c) law enforcement officers;
- (d) maritime security guards;
- (e) screening officers.

Division 2—Maritime security inspectors

135 Simplified overview of Division

Employees in the Department and law enforcement officers can be appointed as maritime security inspectors. Other persons who meet criteria prescribed in the regulations may also be appointed as maritime security inspectors.

Maritime security inspectors are able to conduct ISSC inspections. They can also inspect ships, and the premises and operations of maritime industry participants, to ensure compliance with this Act.

There are special rules for some kinds of inspections. In particular, a maritime security inspector must have a ship inspection warrant to inspect private living areas on a ship.

136 Appointment

- (1) The Secretary may appoint:
 - (a) an APS employee in the Department; or
 - (b) a law enforcement officer; or
 - (c) a person who satisfies the criteria prescribed in the regulations;to be a maritime security inspector.
- (2) The appointment must be in writing.

137 Identity cards

- (1) The Secretary must issue each maritime security inspector with an identity card.
- (2) The regulations may set out requirements in relation to the form, issue and use of identity cards.
- (3) The regulations may provide that the identity card may be combined with another identity card.

138 Maritime security inspector powers—ISSC verifications

- (1) A maritime security inspector may inspect:
- (a) a regulated Australian ship; and
 - (b) the ship security records for the ship; and
 - (c) any other document relating to the security of the ship;
- for the purposes of determining whether the ship meets the requirements necessary for ISSC verification.

Note: See subsections 83(1) and (3) for the meaning of *ISSC verified*.

- (2) In exercising a power under this section, a maritime security inspector must not subject a person to greater indignity than is necessary and reasonable for the exercise of the power.

139 Maritime security inspector powers—ships

- (1) A maritime security inspector may exercise the powers set out in subsection (2) for the following purposes:
- (a) determining whether a person or a ship is complying with this Act;
 - (b) investigating a possible contravention of this Act.
- (2) For the purposes set out in subsection (1), a maritime security inspector may do one or more of the following:
- (a) board and inspect a security regulated ship (including any restricted access area on the ship);
 - (b) inspect and photograph equipment on the ship;
 - (c) observe and record operating procedures for the ship (whether carried out by the crew or some other person);
 - (d) discuss those procedures with a person carrying them out or with another maritime industry participant;
 - (e) inspect, photograph or copy one or more of the following:
 - (i) the ship's ISSC;
 - (ii) a ship security record for the ship;
 - (iii) a document or record held on the ship that relates to a passenger or an item of cargo;
 - (iv) in the case of a regulated Australian ship—any document that relates to the security of the ship;

Section 140

- (f) operate equipment on a security regulated ship for the purposes of gaining access to a document or record relating to the ship.
- (3) In exercising a power under this section, a maritime security inspector must not subject a person to greater indignity than is necessary and reasonable for the exercise of the power.

140 When powers may be exercised—ships

Operational areas

- (1) A maritime security inspector may exercise a power mentioned in section 138 or 139 in an operational area of a ship:
 - (a) if the power is exercised within the boundaries of a security regulated port—at any time and without notice; or
 - (b) otherwise—after giving the ship operator for, or the master of, the ship concerned reasonable notice.

Private living areas

- (2) A maritime security inspector may exercise a power mentioned in section 138 or 139 in a private living area of a ship if:
 - (a) both the master and any person or persons who occupy the private living area consent to the inspection; or
 - (b) the inspector has a warrant, issued under section 144, to search the private living area.
- (3) In addition, a maritime security inspector may only exercise a power mentioned in section 138 or 139 in a private living area of a ship if the inspector is accompanied by the master of the ship or a person nominated by the master.

Definitions

- (4) A **private living area** on a ship is an area:
 - (a) used for the purposes of providing accommodation for passengers or crew of the ship; and
 - (b) to which neither all passengers nor all crew have general access.

- (5) An *operational area* on a ship is an area that is not a private living area.

141 Maritime security inspector powers—participants

- (1) A maritime security inspector may exercise the powers set out in subsection (2) for the following purposes:
- (a) determining whether a person or a ship is complying with this Act;
 - (b) investigating a possible contravention of this Act.
- (2) For the purposes set out in subsection (1), a maritime security inspector may do one or more of the following:
- (a) enter and inspect:
 - (i) any area, building (other than a residence), vehicle or vessel under the control of a maritime industry participant; or
 - (ii) if a maritime industry participant operates from a residence or a part of a residence—the residence or the part of the residence from which the participant operates;
 - (b) inspect equipment in a place, vehicle or vessel mentioned in paragraph (a);
 - (c) observe the operating procedures of a maritime industry participant;
 - (d) discuss those procedures with an employee of the maritime industry participant or with another maritime industry participant;
 - (e) inspect, photograph or copy a document or record made or kept by a maritime industry participant;
 - (f) operate equipment at a place mentioned in paragraph (a) for the purposes of gaining access to a document or record made or kept by a maritime industry participant.
- (3) However, in exercising a power under this section, a maritime security inspector must not subject a person to greater indignity than is necessary and reasonable for the exercise of the power.

Section 142

142 When powers may be exercised—participants

A maritime security inspector may exercise a power mentioned in section 141:

- (a) if the power is exercised within the boundaries of a security regulated port—at any time and without notice; or
- (b) otherwise—after giving the maritime industry participant concerned reasonable notice.

143 Offence—hindering or obstructing a maritime security inspector

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct hinders or obstructs a maritime security inspector in the exercise of a power in accordance with this Division.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

144 Ship inspection warrants

Application for warrant

- (1) A maritime security inspector may apply to a magistrate for a warrant to inspect a private living area on a ship.

Issue of warrant

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is necessary to inspect the private living area for one or more of the following purposes:
 - (a) determining whether the ship meets the requirements necessary for ISSC verification;

- (b) determining whether a person or a ship is complying with this Act;
 - (c) investigating a possible contravention of this Act.
- (3) However, the magistrate must not issue the warrant unless the maritime security inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

- (4) The warrant must:
- (a) authorise the maritime security inspector to inspect the private living area, using such assistance and such force to enter the area as is necessary and reasonable; and
 - (b) state whether the inspection is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

145 Ship inspection warrants by telephone, fax etc.

Application for warrant

- (1) If, in an urgent case, a maritime security inspector considers it necessary to do so, the maritime security inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 144.
- (2) The magistrate may:
- (a) require communication by voice to the extent that it is practicable in the circumstances; and
 - (b) make a recording of the whole or any part of any such communication by voice.

Section 145

- (3) Before applying for the warrant, the maritime security inspector must prepare an information of the kind mentioned in subsection 144(2) that sets out the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the maritime security inspector may apply for the warrant before the information is sworn or affirmed.

Issue of warrant

- (5) If the magistrate is satisfied:
 - (a) after having considered the terms of the information; and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 144 if the application had been made under that section.

Obligations of magistrate and maritime security inspector once warrant issued

- (6) If the magistrate completes and signs the warrant:
 - (a) the magistrate must:
 - (i) tell the maritime security inspector what the terms of the warrant are; and
 - (ii) tell the maritime security inspector the day on which and the time at which the warrant was signed; and
 - (iii) tell the maritime security inspector the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
 - (iv) record on the warrant the reasons for issuing the warrant; and
 - (b) the maritime security inspector must:
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and

- (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (7) The maritime security inspector must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
- (a) the form of warrant completed by the maritime security inspector; and
 - (b) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (8) When the magistrate receives those documents, the magistrate must:
- (a) attach them to the warrant that the magistrate completed and signed; and
 - (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 144.

Authority of warrant

- (9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.
- (10) If:
- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
 - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;
- the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

Division 3—Duly authorised officers

146 Simplified overview of Division

The powers of duly authorised officers extend only to inspecting the operational areas of a ship.

The following may be appointed as duly authorised officers:

- (a) customs officers;
- (b) members of the Australian Defence Force;
- (c) immigration officers;
- (d) AMSA surveyors;
- (e) quarantine officers.

147 Secretary may appoint duly authorised officers

- (1) The Secretary may appoint a person who is:
 - (a) a customs officer; or
 - (b) an ADF member; or
 - (c) an immigration officer; or
 - (d) an AMSA surveyor; or
 - (e) a quarantine officer;to be a duly authorised officer.
- (2) The appointment must be in writing.

148 Duly authorised officer powers—operational areas of ships

- (1) A duly authorised officer may exercise the powers set out in subsection (2) in an operational area of a ship for the purposes of determining whether a person or a ship is complying with this Act.

- (2) For the purposes set out in subsection (1), a duly authorised officer may do one or more of the following:
- (a) board a security regulated ship and inspect its operational areas (including any restricted access area in the operational area of the ship);
 - (b) observe and record operating procedures for the ship (whether carried out by the crew or some other person);
 - (c) inspect, photograph or copy one or more of the following:
 - (i) the ship's ISSC;
 - (ii) a ship security record for the ship;
 - (d) operate equipment in the operational area of a security regulated ship for the purposes of gaining access to a document or record relating to the ship.
- (3) A duly authorised officer may exercise a power mentioned in subsection (2):
- (a) if the power is exercised within the boundaries of a security regulated port—at any time and without notice; or
 - (b) otherwise—after giving the ship operator for, or the master of, the ship concerned reasonable notice.
- (4) However, in exercising a power under this section, a duly authorised officer must not subject a person to greater indignity than is necessary and reasonable for the exercise of the power.

149 Offence—hindering or obstructing a duly authorised officer

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct hinders or obstructs a duly authorised officer in the exercise of a power in accordance with this Division.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

Division 4—Law enforcement officers

150 Simplified overview of Division

This Division provides police and certain customs officers with special authority to:

- (a) stop and search people, vehicles and vessels in maritime security zones and to stop and search people on security regulated ships;
- (b) remove people from ships or maritime security zones if they do not leave when requested to do so;
- (c) remove vehicles and vessels from maritime security zones if an officer is unable to have the vehicles or vessels removed by persons in control of them.

The Division establishes restrictions on this authority, such as requiring an officer to explain why a search is to be made and limiting the amount of force that may be used.

A person who does not leave when requested to do so by a law enforcement officer commits an offence, as does a person who hinders or obstructs an officer exercising powers under this Division.

151 Law enforcement officers

Each of the following who is on duty at a security regulated port is a **law enforcement officer**:

- (a) a member of the Australian Federal Police;
- (b) a member of the police force of a State or a Territory;
- (c) a customs officer who is prescribed in the regulations.

152 Access to ports by law enforcement officers

- (1) A law enforcement officer may enter, and remain in, any part of a security regulated port at any time.
- (2) However, before entering a part of a security regulated port that is under the control of a maritime industry participant, the law enforcement officer must:
 - (a) identify himself or herself as a law enforcement officer to the participant; and
 - (b) tell the participant why the officer is entering that part of the security regulated port.

153 Stopping and searching people

- (1) If a law enforcement officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with maritime transport, the law enforcement officer may stop a person who is within a maritime security zone or on a security regulated ship and conduct an ordinary search or a frisk search of the person.
- (2) If a law enforcement officer stops a person under subsection (1), the officer must:
 - (a) identify himself or herself as a law enforcement officer to the person; and
 - (b) tell the person why the person has been stopped; and
 - (c) if the person is to be searched—tell the person why the person is to be searched.
- (3) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct hinders or obstructs a law enforcement officer in the exercise of a power under subsection (1).

Penalty for an offence against this subsection: Imprisonment for 2 years.

Section 154

154 Stopping and searching vehicles

- (1) If a law enforcement officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with maritime transport, the law enforcement officer may do either or both of the following within a maritime security zone:
 - (a) require the driver of a vehicle to stop the vehicle;
 - (b) search the vehicle.
- (2) If a law enforcement officer stops a vehicle under subsection (1), the law enforcement officer must:
 - (a) identify himself or herself as a law enforcement officer to the driver of the vehicle; and
 - (b) tell the driver why the vehicle has been stopped; and
 - (c) if the vehicle is to be searched—tell the driver why the vehicle is to be searched.
- (3) Before a law enforcement officer searches a vehicle under subsection (1) that was not stopped by the officer, the officer must, if there is a driver or person in control of the vehicle present:
 - (a) identify himself or herself as a law enforcement officer to the driver or person; and
 - (b) tell the driver or person why the vehicle is to be searched.
- (4) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct hinders or obstructs a law enforcement officer in the exercise of a power under subsection (1).

Penalty for an offence against this subsection: Imprisonment for 2 years.

155 Stopping and searching vessels

- (1) If a law enforcement officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with maritime transport, the law enforcement officer may do either or both of the following within a maritime security zone:
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Section 156

- (a) require the person in control of a vessel to stop the vessel;
 - (b) search the vessel.
- (2) If a law enforcement officer stops a vessel under subsection (1), the law enforcement officer must:
- (a) identify himself or herself as a law enforcement officer to the person in control of the vessel; and
 - (b) tell the person in control of the vessel why the vessel has been stopped; and
 - (c) if the vessel is to be searched—tell the person in control of the vessel why the vessel is to be searched.
- (3) Before a law enforcement officer searches a vessel under subsection (1) that was not stopped by the officer, the officer must, if there is a person in control of the vessel present:
- (a) identify himself or herself as a law enforcement officer to the person; and
 - (b) tell the person why the vessel is to be searched.
- (4) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct hinders or obstructs a law enforcement officer in the exercise of a power under subsection (1).

Penalty for an offence against this subsection: Imprisonment for 2 years.

156 Requests to leave ships or zones

- (1) If a law enforcement officer reasonably suspects that a person on a security regulated ship is committing, or has committed, an offence against this Act, the officer may request the person to leave:
 - (a) the ship; or
 - (b) if the ship is within a maritime security zone—the zone.
- (2) If a law enforcement officer reasonably suspects that a person within a maritime security zone is committing, or has committed, an offence against this Act, the officer may request the person to leave the zone.

Section 157

- (3) A person commits an offence if:
- (a) a request has been made to the person under subsection (1) or (2); and
 - (b) the person fails to comply with the request.

Penalty: 50 penalty units.

- (4) Subsection (3) is an offence of strict liability.

157 Removing people from ships or zones

- (1) If:
- (a) a request to leave a ship or a zone has been made to a person under section 156; and
 - (b) the person fails to comply with the request;
- a law enforcement officer may remove the person from the ship or zone.
- (2) A law enforcement officer must not use more force, or subject the person to greater indignity, than is necessary and reasonable to remove the person from the ship or zone.

158 Removing vehicles from zones

- (1) If a law enforcement officer reasonably suspects that:
- (a) a vehicle in or near a maritime security zone presents a risk to maritime transport security; or
 - (b) a vehicle is in a maritime security zone without proper authorisation;
- the law enforcement officer may remove the vehicle.
- (2) However, the law enforcement officer must not remove the vehicle without making reasonable efforts to have the person in control of the vehicle remove the vehicle.
- (3) The law enforcement officer:
- (a) must not use more force, or subject a person to greater indignity, than is necessary and reasonable to remove the vehicle; and
 - (b) must make reasonable efforts to avoid damaging the vehicle.

159 Removing vessels from zones

- (1) If a law enforcement officer reasonably suspects that:
 - (a) a vessel in or near a maritime security zone presents a risk to maritime transport security; or
 - (b) a vessel is in a maritime security zone without proper authorisation;the law enforcement officer may remove the vessel.
- (2) However, the law enforcement officer must not remove the vessel without making reasonable efforts to have the person in control of the vessel remove the vessel.
- (3) The law enforcement officer:
 - (a) must not use more force, or subject a person to greater indignity, than is necessary and reasonable to remove the vessel; and
 - (b) must make reasonable efforts to avoid damaging the vessel.

160 Other law enforcement powers not affected

This Act does not, by implication, limit the exercise of the powers a law enforcement officer has apart from this Act.

Division 5—Maritime security guards

161 Simplified overview of Division

This Division gives maritime security guards a limited power to restrain and detain persons. Maritime security guards may only detain a person until the person can be dealt with by a law enforcement officer. A maritime security guard's ability to use force is restricted.

Regulations must establish requirements to be met before a person can become a maritime security guard.

162 Maritime security guards

- (1) A *maritime security guard* is a person who:
 - (a) satisfies the training and qualification requirements and any other requirements prescribed in the regulations for maritime security guards; and
 - (b) is on duty at a security regulated port or on a security regulated ship; and
 - (c) is not a law enforcement officer.
- (2) The regulations must prescribe the following for maritime security guards:
 - (a) training and qualification requirements;
 - (b) requirements in relation to the form, issue and use of identity cards.
- (3) The regulations may prescribe the following for maritime security guards:
 - (a) requirements in relation to uniforms;
 - (b) any other requirements.

163 Maritime security guards' power to physically restrain persons

- (1) A maritime security guard may physically restrain a person if:
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Section 163

- (a) the maritime security guard reasonably suspects that the person is committing, or has committed, an offence against this Act; and
- (b) the maritime security guard reasonably believes it is necessary to do so in order to:
 - (i) ensure that a person who is not cleared is not in a cleared area; or
 - (ii) maintain the integrity of a maritime security zone.
- (2) If a person is restrained under subsection (1), the maritime security guard may detain the person until the person can be dealt with by a law enforcement officer.
- (3) In exercising a power under subsection (1) or (2), a maritime security guard must not use more force, or subject a person to greater indignity, than is necessary and reasonable.

Division 6—Screening officers

164 Simplified overview of Division

A screening officer may request a person to remove items of clothing for screening purposes—but may not require this. However, if a person refuses to comply with such a request and the screening officer is unable to screen the person properly, the screening officer must refuse to allow the person to pass the screening point.

To protect the integrity of screening processes, screening officers are provided with similar restraint and detention powers to those of maritime security guards.

165 Screening officers

- (1) A person who is authorised or required to conduct screening is a *screening officer*.
- (2) The regulations must prescribe the following for screening officers:
 - (a) training and qualification requirements;
 - (b) requirements in relation to the form, issue and use of identity cards.
- (3) The regulations may prescribe the following for screening officers:
 - (a) requirements in relation to uniforms;
 - (b) any other requirements.

166 Screening powers

- (1) If a screening officer considers it necessary in order to screen a person properly, the screening officer may request the person to remove any item of the person's clothing.
- (2) The screening officer must not:
 - (a) require the person to remove any clothing; or

(b) remove or cause the removal of any of the person's clothing.

Penalty: 50 penalty units.

(3) Subsection (2) does not apply if the officer has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) Subsection (2) is an offence of strict liability.

(5) If:

- (a) a screening officer requests a person to remove an item of clothing under subsection (1); and
- (b) the person refuses to comply with the request; and
- (c) the person refuses to be screened in a private room by a screening officer of the same sex as the person; and
- (d) the refusals mean that it is not possible to screen the person properly;

the screening officer must refuse to allow the person to pass through the screening point.

167 Screening officers' power to physically restrain persons

(1) A screening officer may physically restrain a person if:

- (a) the screening officer reasonably suspects that the person is committing, or has committed, an offence against this Act; and
- (b) the screening officer reasonably believes it is necessary to do so in order to:
 - (i) ensure that a person who is not cleared is not in a cleared area; or
 - (ii) maintain the integrity of a cleared area.

(2) If a person is restrained under subsection (1), the screening officer may detain the person until the person can be dealt with by a law enforcement officer.

Section 168

168 Exercise of powers by screening officers

In exercising a power under this Division, a screening officer must not use more force, or subject a person to greater indignity, than is necessary and reasonable.

Part 9—Reporting maritime transport security incidents

Division 1—Simplified overview of Part

169 Simplified overview of Part

It is important, for maritime transport security, to ensure that all maritime transport security incidents are appropriately reported.

This Part establishes requirements to report maritime transport security incidents and provides for the form and content of such reports.

Division 2—Meaning of maritime transport security incident

170 Meaning of *maritime transport security incident*

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

Division 3—Certain people must report incidents

171 Port operators

- (1) A port operator commits an offence if:
 - (a) the port operator becomes aware of a maritime transport security incident; and
 - (b) the port operator fails to report the incident as required by section 177 as soon as possible.

Penalty: 200 penalty units.

- (2) Subsection (1) does not apply in relation to a report that must be made to a particular person if:
 - (a) the port operator believes, on reasonable grounds, that the person is already aware of the incident; or
 - (b) the port operator has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

172 Ship masters

- (1) The master of a security regulated ship commits an offence if:
 - (a) the master becomes aware of a maritime transport security incident; and
 - (b) the master fails to report the incident as required by section 178 as soon as possible.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply in relation to a report that must be made to a particular person if:
 - (a) the master believes, on reasonable grounds, that the person is already aware of the incident; or
 - (b) the master has a reasonable excuse.

Part 9 Reporting maritime transport security incidents

Division 3 Certain people must report incidents

Section 173

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

173 Ship operators

- (1) A ship operator for a security regulated ship commits an offence if:
- (a) the ship operator becomes aware of a maritime transport security incident; and
 - (b) the ship operator fails to report the incident as required by section 179 as soon as possible.

Penalty: 200 penalty units.

- (2) Subsection (1) does not apply in relation to a report that must be made to a particular person if:
- (a) the ship operator believes, on reasonable grounds, that the person is already aware of the incident; or
 - (b) the ship operator has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

174 Port facility operators

- (1) A port facility operator commits an offence if:
- (a) the port facility operator becomes aware of a maritime transport security incident; and
 - (b) the port facility operator fails to report the incident as required by section 180 as soon as possible.

Penalty: 200 penalty units.

- (2) Subsection (1) does not apply in relation to a report that must be made to a particular person if:
- (a) the port facility operator believes, on reasonable grounds, that the person is already aware of the incident; or
 - (b) the port facility operator has a reasonable excuse.

Section 175

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

175 Persons with incident reporting responsibilities

- (1) A person with incident reporting responsibilities commits an offence if:
- (a) the person becomes aware of a maritime transport security incident; and
 - (b) the person fails to report the incident as required by section 181 as soon as possible.

Penalty: For a person with incident reporting responsibilities who is a maritime industry participant—100 penalty units.

For any other person with incident reporting responsibilities—50 penalty units.

- (2) Subsection (1) does not apply in relation to a report that must be made to a particular person (the *person to be notified*) if:
- (a) the person with incident reporting responsibilities believes, on reasonable grounds, that the person to be notified is already aware of the incident; or
 - (b) the person with incident reporting responsibilities has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.
- (4) Each of the following is a *person with incident reporting responsibilities*:
- (a) a maritime security inspector;
 - (b) a duly authorised officer;
 - (c) a maritime security guard;
 - (d) a screening officer;
 - (e) a maritime industry participant other than a participant who is:

Part 9 Reporting maritime transport security incidents

Division 3 Certain people must report incidents

Section 176

- (i) a port operator; or
- (ii) a port facility operator; or
- (iii) a ship operator; or
- (iv) an employee (within the definition of *employee* in section 10) of a maritime industry participant.

176 Employees

- (1) An employee of a maritime industry participant commits an offence if:
 - (a) the employee becomes aware of a maritime transport security incident; and
 - (b) the employee fails to report the incident to the maritime industry participant as soon as possible.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the employee has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

Division 4—Reporting requirements

177 Reporting by port operators

- (1) A port operator must report maritime transport security incidents in accordance with this section.
- (2) An incident that relates to the port of the port operator must be reported to:
 - (a) the Secretary; and
 - (b) the Australian Federal Police or the police force of a State or a Territory; and
 - (c) if it relates to a part of the port that is controlled by another person—that other person; and
 - (d) if it relates to operations conducted within the port (other than those conducted by the port operator)—the person who conducts those operations; and
 - (e) if it relates to a security regulated ship within the port—the ship operator for, or the master of, the ship.
- (3) However, the port operator is not required to report under paragraph (2)(c), (d) or (e) if the incident:
 - (a) relates to the port in general; and
 - (b) is not specifically directed at:
 - (i) in the case of an incident covered by paragraph (2)(c)—the part of the port controlled by that other person; or
 - (ii) in the case of an incident covered by paragraph (2)(d)—those operations; or
 - (iii) in the case of an incident covered by paragraph (2)(e)—that ship.
- (4) An incident that relates to the port of another port operator must be reported to that other port operator.
- (5) An incident that relates to a security regulated ship must be reported to:
 - (a) the ship operator for the ship; or
 - (b) the master of the ship.

Section 178

178 Reporting by ship masters

- (1) The master of a security regulated ship must report maritime transport security incidents in accordance with this section.
- (2) An incident that relates to the master's ship must be reported to:
 - (a) the Secretary; and
 - (b) the Australian Federal Police or the police force of a State or a Territory; and
 - (c) if the ship is within a security regulated port—the port operator for the port; and
 - (d) if the ship is using a port facility within a security regulated port—the port facility operator for the port facility.
- (3) An incident that relates to a security regulated port (including a port facility within the port) must be reported to the port operator for the port.
- (4) An incident that relates to another security regulated ship must be reported to:
 - (a) the ship operator for the ship; or
 - (b) the master of the ship.

179 Reporting by ship operators

- (1) The ship operator for a security regulated ship must report maritime transport security incidents in accordance with this section.
- (2) An incident that relates to a security regulated ship of the ship operator must be reported to:
 - (a) the Secretary; and
 - (b) the Australian Federal Police or the police force of a State or a Territory; and
 - (c) if the ship is within a security regulated port—the port operator for the port; and
 - (d) if the ship is using a port facility within a security regulated port—the port facility operator for the port facility.

- (3) An incident that relates to a port must be reported to the port operator for the port.
- (4) An incident that relates to another security regulated ship must be reported to:
 - (a) the ship operator for the ship; or
 - (b) the master of the ship.

180 Reporting by port facility operators

- (1) A port facility operator for a port facility within a security regulated port must report maritime transport security incidents in accordance with this section.
- (2) An incident that relates to the port facility operator's port facility must be reported to:
 - (a) the Secretary; and
 - (b) the Australian Federal Police or the police force of a State or a Territory; and
 - (c) the port operator.
- (3) An incident that relates to the port (apart from the port facility of the port facility operator) must be reported to the port operator.
- (4) An incident that relates to another port must be reported to the port operator for that other port.
- (5) An incident that relates to a security regulated ship must be reported to:
 - (a) the ship operator for the ship; or
 - (b) the master of the ship.

181 Reporting by persons with incident reporting responsibilities

- (1) A person with incident reporting responsibilities must report maritime transport security incidents in accordance with this section.
- (2) Each incident must be reported to the Secretary.

Part 9 Reporting maritime transport security incidents

Division 4 Reporting requirements

Section 181

- (3) An incident that relates to a security regulated port must be reported to the port operator for the port.
- (4) An incident that relates to a security regulated ship must be reported to:
 - (a) the ship operator for the ship; or
 - (b) the master of the ship.

Division 5—Form and content of reports

182 How reports are to be made

- (1) The Secretary may publish a notice in the *Gazette* setting out either or both of the following:
 - (a) information that must be included in a report required by this Part;
 - (b) the way in which the report must be made.
- (2) A notice under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) If:
 - (a) a person reports a maritime transport security incident; and
 - (b) the report does not comply with any requirements that are in force under subsection (1) when the report is made;the report is taken, for the purposes of this Part, not to have been made.

Part 10—Information-gathering

Division 1—Simplified overview of Part

183 Simplified overview of Part

It is important, for maritime transport security, for the Secretary to be able to collect certain information.

Division 2 gives the Secretary the power to require security compliance information but limits the use of the information in certain proceedings.

Division 2—Secretary may require security compliance information

184 Secretary may require security compliance information

- (1) Information that relates to compliance, or failure to comply, with this Act is *security compliance information*.
- (2) If the Secretary believes, on reasonable grounds, that a maritime industry participant has security compliance information, the Secretary may, by written notice given to the participant, require the participant to give the information to the Secretary.
- (3) The information must be given within the period and in the form and manner specified in the notice. The period must not be less than 14 days.
- (4) Without limiting subsection (3), the Secretary may specify in the notice any one or more of the following ways for the participant to give the information:
 - (a) orally;
 - (b) in writing;
 - (c) by electronic transmission.
- (5) A person commits an offence if the person fails to comply with a notice under subsection (2).

Penalty: 45 penalty units.
- (6) Subsection (5) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).
- (7) Subsection (5) is an offence of strict liability.

185 Self-incrimination

- (1) A person is not excused from giving security compliance information under section 184 on the ground that the information

Part 10 Information-gathering

Division 2 Secretary may require security compliance information

Section 185

might tend to incriminate the person or expose the person to a penalty.

(2) However, if the person is a natural person:

- (a) the information; and
- (b) the giving of the information; and
- (c) any information, document or thing obtained as a direct or indirect consequence of giving the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than a proceeding under section 137.1 or 137.2 of the *Criminal Code* that relates to the giving of the information.

Part 11—Enforcement

Division 1—Simplified overview of Part

186 Simplified overview of Part

To ensure that persons comply with their obligations under this Act, many provisions throughout the Act provide for criminal offences. To provide flexibility in enforcing this Act, there is also a range of enforcement options that can be used as an alternative to, or in addition to, criminal prosecution. These enforcement options are covered by this Part.

The enforcement options (and the relevant Divisions) are as follows:

- (a) infringement notices (Division 2);
- (b) enforcement orders (Division 3);
- (c) ship enforcement orders for regulated Australian ships (Division 4);
- (d) injunctions (Division 5);
- (e) demerit points system (Division 6).

Division 2—Infringement notices

187 Infringement notices

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against this Act, other than an offence against subsection 43(1), 62(1), 120(3), 121(3), 127(3), 128(3), 153(3), 154(4) or 155(4), or section 123 or 130, to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

Division 3—Enforcement orders for maritime industry participants

188 Simplified overview of Division

The Secretary may make enforcement orders requiring a specified person to take specified actions, where the Secretary is of the opinion that the person has contravened this Act.

A person who contravenes an enforcement order may be subject to an injunction.

189 Secretary may make enforcement orders

- (1) The Secretary may make a written order (an *enforcement order*) under this section:
 - (a) prohibiting or restricting specified activities by the maritime industry participant named in the enforcement order; or
 - (b) requiring the maritime industry participant named in the enforcement order to take specified action.
- (2) The Secretary may only make an enforcement order under this section if he or she reasonably believes that:
 - (a) the maritime industry participant named in the enforcement order has contravened this Act; and
 - (b) it is necessary to make the order to safeguard against unlawful interference with maritime transport.
- (3) The enforcement order must:
 - (a) bear a clear and direct relationship to the contravention; and
 - (b) be proportionate to the contravention.
- (4) The enforcement order must not require the payment of money to the Secretary (or any other person) other than an amount of money that is already recoverable at law.

Section 190

190 Commencement and duration of enforcement orders

- (1) An enforcement order comes into force:
 - (a) if a commencement time that is after the day on which the order is given to the maritime industry participant concerned is specified in the order—at that time; or
 - (b) otherwise—at the beginning of the seventh day after it is given to the maritime industry participant concerned.
- (2) The order remains in force:
 - (a) for the period (if any) specified in the order; or
 - (b) until it is revoked by the Secretary.

191 Reviews of enforcement orders

- (1) The Secretary must:
 - (a) at intervals of not more than 3 months, review the enforcement order; and
 - (b) after each review, confirm, vary or revoke the order by instrument in writing.
- (2) The Secretary must revoke the order unless he or she is satisfied that the order is still needed to safeguard against unlawful interference with maritime transport.
- (3) The Secretary must not vary the order unless he or she is satisfied that the order as varied:
 - (a) adequately safeguards against unlawful interference with maritime transport; and
 - (b) meets the requirements set out in subsections 189(3) and (4).
- (4) If an order is varied, the order continues in force as varied.

192 Notice of enforcement orders

- (1) As soon as practicable after making or reviewing an enforcement order, the Secretary must cause the maritime industry participant named in the order to be informed of the making of the order, or the decision on the review, as the case requires.

- (2) Failure to comply with this section does not affect the validity of the order.

193 Complying with enforcement orders

- (1) A person must not engage in conduct that contravenes an enforcement order.
- (2) If a person contravenes subsection (1), the person does not commit an offence but may be subject to an injunction under section 197.

Division 4—Ship enforcement orders for regulated Australian ships

194 Simplified overview of Division

The Secretary may give a ship enforcement order to the ship operator for, or the master of, a regulated Australian ship, where the Secretary is of the opinion that the ship has operated in contravention of this Act.

A ship operator or master who contravenes an enforcement order may be subject to an injunction.

195 Ship enforcement orders—regulated Australian ships

- (1) The Secretary may give a direction to:
 - (a) the ship operator for a regulated Australian ship; or
 - (b) the master of the ship;requiring the ship operator or master to take specified action, or refrain from taking specified action, in relation to the ship.
- (2) A direction under subsection (1) is a *ship enforcement order*.
- (3) The Secretary may only give a ship enforcement order if he or she reasonably believes that:
 - (a) the regulated Australian ship named in the ship enforcement order has operated in contravention of this Act; and
 - (b) the ship enforcement order is necessary to safeguard against unlawful interference with maritime transport.
- (4) The ship enforcement order must:
 - (a) bear a clear and direct relationship to the contravention; and
 - (b) be proportionate to the contravention.
- (5) The action that a ship operator or master may be directed to take under subsection (1) includes, but is not limited to, the following:
 - (a) removing the ship from specified waters;

- (b) removing the ship from a security regulated port;
 - (c) moving the ship within a security regulated port;
 - (d) holding the ship in a particular position for a specified period or until a specified event occurs;
 - (e) taking particular actions, or ensuring that particular actions are taken, on board the ship;
 - (f) allowing a maritime security inspector on board the ship to inspect the ship or ship security records carried by the ship.
- (6) A ship enforcement order has no effect unless the Secretary commits the direction to writing before giving it.

196 Enforcing ship enforcement orders

- (1) The ship operator for a regulated Australian ship must not engage in conduct that contravenes a ship enforcement order that relates to the ship.
- (2) If a ship operator contravenes subsection (1), the ship operator may be subject to an injunction under section 197.
- (3) The master of a regulated Australian ship must not engage in conduct that contravenes a ship enforcement order that relates to the ship.
- (4) If the master of a ship contravenes subsection (3), the master may be subject to an injunction under section 197.

Division 5—Injunctions

197 Injunctions

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Act, the Federal Court may, on the application of the Secretary, grant an injunction:
 - (a) restraining the person from engaging in the conduct; or
 - (b) requiring the person to do an act or thing.
- (2) On an application, the court may, if it thinks it appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the court is satisfied that the person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Act.
- (3) The court may, if it thinks it desirable, grant an interim injunction pending its determination of an application.
- (4) The court is not to require the Secretary or anyone else, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (5) The court may discharge or vary an injunction it has granted.
- (6) The power to grant or vary an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in such conduct; and
 - (b) whether or not the person has previously engaged in such conduct.
- (7) The power to grant or vary an injunction requiring a person to do an act or thing may be exercised:
 - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

Section 197

- (b) whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

Division 6—Demerit points system

198 Demerit points system

The regulations may, in accordance with this Division, establish a system (the *demerit points system*) under which the approval of a maritime security plan or a ship security plan may be cancelled.

199 Demerit points—maritime security plans

- (1) The demerit points system may provide that the approval of the maritime security plan of a maritime industry participant may be cancelled if the maritime industry participant accrues a prescribed number of demerit points.

Note: Section 58 deals with the cancellation of the approval of maritime security plans under the demerit points system.

- (2) Demerit points must only be accrued if the maritime industry participant:
 - (a) is convicted or found guilty of an offence against this Act; or
 - (b) under a scheme established under regulations made under section 187, pays a penalty to the Commonwealth as an alternative to prosecution.
- (3) Without limiting the scheme that may be established under section 198, the scheme may provide that different provisions apply to different kinds of maritime industry participants or to different classes of participants within a kind of maritime industry participant.

200 Demerit points—ship security plans

- (1) The demerit points system may provide that the approval of a ship security plan may be cancelled if the number of demerit points prescribed by the regulations is accumulated in respect of the ship.

Note: Section 77 deals with the cancellation of the approval of ship security plans under the demerit points system.

Section 200

- (2) The demerit points system must only allow demerit points to be accumulated in respect of the ship if a ship operator:
 - (a) is convicted or found guilty of an offence against section 62 or 63 in respect of the ship; or
 - (b) under a scheme established under regulations made under section 187, pays a penalty to the Commonwealth as an alternative to prosecution for an offence against section 63 in respect of the ship.
- (3) Without limiting the scheme that may be established under section 198, the scheme may provide that different provisions apply to different kinds of ships or to different classes of ships within a kind of ship.

Part 12—Review of decisions

201 Review of decisions by Administrative Appeals Tribunal

Application may be made to the Administrative Appeals Tribunal for a review of a decision by the Secretary:

- (a) to refuse to approve a maritime security plan under subsection 51(2) or (4) or a ship security plan under subsection 70(2) or (4); or
- (b) to direct a maritime industry participant or ship operator to vary a plan under section 53 or 72; or
- (c) to direct a maritime industry participant or ship operator to revise a plan under section 55 or 74; or
- (d) to cancel a maritime security plan or a ship security plan under section 57, 58, 76 or 77; or
- (e) to refuse an interim ISSC under section 86; or
- (f) to declare that a particular port, or a part of a particular port, is a security regulated port under subsection 13(1); or
- (g) to designate a person as a port operator under section 14; or
- (h) to establish a port security zone under section 102; or
- (i) to declare, under section 106, that a ship security zone is to operate around a security regulated ship; or
- (j) to establish an on-board security zone under section 110.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the decision-maker to notify persons whose interests are affected by the decision of the making of the decision and their right to have the decision reviewed. In so notifying, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.

Part 13—Miscellaneous

202 Delegation

- (1) The Secretary may, by writing, delegate all or any of his or her powers and functions under this Act to an SES employee, or acting SES employee, in the Department.
- (2) The Secretary may, by writing, delegate all or any of his or her powers and functions under this Act, other than powers or functions under Division 3 of Part 11, to an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

Note: The Secretary may delegate his or her powers and functions under Part 4 to a person engaged by a recognised security organisation: see section 88.

- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

203 Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of electronic equipment being operated as mentioned in section 139, 141 or 148:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.

Section 204

- (2) The Commonwealth is liable to pay the owner of the equipment, or the user of the data or programs, compensation of a reasonable amount to the person in respect of the damage or corruption.
- (3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may take proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.

204 Compensation for acquisition of property

- (1) If:
 - (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;then the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may take proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (3) Compensation is payable out of money appropriated by the Parliament.

205 Compensation for unnecessary delay—paid by the Commonwealth

- (1) If:
-

- (a) the Secretary gives:
 - (i) a control direction to a regulated foreign ship (see Division 3 of Part 5); or
 - (ii) a ship enforcement order to a regulated Australian ship (see Division 4 of Part 11); and
 - (b) the ship is delayed because the ship complies with the direction or order; and
 - (c) the delay is unreasonable in the circumstances;
- the Commonwealth is liable to pay compensation of a reasonable amount to the ship operator for the ship in respect of the delay.
- (2) If the Commonwealth and the ship operator do not agree on the amount of the compensation, the ship operator may take proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
 - (3) Compensation is payable out of money appropriated by the Parliament.

206 Compensation for inspection and detention—paid by ship operators or other persons

- (1) If:
 - (a) a person fails to comply with this Act; and
 - (b) because of that failure a ship is detained or inspected; and
 - (c) the detention or inspection is reasonable in the circumstances; and
 - (d) the Commonwealth incurs costs in connection with the detention or inspection;

the person is liable to pay compensation of a reasonable amount to the Commonwealth in respect of the detention or inspection.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the Commonwealth may take proceedings in the Federal Court for the recovery from the person of such reasonable amount of compensation as the Court determines.
- (3) If:

Section 207

- (a) a security regulated ship (the *non-complying ship*) fails to comply with this Act; and
 - (b) because of that failure, the non-complying ship or another ship is detained or inspected; and
 - (c) the detention or inspection is reasonable in the circumstances; and
 - (d) the Commonwealth incurs costs in connection with the detention or inspection;
- the ship operator for the non-complying ship is liable to pay compensation of a reasonable amount to the Commonwealth in respect of the detention or inspection.
- (4) If the Commonwealth and the ship operator do not agree on the amount of the compensation, the Commonwealth may take proceedings in the Federal Court for the recovery from the ship operator of such reasonable amount of compensation as the Court determines.

207 Saving of other laws

This Act does not affect an immunity or privilege that is conferred by or under the *Consular Privileges and Immunities Act 1972*, the *Defence (Visiting Forces) Act 1963*, the *Diplomatic Privileges and Immunities Act 1967*, the *Foreign States Immunities Act 1985* or any other Act.

208 Severability—additional effect of Act

- (1) Without limiting its effect apart from this section, this Act also has effect as provided by this section.
- (2) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions of corporations to which paragraph 51(xx) of the Constitution applies.
- (3) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions that occur at Commonwealth places.

- (4) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place in the course of, or in relation to, trade or commerce:
 - (a) between Australia and places outside Australia; or
 - (b) among the States; or
 - (c) within a Territory, between a State and a Territory or between 2 Territories.
- (5) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place in a Territory.
- (6) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place outside Australia.
- (7) This Act also has the effect that it would have if its operation were expressly confined to matters:
 - (a) in relation to which the Commonwealth is under an obligation under an international agreement; or
 - (b) that are of international concern.

209 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
 - (a) prescribe fees in respect of matters under this Act (including the regulations); and
 - (b) prescribe penalties of not more than 50 penalty units for offences against the regulations.
- (3) Paragraph (2)(b) does not limit any provision in this Act that provides for the regulations to prescribe penalties higher than 50 penalty units.

*[Minister's second reading speech made in—
House of Representatives on 18 September 2003
Senate on 9 October 2003]*

(151/03)
