

## **EXPLANATORY STATEMENT**

Issued by authority of the Secretary of the Department of Home Affairs

*Maritime Transport and Offshore Facilities Security Act 2003*

***Maritime Transport Security (Screening Officer Requirements)  
Determination 2022***

The *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act) establishes a regulatory framework to safeguard against unlawful interference with maritime transport and offshore facilities. To achieve this purpose, the Maritime Act establishes minimum security requirements for maritime industry participants by imposing obligations on persons engaged in maritime transport and offshore facilities related activities.

Consistent with this purpose, the *Maritime Transport Security (Screening Officer Requirements) Determination 2022* (the Determination) determines qualifications, training, use of security identification cards and uniform requirements for specified screening officers.

### **Legislative authority**

The Determination is made under section 165A of the Maritime Act. Paragraph 165A(a) of the Maritime Act provides that the Secretary of the Department of Home Affairs (the Secretary) may determine, by a legislative instrument, the training and qualification, and any other requirements for specified screening officers relating to their exercise or performance of a specified power under Division 6 of Part 8 of the Maritime Act, or a specified screening function. Paragraph 165A(b) of the Maritime Act provides that the Secretary may, by legislative instrument, determine for specified screening officers the requirements in relation to use of identity cards or requirements in relation to uniforms.

### **Purpose**

The purpose of the Determination is to determine certain requirements for specified screening officers, thereby standardising the competency levels of specified screening officers. In turn, this is intended to strengthen the performance of security screening activities undertaken at Australian security regulated ports and help ensure all screeners in Australia are equipped to respond to current and emerging threats.

The effect of the Determination is that specified screening officers are required to have completed relevant training and to hold relevant qualifications, and meet other requirements, prior to exercising powers or performing screening functions under the Maritime Act.

The Determination determines requirements for two classes of screening officers; *new* screening officers and *existing* screening officers. The purpose of this distinction is to enable the current screening workforce (*existing* screening officers) to continue in their role as a screening officer by meeting requirements which more closely align

with the requirements for screening officers prior to 16 January 2022, while *new* screening officers are subject to certain different requirements, which are outlined in the Determination.

Under the Determination, the following qualification requirements apply to screening officers engaged or employed by a port facility operator that has been served a notice under regulation 7.30 of the *Maritime Transport and Offshore Facilities Security Regulations 2003* (Maritime Regulations):

- a *new screening officer* (as defined in the Determination) is required to hold a Certificate II in Transport Security Protection or a qualification the Secretary is satisfied will enable the holder to carry out the duties of a screening officer under the Maritime Act; and
- an *existing screening officer* (as defined in the Determination) is required to hold a Certificate II in Transport Security Protection or a Certificate II in Security Operations or a qualification the Secretary is satisfied is equivalent to a Certificate II in Transport Security Operations or have training and experience acquired while working as a security guard that is sufficient to satisfy the requirements for obtaining a security guard license in the state or territory where the person intends to work as a screening officer.

The application of the qualification requirements has only been applied to those ports operating under a Maritime Regulation 7.30 notice. In practical terms, this means applying the requirement to only those port facilities that have been served the Large Passenger Ship Screening Notice – that is, the major ports where cruise ships embark and disembark passengers, and which have a greater risk profile. This is a proportional application of screening officer requirements to reflect the differential threat and risk within the maritime sector.

The Determination also provides that all screening officers (as defined in the Maritime Act), regardless of whether or not the port facility operator by whom they are engaged or employed has been served a notice under regulation 7.30 of the Maritime Regulations, are required to meet training requirements, hold and properly display a valid Maritime Security Identification Card (MSIC) while on duty and wear a distinctive and recognisable uniform.

The Determination also facilitates the employment of people previously engaged or employed as a screening officer by a screening authority under the *Aviation Transport Security Act 2004* (Aviation Act) or *Aviation Transport Security Regulations 2005* (Aviation Regulations) as screening officers in the Maritime sector. This is achieved by recognising people who were employed as screening officers under the Aviation Act or Aviation Regulations in the definitions of existing screening officer and new screening officer in the Determination. The recognition of aviation screening officers in the maritime environment will provide a greater pool of employees for port facilities to draw upon as the cruise ship sector recovers from disruptions caused by the COVID-19 pandemic.

The Department of Home Affairs consulted with transport industry stakeholders on the development and implementation of the Determination. An exposure draft of the Determination was provided to maritime industry stakeholders for their review and comment. No issues or concerns were raised by industry in relation to the Determination.

The Office of Best Practice Regulation (OBPR) was consulted prior to making the Regulations. OBPR noted that the Determination was unlikely to have more than a minor regulatory impact and that a Regulation Impact Statement for this Determination was not required (OBPR: 22344).

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 Determination is compatible with human rights.

Details of the Determination are set out in Attachment B.

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

The whole of the Determination commences the day after the instrument is registered on the Federal Register of Legislation.

**Statement of Compatibility with Human Rights**

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

**Maritime Transport Security (Screening Officer Requirements) Determination 2022**

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 Act 2003* (the Maritime Act) establishes a regulatory framework to safeguard against unlawful interference with maritime transport and offshore oil and gas facilities. To achieve this purpose, the Act establishes minimum security requirements for maritime transport or offshore facilities in Australia by imposing obligations on persons engaged in related activities.

Consistent with this purpose, the *Maritime Transport Security (Screening Officer Requirements) Determination 2022* (the Determination) determines training, qualification, use of identity card and uniform requirements for specified screening officers. The Determination revokes the *Maritime Transport Security (Screening Officer Requirements) Determination 2021* (the 2021 Determination).

The Determination replicates and maintains many of the requirements included in the 2021 Determination, such as requirements for specified screening officers to obtain certain qualifications, have supervised training, display a Maritime Security Identification Card (MSIC) and wear a uniform. Further, the Determination maintains a distinction between the qualification requirements of a ‘*new screening officer*’ and an ‘*existing screening officer*’.

However, the Determination seeks to assist maritime industry participants in two key respects, and in which it differs from the previous 2021 Determination:

- The Determination limits the scope of the qualification requirements to only apply where the screening officer is engaged or employed by a port facility that has been served a Notice under regulation 7.30 of the *Maritime Transport and Offshore Facilities Security Regulations 2003* (Maritime Regulations). In practical terms, this means applying the requirement to only those port facilities that have been served the Large Passenger Ship Screening Notice – that is, the major ports where cruise ships embark and disembark passengers, and which have a greater risk profile; and
- The Determination also allows that people who have been employed as a screening officer by a screening authority under the *Aviation Transport*

*Security Act 2004* or *Aviation Transport Security Regulations 2005* may also be employed as a screening officer at port facilities. The recognition of aviation screening officers in the maritime environment will provide a greater pool of employees for port facilities to draw upon as the cruise ship sector recovers.

This Determination differs from the 2021 Determination in one other respect – the date reference in the definitions of *existing screening officer* and *new screening officer*. This takes account of the fact the discretionary powers within the 2021 Determination (under paragraph 5(2)(b)) were used to continue to recognise the previous qualification requirement, the Certificate II Security Operations, as an equivalent qualification until 16 January 2022. Recognition in this Determination of the previous qualification requirements for an additional seven months after the 2021 Determination came into force, is to provide industry with a larger pool of potential employees as it seeks to recover from the impacts of the COVID-19 pandemic on the maritime sector.

### **Human rights implications**

This Disallowable Legislative Instrument will engage the following human rights:

- the right to work under Article 6 of *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- the right to freedom from discrimination under Article 2(2) of the ICESCR

Article 6(1) of the ICESCR provides that:

*The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

Article 6 of the ICESCR is a right to the opportunity for a person to gain work of their choosing. The right to work does not equate to a guarantee to particular employment. The United Nations Committee on Economic Social and Cultural Rights (CESCR) has stated that this protection includes the right to not be unfairly deprived of work. Any limitations need to be reasonable, necessary and proportionate to the legitimate objective sought to be achieved.

Article 2(2) of the ICESCR provides:

*The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

In its General Comment on Article 2 of the ICESCR (E/C.12/GC/20), CESCR has stated (at 13) that:

*Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.*

The Disallowable Legislative Instrument can be seen to positively engage the right to work in Article 6 of the ICESCR as it makes it easier for a screening officer to meet the work requirements, by limiting the locations where an officer is required to have qualification requirements and expanding the criteria for those who may be deemed an ‘existing screening officer’.

The Determination makes provision for aviation screening officers who wish to transfer to maritime screening officer roles to satisfy qualification requirements as an ‘existing screening officer’ rather than having to meet the qualification requirements of a ‘new screening officer’.

These changes promote the work rights of screening officers by providing that existing maritime and aviation screening officers are not required to obtain further qualifications in circumstances where they fulfil all other obligations and have previously been assessed as having the requisite skills, knowledge and qualifications to carry out their roles effectively. This avoids disrupting the employment of existing maritime screening officers and provides aviation officers the flexibility to transition to maritime. The Determination promotes the right to work by supporting existing screening officers to obtain and remain in employment of their choosing and with requirements and conditions that reflect their existing skills, knowledge and experience.

The Australian maritime security environment is a highly sensitive environment, the consequences of unlawful interference with maritime transport are significant, and it is reasonable to impose necessary qualifications on persons wishing to work in this environment.

To the extent that the Determination may also limit the right to work in Article 6 of the ICESCR and the right to non-discrimination in Article 2(2) of the ICESCR by imposing qualification requirements on persons seeking employment as maritime screening officers, such limitation is reasonable, necessary and proportionate in achieving the legitimate aim of safeguarding against interference with maritime transport and ensuring that screening officers are properly qualified to carry out their duties.

## **Conclusion**

The Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**The Hon Clare O’Neil MP  
Minister for Home Affairs**

***Details of the Maritime Transport Security (Screening Officer Requirements) Determination 2022***

**Section 1 – Name**

This section provides that the title of this instrument is *Maritime Transport Security (Screening Officer Requirements) Determination 2022* (the Determination).

**Section 2 – Commencement**

This section provides that the Determination commences the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Revocation**

The effect of this section is that, on commencement of the Determination, the *Maritime Transport Security (Screening Officer Requirements) Determination 2021* is revoked.

**Section 4 – Definitions**

Section 4 provides various definitions for the purpose of the Determination.

***Note***

The note to section 4 notes that certain terms used in the Determination are defined in the *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act) and the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Maritime Regulations). Those terms include “**screening officer**”, which has the meaning given by section 165 of the Maritime Act, and “**MSIC**”, which means a Blue or White Maritime Security Identification Card (see regulation 6.07B of the Maritime Regulations).

***Aviation Act***

This definition clarifies that a reference to the Aviation Act is a reference to the *Aviation Transport Security Act 2004*.

***Aviation Regulations***

This definition clarifies that a reference to Aviation Regulations is a reference to the *Aviation Transport Security Regulations 2005*.

***existing screening officer***

Different requirements have been determined for those screening officers that are employed prior to, or on, 16 January 2022, and those that are employed following this date. The date reflects that the Certificate II Transport Security Protection qualification requirement came into force on 16 June 2021, but the delegate continued

to recognise the Certificate II Security Operations qualification as equivalent for an additional seven months to 16 January 2022 to give industry time to adjust to the new requirements.

While this Determination seeks to introduce standardised competency levels for specified screening officers, it is necessary to recognise the experience of existing screening officers in the sector. As such, it is necessary to include definitions differentiating between *new* and *existing* screening officers. This allows greater flexibility in the transport security sector more broadly and assists in retention across the screening officer workforce.

‘Existing screening officer’ means a person who:

- has been employed or engaged by a port facility operator as a screening officer under the Maritime Act or Maritime Regulations, or by a screening authority as a screening officer under the Aviation Act or Aviation Regulations, at any time in the 12 months on or before 16 January 2022 (paragraph (a)); and
- since 16 January 2022, has not ceased engagement or employment as a screening officer for any period of at least 24 months (paragraph (b)).

Paragraph (a) captures persons engaged or employed as a screening officer prior to 16 January 2022 under the Maritime Act or Maritime Regulations or under the Aviation Act or Aviation Regulations. This not only recognises the experience and qualifications of existing screening officers in the maritime sector, but also in the aviation sector. This not only minimises disruption to existing employees or contactors in the maritime sector, but provides flexibility to both employers and workers by giving certain screening officers in the aviation sector the option to transition to the maritime sector (provided they meet other requirements in the Determination, including holding an MSIC).

### ***independent screening decision***

This means a decision whether to allow a person, personal effects, carry-on baggage, goods or a vehicle to pass through a screening point, without prompting or guidance from a supervising officer. This definition is relevant to the training requirements determined in section 6 of the Determination.

### ***new screening officer***

This means a person who is not an existing screening officer, as defined above, and who was engaged or employed as a screening officer under the Maritime Act or Maritime Regulations, or as a screening officer under the Aviation Act or Aviation Regulations, after 16 January 2022.

### ***Maritime Act***

This definition clarifies that a reference to the Maritime Act is a reference to the *Maritime Transport and Offshore Facilities Security Act 2003*.

### ***Maritime Regulations***

This definition clarifies that a reference to the Maritime Regulations is a reference to the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

### **Section 5 – Application**

Section 5 provides that the Determination determines requirements under section 165A of the Maritime Act, for specified screening officers. Section 165A of the Maritime Act provides that the Secretary may, by legislative instrument, determine training and qualification requirements, and any other requirements, for specified screening officers relating to their exercise or performance of a specified power under Division 6 of Part 8 of the Maritime Act, or a specified screening function. It also provides that the Secretary may determine for specified screening officers requirements in relation to the use of identity cards and uniforms.

### **Section 6 – Qualifications**

Section 6 of the Determination details the qualification requirements for *new* and *existing* screening officers (as defined in the Determination).

Subsection 6(1) provides that a *new* screening officer who is employed or engaged by a port facility operator that is the subject of a notice under 7.30 of the Maritime Regulations, must hold either a Certification II in Transport Security Protection or a qualification that the Secretary is satisfied will enable the holder to carry out the duties of a screening officer under the Maritime Act.

The requirement for new screening officers to hold a Certification II in Transport Security Protection is consistent with the qualification requirements in the *Aviation Transport Security (Screening Officer Requirements) Determination 2022* for newer screening officers in the aviation sector. This requirement aims to standardise the competency levels of specified screening officers, which in turn will strengthen the performance of security screening activities undertaken at Australian security regulated ports and help ensure all screeners in Australia are equipped to respond to current and emerging threats.

Subsection 6(2) provides that an *existing* screening officer who is engaged or employed by a port facility operator that has been served a notice under regulation 7.30 of the Maritime Regulations must hold any of the following:

- a Certificate II in Security Operations;
- a qualification that the Secretary is satisfied is equivalent to a Certificate II in Security Operations;

- training and experience acquired while working as a security guard that is sufficient to satisfy the requirements for obtaining a security guard license in the state or territory where the person intends to work as a screening officer;
- a Certification II in Transport Security Protection.

Existing screening officers, who are engaged or employed by a port facility operator that has been served a notice under regulation 7.30 of the Maritime Regulations, are not required to obtain a Certification II in Transport Security Protection to continue working as a screening officer under this Determination. This approach recognises the prior qualifications and experience obtained by existing screening officers. The Department, as the regulator, has determined that recognising prior qualifications and experience is appropriate in the circumstances and ensures there is no unnecessary disruption to the maritime sector as it recovers from COVID-19 related workforce disruptions.

The application of the qualification requirements has only been applied to those ports operating under a Maritime Regulation 7.30 notice. This is a proportional application of screening officer requirements to reflect the differential threat and risk within the maritime sector.

The discretionary powers available to the Secretary at paragraphs 6(1)(b) and 6(2)(b) of the Determination enable a mandatory qualification for a new or existing screening officer to include one that the Secretary is satisfied will enable the holder to carry out the duties of a screening officer under the Maritime Act (for new screening officers), or one that is equivalent to a Certificate II in Security Operations (for existing screening officers). The intention is that the main criterion against which the Secretary would exercise a discretionary power is the relevance of the qualification to the role of a screening officer, and their ability to carry out their various duties as a screening officer under the Maritime Act.

Subsection 6(3) provides that the qualifications mentioned in section 6, for a screening officer who is an existing screening officer or a new screening officer, are required for the screening officer to carry out each power and function mentioned in Division 6 of Part 8 of the Maritime Act.

As mentioned above in the definition of *existing screening officer*, to ensure screening officers employed on or before 16 January 2022, can continue to operate as screening officers, it is necessary to have different requirements for new screening officers and existing screening officers.

Prior to 16 January 2022, the standard qualification requirement for screening officers was a Certificate II in Security Operations. Under the Determination, the intention is that existing screening officers will be able to continue to rely on that qualification. They will not be required to obtain a new qualification to continue to perform their role. Screening officers were also able to rely on training and experience obtained while working as a security guard, if the experience and training was sufficient to

satisfy the requirements for obtaining a security guard licence. While existing screening officers will continue to be able to rely on that experience, a similar provision is not included for new screening officers in the Determination.

The purpose of these requirements is to provide a consistent standard of qualification for screening officers to meet. The effect is that, if a screening officer does not meet the requirements, they are unable to perform the role of a screening officer.

The note to section 6 provides that the Secretary may, under section 165B of the Maritime Act, exempt a class of screening officers from any of the requirements determined under paragraph 165A(a). Section 165B provides that the Secretary may, in writing, exempt a class of screening officers from one or more of the requirements determined under paragraph 165A(1)(a), if the Secretary is satisfied that there are exceptional circumstances.

### Section 7 – Training

Section 7 specifies the training requirements for a person who is a screening officer (as defined in the Maritime Act), regardless of whether or not the port facility operator by whom they are engaged or employed has been served a notice under regulation 7.30 of the Maritime Regulations. Specifically, it provides that, until a supervisor is satisfied that the person is competent as a screening officer, the person:

- is to be supervised by someone who is capable of making an *independent screening decision* (as defined in the Determination); and
- is not to themselves make an independent screening decision.

The purpose of this requirement is to ensure that screening officers (both new and existing) are appropriately supervised until they are capable of making an independent screening decision. The effect is that, until a supervisor is satisfied that the person is so capable, they will not be able to make an independent screening decision.

The note to section 7 is the same as that note to section 6. It provides that the Secretary may, under section 165B of the Maritime Act, exempt a class of screening officers from this requirement (or other requirements determined under paragraph 165A(a)).

### Section 8 – Maritime Security Identification Cards

Section 8 provides that a screening officer (as defined in the Maritime Act), regardless of whether or not the port facility operator by whom they are engaged or employed has been served a notice under regulation 7.30 of the Maritime Regulations, must at all times properly display a valid Maritime Security Identification Card (MSIC) while on duty.

This requirement applies to both new and existing screening officers.

Obtaining an MSIC involves the applicant for the MSIC undergoing identity confirmation, a criminal history check and a security assessment, and if applicable a check to ensure they have the right to work in Australia.

Screening officers perform a vital role in relation to maritime security. The purpose of this requirement is to ensure that all screening officers display that they have an MSIC at all times, while on duty or as otherwise required by the Maritime Regulations, to provide assurance that they have met the requirements to obtain an MSIC and are allowed access to certain areas of Australian security regulated ports.

The note to section 8 outlines that a screening officer must also properly display an MSIC when otherwise required by the Maritime Regulations.

### Section 9 – Uniforms

Section 9 provides that a screening officer (as defined in the Maritime Act), regardless of whether or not the port facility operator by whom they are engaged or employed has been served a notice under regulation 7.30 of the Maritime Regulations, must wear a distinctive and recognisable uniform. The phrase ‘distinctive and recognisable’ is not defined in the Determination, the Maritime Act or the Maritime Regulations and should be given its ordinary meaning.

This requirement applies to both new and existing screening officers.

The purpose of this requirement is to ensure that persons performing screening functions are in a distinct and recognisable uniform making them easily identifiable to the public. The effect of the requirement is that in order to perform the role of a screening officer, a person must wear a uniform.