

# **Maritime Transport Security Amendment Regulations 2004 (No. 2) 2004 No. 137**

## **EXPLANATORY STATEMENT**

Rules 2004 No. 137

Issued by Authority of the Minister for Transport and Regional Services

Subject: *Maritime Transport Security Act 2003*

*Maritime Transport Security Amendment Regulations 2004 (No. 2)*

Subsection 209(1) of the *Maritime Transport Security Act 2003* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act gives effect in Australian law to the international maritime security regime enshrined in Chapter XI-2 of the International Convention for the Safety of Life at Sea and the International Ship and Port Facility Security Code. The regime comes into force on 1 July 2004.

The purpose of the Regulations is to clarify provisions in the *Maritime Transport Security Regulations 2003* (the Principal Regulations) and to correct inconsistencies identified since notification of the Principal Regulations.

The enforcement provisions of the Act are due to commence on 1 July 2004, to coincide with the deadline for compliance with the new international maritime security regime. The Regulations will assist maritime industry participants' compliance with the Act and the Principal Regulations.

In summary, the proposed amendments to the Principal Regulations:

- insert provisions enabling port operators to request the establishment of a land-side restricted zone by the Secretary of the Department of Transport and Regional Services, and the obligations which flow from the establishment of this type of maritime security zone;
- clarify that a port facility operator may enter into an agreement with a ship operator to determine the procedures for screening and clearing persons;
- specify requirements for the establishment of on-board security zones which operate under prescribed circumstances;
- clarify that members of the Australian Defence Force on duty and their vessels, vehicles or goods are not to be denied entry into a maritime security zone, and that Australian Defence Force vessels, vehicles or goods which are being taken into a cleared zone or through a screening point need not be screened and cleared if under the control of, or belonging to, an Australian Defence Force member on duty;
- clarify that an immigration officer on duty and a maritime security inspector on duty need not be screened and cleared under prescribed circumstances; and

- specify that if a person need not be screened and cleared under prescribed circumstances then neither does their baggage.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the proposed Regulations may be exercised.

The Regulations commence in two stages. The first stage commences on the date of gazettal and comprises regulations 1 to 4 and Schedule 1.

All other amendments to the Regulations commence on the commencement of Part 2 of the Act. According to the Proclamation gazetted on 17 March 2004, Part 2 commences on 1 July 2004.

## **ATTACHMENT**

### **Details of the proposed *Maritime Transport Security Amendment Regulations 2004 (No. 2)***

#### **1 Name of Regulations**

This regulation provides that these regulations are to be cited as the *Maritime Transport Security Amendment Regulations 2004 (No. 2)*.

#### **2 Commencement**

This regulation provides that these regulations commence in two stages. The first stage commences on the date of gazettal and comprises regulations 1 to 4 and Schedule 1.

Schedule 2 commence on the commencement of Part 2 of the Act. According to the Proclamation gazetted on 17 March 2004, Part 2 commences on 1 July 2004.

#### **3 Amendment of *Maritime Transport Security Regulations 2003***

This regulation provides that Schedule 1 amends the *Maritime Transport Security Regulations 2003* (the Principal Regulations).

#### **4 Amendment of *Maritime Transport Security Regulations 2003***

This regulation provides that Schedule 2 amends the Principal Regulations as amended by the *Maritime Transport Security Amendment Regulations 2004 (No. 1)*.

### **Schedule 1 Amendments commencing on gazettal**

#### **Item 1 Regulation 1.03, definition of *land-side restricted zone***

This item substitutes the definition of 'land-sided restricted zone' to provide that the term applies to a structure connected directly or indirectly to land. This clarifies that, for instance, land-side restricted zones may apply to wharves whether directly or indirectly connected with the land.

This item provides that the defined term is also extended to include land under the control of a port operator, not just port facility operators and port service providers, to take into account the amendments in Item 3 of Schedule 1 and Items 1 and 3 of Schedule 2 (see below).

#### **Item 2 Paragraph 1.55 (3A) (b)**

This item corrects an inconsistency. In other paragraphs under subregulation 1.55(3A) the reference is to 'the last 10 ports of call' rather than, as currently in paragraph 1.55(3A)(b), to 'any of the last 10 ports of call'.

#### **Item 3 After regulation 3.75**

This item inserts a new regulation 3.77 to prescribe conditions to be met by a port operator who wishes the Secretary of the Department of Transport and Regional Services to establish a land-side restricted zone.

**Item 4 Regulation 3.160**

This item enables the creation of one or more subregulations under regulation 3.160.

**Item 5 Regulation 3.160**

This item inserts a new subregulation (2) under regulation 3.160 to provide that a port facility operator may enter into an agreement with a ship operator to determine the procedures for screening and clearing persons.

**Item 6 Paragraph 4.65 (1) (e)**

This item provides that a semi-colon and an 'and' replace the full stop at the end of the paragraph to enable the addition of another paragraph.

**Item 7 After paragraph 4.65 (1) (e)**

This item inserts a new paragraph 4.65(1)(f) to extend the prescribed conditions for an on-board security zone.

**Item 8 Regulation 6.05, heading**

This item substitutes the current heading 'Access by certain persons not be denied' with 'Access not to be denied' to take into account the amendments proposed in Items 9 and 12 of Schedule 1 (see below).

**Item 9 Regulation 6.05**

This item provides for the creation of one or more subregulations under regulation 6.05 and corrects an error of terminology.

**Item 10 Paragraph 6.05 (c)**

This item corrects an error of terminology.

**Item 11 Regulation 6.05, example** This item corrects an error of terminology.

**Item 12 Regulation 6.05**

This item inserts a new subregulation (2) to clarify that members of the Australian Defence Force on duty and their vessels, vehicles and goods are not to be denied entry into a maritime security zone.

**Schedule 2 Amendments commencing on the commencement of Part 2 of the *Maritime Transport Security Act 2003***

**Item 1 After regulation 6.30**

This item inserts a new regulation 6.33 to provide that port operators who are responsible for land-side restricted zones are required to monitor and control access to such zones. A strict liability offence applies to a breach, and the maximum penalty is 200 penalty units. Subsection 4AA(1) of the *Crimes Act 1914* provides that one penalty unit is \$110.

**Item 2 Subregulation 6.40 (1)**

This item corrects an error of terminology.

**Item 3 Subregulations 6.45 (1) and (2)**

This item clarifies that it is a strict liability offence for a person to enter or remain in a land-side restricted zone which has been established within the boundaries of an area under the control of a port service provider unless authorised to do so. This regulation also makes it a strict liability offence to take into or leave a vehicle or thing in a landside restricted zone within the boundaries of an area under the control of a port service provider unless authorised to do so.

**Item 4 Paragraph 6.65 (2) (b)**

This item clarifies that the type of land-side sign used to identify a water-side restricted zone is not limited to a sign which includes a map of the port that shows the boundaries of the water-side restricted zone, as previously provided for in this paragraph.

**Item 5 Regulation 7.05, including the example**

This item substitutes the current heading 'Access by certain persons not be denied' with 'Access not to be denied'.

This item creates subregulations under regulation 7.05. In subregulation 7.05(1) an error of terminology is corrected. Subregulation 7.05(2) is inserted to provide that members of the Australian Defence Force on duty and their vessels, vehicles and goods are not to be denied entry into a maritime security zone.

**Item 6 Paragraph 7.20 (b)**

This item amends the paragraph to take into account the amendments in Item 9 of Schedule 2 (see below).

**Item 7 Paragraph 7.25 (3) (j)**

This item enables two new paragraphs to be inserted after paragraph 7.25(3)(j) by replacing the full-stop after 'duties' with a semi-colon and an 'and'.

**Item 8 After paragraph 7.25 (3) (j)**

This item inserts two paragraphs (k) and (l) to clarify that under prescribed circumstances immigration officers on duty and maritime security inspectors on duty need not be screened and cleared.

**Item 9 After regulation 7.25**

This item inserts three new regulations to clarify screening and clearing provisions.

Regulation 7.27 provides that a person's baggage need not be screened when the Regulations prescribe that that person need not be screened. Similarly, if the Regulations prescribe that a person may enter a cleared zone other than through a screening point, that person's baggage and other goods, for instance equipment, will also be permitted to enter.

Regulations 7.28 and 7.29 provide that a vehicle driven by an Australian Defence Force member on duty or a vessel operated by an Australian Defence Force member on duty need not be screened and can enter a cleared zone other than through a screening point. These regulations reinforce the amendments to regulations 6.05 and 7.05 referred to in Item 12 of Schedule 1 and Item 5 in Schedule 2 respectively.

**Item 10 Subregulation 7.35 (2), including the penalty**

This item corrects an error of terminology. New subregulation 7.35(2) uses the term 'goods', to correspond with regulation 3.155.

**Item 11 Regulation 7.40, heading**

This item replaces the heading 'Persons authorised to carry weapons or prohibited items in cleared zones' with 'Persons authorised to carry weapons or prohibited items in maritime security zones' to reflect the amendments in Item 12 of Schedule 2 (see below).

**Item 12 Subregulations 7.40 (2) and (3)**

This item replaces the term 'cleared zone' with 'maritime security zone' to clarify that prescribed persons may carry weapons or prohibited items into maritime security zones.