

EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

Maritime Transport and Offshore Facilities Security Act 2003

Maritime Transport and Offshore Facilities Security Amendment (Security Awareness Training) Regulations 2021

The *Maritime Transport and Offshore Facilities Security Act 2003* (the Act) and the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Regulations) operate to safeguard against unlawful interference with maritime transport or offshore facilities. One way in which the Act achieves this purpose is by imposing obligations on maritime industry participants, including the development of maritime security plans.

The Regulations promote this purpose, in part, by imposing requirements on maritime industry participants with which they must comply, in addition to requesting the Secretary to approve a maritime security plan (at subregulations 1.20(1) and 1.25(1)). *The Maritime Transport and Offshore Facilities Security Amendment (Security Awareness Training) Regulations 2021* (Amending Regulations), consistent with these purposes, amend the Regulations to introduce a new duty and responsibility of a Port Security Officer (PSO) and a Port Facility Security Officer (PFSO), which is that they ensure port personnel are provided with adequate training in security awareness.

Legislative authority

Subsection 209(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed (paragraph (a)), or necessary or convenient to be prescribed for carrying out or giving effect to the Act (paragraph (b)). The Amending Regulations are being made under paragraph 209(1)(b) of the Act, as they are necessary and convenient to the purpose of safeguarding against unlawful interference with maritime transport or offshore facilities.

Purpose

Security awareness is an essential foundation for effective transport security and safeguarding against unlawful interference with maritime transport or offshore facilities. This amendment will assist to ensure that personnel employed at Australia's security regulated ports and port facilities are appropriately alert to, and aware of, the security environment and their responsibilities working within that environment.

The Amending Regulations add to the current duties and responsibilities of a PSO and PFSO, which are provided at subregulations 1.20(3) and 1.25(3) of the Regulations, respectively. Paragraph 1.20(3)(g) of the Regulations provides that the duties and responsibilities of a PSO include "enhancing security awareness and vigilance of port personnel". There is no equivalent duty or responsibility for PFSOs.

The Amending Regulations will build on paragraph 1.20(3)(g) for PSOs and introduce an equivalent duty and responsibility for PFSOs. PSOs and PFSOs will be required to ensure that security awareness training is provided to port personnel, to an adequate standard. This would allow for a mechanism to provide security awareness training across all security-regulated ports and port facilities.

The Office of Best Practice Regulation (OBPR) was consulted prior to making the Amending Regulations, and a Regulation Impact Statement for these Regulations was not required (OBPR: 42580).

The Department of Home Affairs (the Department) has been working closely with maritime industry participants since 2018 to develop an approach to security awareness training that is tailored to the maritime environment, and achieves the policy objective. Consultation with industry participants was achieved, in part, through the Maritime Industry Security Consultative Forum, during which members had the opportunity to comment on discussion papers related to the proposal. Working group meetings with self-elected industry participants were also held in late 2019, to finalise the scope of the proposed reforms. Finally, the maritime industry was provided with the Exposure Draft of the proposed Amending Regulations for their comments and feedback. Maritime industry participants provided positive feedback as part of this consultation.

The Department has also consulted directly with the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) on the proposal. DITRDC have not raised any concerns.

A Statement of Compatibility with Human Rights in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* is included at Attachment A. The overall assessment is that the Amending Regulations are compatible with human rights.

Details of the Amending Regulations are set out in Attachment B.

The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The whole of the Amending Regulations commence on 1 July 2021.

Statement of Compatibility with Human Rights

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

Maritime Transport and Offshore Facilities Security Amendment (Security Awareness Training) Regulations 2021

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

Overview of the Disallowable Legislative Instrument

The *Maritime Transport and Offshore Facilities Security Amendments (Security Awareness Training) Regulations 2021* (the Amending Regulations) amends the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Regulations) to introduce a new duty and responsibility of a port security officer (PSO) and a port facility security officer (PFSO), to ensure port personnel are provided with adequate training in security awareness.

The *Maritime Transport and Offshore Facilities Security Act 2003* (the Act) and the Regulations operate to safeguard against unlawful interference with maritime transport or offshore facilities. One way in which the Act achieves this purpose is by imposing obligations on maritime industry participants, including the development of maritime security plans.

The Regulations promote the purpose of the Act, in part, by imposing requirements on maritime industry participants with which they must comply, in addition to requesting the Secretary to approve a maritime security plan (at subregulations 1.20(1) and 1.25(1)). The Amendment Regulations, consistent with these purposes, introduce a new duty and responsibility of PSOs and PFSOs, which is that they ensure port personnel are provided with adequate training in security awareness.

The Amending Regulations add to the current duties and responsibilities of a PSO and PFSO, which are provided at subregulations 1.20(3) and 1.25(3) of the Regulations, respectively. Paragraph 1.20(3)(g) of the Regulations provides that the duties and responsibilities of a PSO include “enhancing security awareness and vigilance of port personnel”. There is no equivalent duty and responsibility for PFSOs.

The Amendment Regulations will build on paragraph 1.20(3)(g) for PSOs and introduce an equivalent duty and responsibility for PFSOs. PSOs and PFSOs will ensure that security awareness training is provided to port personnel, to an adequate standard. This will allow for a mechanism to provide security awareness training across all security regulated ports and facilities.

Security awareness is an essential foundation for effective transport security and safeguarding against unlawful interference with maritime transport or offshore facilities. The policy intention of this amendment is that it will assist to ensure that

personnel employed at Australia's security regulated ports and facilities are appropriately alert to, and aware of, the security environment and their responsibilities working within that environment.

Human rights implications

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

Conclusion

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

Details of the *Maritime Transport and Offshore Facilities Security Amendment (Security Awareness Training) Regulations 2021*

Section 1 – Name

This section provides that the title of this instrument is the *Maritime Transport and Offshore Facilities Security Amendments (Security Awareness Training) Regulations 2021* (the Amending Regulations).

Section 2 – Commencement

This section provides for the commencement of the Amending Regulations, as set out in the table in subsection 2(1).

Table Item 1 of subsection 2(1) provides for the whole of the Amending Regulations to commence on 1 July 2021.

Subsection 2(2) clarifies that information in column 3 of the table in subsection (1) is not part of the instrument, and that information may be inserted there, or edited, in any published version of the instrument.

Section 3 – Authority

This section provides that the Amending Regulations are made under the *Maritime Transport and Offshore Facility Security Act 2003* (the Act).

Section 4 – Schedules

Section 4 provides that each instrument specified in a Schedule to this instrument is to be amended or repealed as set out in this instrument and any other item in a schedule to this instrument has effect according to its terms. There is one Schedule to the Amending Regulations, which makes amendments to the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Regulations).

Schedule 1—Amendments

Maritime Transport and Offshore Facilities Security Regulations 2003

Clause 1 – After paragraph 1.20(3)(g)

Subsection 1.20(1) of the Regulations requires port operators to designate a person as a port security officer (PSO) prior to requesting the Secretary to approve a maritime security plan. Subsection 1.20(3) of the Regulations provides for the duties and responsibilities of a PSO. Paragraph 1.20(3)(g) provides that one of the duties and responsibilities of a PSO is “enhancing security awareness and vigilance of port personnel”.

This item inserts new paragraph 1.20(3)(ga) into the Regulations, which provides that the duties and responsibilities of a PSO include ensuring that port personnel are provided with adequate training in security awareness. New paragraph 1.20(3)(ga) of the Regulations also provides that this new paragraph does not limit paragraph 1.20(3)(g) of the Regulations.

The purpose of this amendment is to add to the current duties and responsibilities for a PSO, to ensure that port personnel are provided with adequate training in security awareness.

The policy intention is that PSOs will have the discretion to decide which personnel should complete security awareness training within their port. Training should be regular, and occur in a way that best suits the unique operating environment of each port. The intention is that security awareness training should apply to all persons who can influence security outcomes by virtue of their work location and/or the nature of their role.

Clause 2 – After paragraph 1.25(3)(b)

Subsection 1.25(1) of the Regulations requires port facility operators to designate a person as a port facility security officer (PFSO) prior to requesting the Secretary to approve a maritime security plan. Subsection 1.25(3) of the Regulations provides for the duties and responsibilities of a PFSO.

This item inserts new paragraph 1.25(3)(ba) into the Regulations, which provides that the duties and responsibilities of a PFSO include ensuring that port facility personnel are provided with adequate training in security awareness.

The purpose of this amendment is to provide for a new duty and responsibility for a PFSO, to ensure that port facility personnel are provided with adequate training in security awareness.

The policy intention is that PFSOs will have the discretion to decide which personnel should complete security awareness training within their facility. Training should be regular, and occur in a way that best suits the unique operating environment of each port facility. The intention is that security awareness training should apply to all persons who can influence security outcomes by virtue of their work location and/or the nature of their role.