

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 2023

The *Maritime Transport and Offshore Facilities Security Act 2003* ('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 2023* ('the Determination') determines qualification, training, accreditation testing, 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.

The Determination revokes the *Maritime Transport Security (Screening Officer Requirements) Determination 2022* ('the 2022 Determination').

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

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, to hold relevant qualifications, and meet other requirements prior to exercising powers or performing screening functions under the Maritime Act.

The Determination introduces accreditation testing, on the job training and continuing professional development requirements for screening officers. These build on existing qualifications and other requirements, to ensure screening officers obtain and continue to

have the knowledge and ability to maintain the Australian maritime security environment in accordance with current international maritime security standards.

Broadly, the following is determined in relation to requirements for specified screening officers:

- a screening officer must hold either a Certificate 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;
- for persons already engaged or employed as a screening officer before 16 January 2022, a Certificate II in Transport Security Protection, Certificate II in Security Operations, a qualification which the Secretary is satisfied is equivalent, or 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 works as a screening officer, will satisfy the qualification requirements;
- if persons employed or engaged as a screening officer prior to 16 January 2022 cease to be engaged or employed as a screening officer by a port facility operator, ship operator for a regulated Australian ship or screening authority for a continuous period of more than 24 months from 15 June 2020, and they do not already hold a Certificate II in Transport Security Protection, they must gain that qualification in order to carry out the duties of a screening officer;
- screening officers first engaged or employed as a screening officer after 30 June 2023 must complete at least 40 hours of on the job training specific to their role before undertaking a maritime accreditation test;
- screening officers engaged or employed after 30 June 2023 must pass the relevant maritime accreditation test approved by the Secretary and completed using Department of Home Affairs' ICT systems for each power and screening function they may use in their role before the screening officer may exercise independent screening decisions in relation to each power or screening function. Screening officers employed or engaged before 1 July 2023 will be able to continue in their roles and must complete and pass all accreditation tests relevant to the powers they exercise and functions they perform in their role within 12 months of 30 June 2023;
- from the date that a screening officer passes a maritime accreditation test, they must pass the accreditation test at least once every 12 months thereafter, if it continues to be relevant to a power or function they use in their role. The non-completion of a maritime accreditation test will only prevent a screening officer from exercising powers or performing the functions related to that specific test, and will not prevent a screening officer from exercising powers or performing functions if the screening officer has passed the relevant accreditation test. Screening officers may also retake a test up to three times within a thirty-day (30) period;
- screening officers must complete at least 12 hours of continuing professional development specific to their role every 12 months;
- the qualification, on the job training, continuing professional development and accreditation testing requirements have only been applied to port facility operators or ship operators of regulated Australian ships that have been served a notice under a

Maritime Regulation 7.30 notice. In practical terms, this means applying the requirements to only those operators of port facilities or regulated Australian ships 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;

- screening officers, regardless of whether or not the port facility operator or ship operator for a regulated Australian ship by whom they are engaged or employed has been served a notice under regulation 7.30 of the Maritime Regulations, must continue to hold and properly display a Maritime Security Identification Card ('MSIC') at all times 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* or *Aviation Transport Security Regulations 2005* as screening officers in the Maritime sector.

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. Only one response was provided by an industry participant, with only minor issues or concerns raised in relation to the Determination.

The Office of Impact Analysis ('OIA') was consulted prior to making the Regulations. OIA 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 (OIA: 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 on 1 July 2023.

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 2023

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 Maritime Act establishes minimum security requirements for maritime transport or offshore facilities in Australia by imposing obligations on persons engaged in related maritime transport or offshore facilities.

This Determination is made under section 165A of the Maritime Act, which provides that the Secretary of the Department of Home Affairs may, by legislative instrument, determine the training and qualification requirements, and any other requirements, for specified screening officers relating to the 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, by legislative instrument, determine requirements for specified screening officers in relation to the use of identity cards or in relation to uniforms.

Consistent with this purpose, this Determination determines training, qualification, accreditation testing, use of identity card and uniform requirements for specified screening officers.

The Determination revokes the *Maritime Transport Security (Screening Officer Requirements) Determination 2022* (the 2022 Determination).

The Determination replicates and maintains many of the requirements included in the 2022 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.

However, the Determination introduces the following new requirements:

- screening officers first engaged or employed as a screening officer after 30 June 2023, or re-engaged after an absence of 24 months, must complete at least 40 hours of on the job training specific to their role before undertaking accreditation testing;
- screening officers engaged or employed after 30 June 2023 must pass the relevant maritime accreditation test approved by the Secretary and completed using Department of Home Affairs' Information and Communication Technology systems for each power and screening function they may use in their role before the screening officer may exercise independent screening decisions in relation to each power or screening function. Screening officers employed or engaged before 1 July 2023 will be able to continue in

their roles and must complete and pass all accreditation tests relevant to the powers and functions they perform in their role within 12 months of 30 June 2023;

- from the date that a screening officer passes a maritime accreditation test, they must re-pass that accreditation test at least once every 12 months thereafter, if it continues to be relevant to a power or function they use in their role. The non-successful completion of a maritime accreditation test will only prevent a screening officer from independently exercising powers or performing the functions related to that specific test, and will not prevent a screening officer from exercising powers or performing functions for which the screening officer has passed the relevant accreditation test. If a screening officer fails a maritime accreditation test, they must be supervised by an officer who has passed the maritime accreditation test, and must not make independent screening decisions in relation to that screening function or power. Screening officers may also retake a relevant test at any time up to three times within any thirty-day (30) period;
- screening officers must complete at least 12 hours of continuing professional development specific to their role every 12 months.

The Determination includes record keeping obligations which require port facility operators or ship operators for regulated Australian ships to make electronic records of information relating to screening officers engaged or employed by the screening authority relating to, among other things, those officers' training, qualifications and continuing professional development. These records must be kept by the port facility operator or ship operator for two years after the cessation of the screening officer's employment or engagement, even if the screening authority ceases to be a screening authority.

The purpose of these record-keeping requirements is for port facility operators and ship operators for regulated Australian ships to be able to demonstrate that they have employed or engaged screening officers who meet the qualification, training, continuing professional development and other requirements in the Determination. The Secretary of the Department may request this information as security compliance information under section 184 of the Maritime Act. This will enable the Department to assess the effectiveness of the screening officer legislative framework to safeguard against unlawful interference with maritime transport and offshore oil and gas facilities.

Consistent with the 2022 Determination, the Determination seeks to assist maritime industry participants in two key respects:

- The Determination limits the scope of the qualification, on the job training, continuing professional development, and accreditation testing requirements to only apply where the screening officer is engaged or employed by a port facility operator or a ship operator for a regulated Australian ship 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 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* to also be employed as a screening officer at port facilities or on a regulated Australian ship. The recognition of aviation screening officers

in the maritime environment provides a greater pool of employees for port facilities and regulated Australian ships to draw upon as the cruise ship sector recovers.

Human rights implications

This Disallowable Legislative Instrument may engage the following human rights:

- the right to work under Article 6 of *International Covenant on Economic, Social and Cultural Rights* (ICESCR); the right to freedom from discrimination under Article 2(2) of the ICESCR and Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR);
- the right to privacy in Article 17 of the ICCPR.

The right to work and non-discrimination

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 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.

Article 26 of the ICCPR provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee, to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In its General Comment 18, the UN Human Rights Committee stated that:

The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

Similarly, in its General Comment on Article 2 of the ICESCR (E/C.12/GC/20), UNCESCR 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 may promote the right to work in Article 6 of the ICESCR by including provision for certain aviation screening officers to be considered as existing maritime screening officers under the same date of employment and engagement requirements as existing maritime officers.

The Disallowable Legislative Instrument may also promote the work rights of screening officers by providing that existing maritime and aviation screening officers, engaged or employed prior to 1 July 2023, are not required to undertake further training in circumstances where they fulfil all other obligations and are assessed as already having the requisite skills, knowledge and qualifications to carry out their roles effectively. This avoids disrupting existing maritime screening officers and provides aviation screening officers the flexibility to transition to maritime.

To the extent that the measures may prevent a person from obtaining, or remaining in, employment as a maritime screening officer, the Disallowable Legislative Instrument may limit the right to work and the right to non-discrimination by imposing training, continuing professional development and accreditation testing obligations on new and existing maritime screening officers. The accreditation testing must be undertaken on the Department of Home Affairs's ICT systems. Mandating the testing be undertaken this way protects the classified information contained in the accreditation tests and ensures quality control for both the manner in which the tests are carried out and testing results. Moreover, the use of the department's ICT system allows the Department to better identify any potential weaknesses in the transport security system related to screening.

However, this limitation is reasonable, necessary and proportionate in achieving the legitimate objective of safeguarding against interference with maritime transport and establishing a national standard of competency for maritime screening officers. 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 training, continuing professional development, and annual accreditation requirements on persons working, or wishing to work, in this environment. The new requirements also align Australia with international maritime security standards, and implement recommendations of the Inspector of Transport Security's *Inquiry into Aviation and Maritime Transport Security Education and Training in Australia*.

Notably, with regards to the annual accreditation testing requirement, not completing, or failing, a maritime accreditation test will only prevent a screening officer from independently exercising the powers, or performing the functions, related to that specific test. It will not

prevent a screening officer from exercising other powers or performing other functions, if they have passed the relevant maritime accreditation tests for those other powers and functions. A screening officer may re-take the test at any time, but no more than three times in any thirty-day period.

The annual accreditation testing requirement will apply to all screening officers. However, screening officers engaged or employed before 1 July 2023, will have 12 months to complete and pass all accreditation tests relevant to their role. This is to ensure a smooth transition in the screening workforce, allowing existing maritime screening officers to continue to exercise powers and perform functions related to their role.

To the extent that the Disallowable Legislative Instrument limits the right to non-discrimination and the right to work, the limitations are reasonable, necessary and proportionate in achieving the legitimate objective of safeguarding against interference with maritime transport security and ensuring that screening officers are properly qualified to carry out their duties.

Right to privacy

Article 17 of the ICCPR relevantly states that:

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy... or correspondence*
2. *Everyone has the right to the protection of the law against such interference or attacks.*

Interferences with privacy may be permissible, provided that they are authorised by law and are not arbitrary. In order for an interference with the right to privacy not to be arbitrary, the interference must be for a reason consistent with the provisions, aims and objectives of the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted ‘reasonableness’ in this context to mean that ‘any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case’.

The Disallowable Legislative Instrument engages the right to privacy through the record-keeping obligations imposed on port facility operators. Information about a screening officer, their training and continuing professional development must be kept by the port facility operator until two years after the cessation of the screening officer’s employment or engagement. This limitation on the right to privacy is reasonable, necessary and proportionate as it is aimed at ensuring that port facility operators are able to demonstrate that they have employed or engaged screening officers who meet the qualification, training, continuing professional development and other requirements in the Determination. To the extent that the information is private, the information collected by port facility operators is protected by the privacy protection framework in the *Privacy Act 1988* (Privacy Act). The Department may also request this information for the purposes of assessing the effectiveness of the screening officer training framework, consistent with the Determination, Maritime Act and Maritime Regulations, to safeguard against unlawful interference with maritime transport and prevent

the use of the maritime sector in connection with serious crime. The collection, storage, use and disclosure of personal information by the Department is undertaken in accordance with the Australian Privacy Principles contained in the Privacy Act.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it will assist to maintain the integrity of Australia's maritime security. To the extent that the Disallowable Legislative Instrument may limit human rights, those limitations are reasonable, necessary and proportionate.

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Details of the Maritime Transport Security (Screening Officer Requirements) Determination 2023

Section 1 – Name

This section provides that the title of this instrument is *Maritime Transport Security (Screening Officer Requirements) Determination 2023* ('the Determination').

Section 2 – Commencement

This section provides that the Determination commences on 1 July 2023.

Section 3 – Revocation

The effect of this section is that, on commencement of the Determination, the *Maritime Transport Security (Screening Officer Requirements) Determination 2022* (LIN 22/079) is revoked.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Section 4 – Definitions

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

Act

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

independent screening decision

This means a decision made by a screening officer when exercising a specified power or performing a screening function related to whether to allow a person, personal effects, baggage, goods, vehicles, or a vessel to pass through a screening point, without prompting or guidance from a supervising officer.

Regulations

This definition clarifies that a reference to Regulations is a reference to the *Maritime Transport and Offshore Facilities Security Regulations 2005* ('Maritime Regulations').

Screening authority

This definition clarifies that a reference to screening authority means a screening authority as defined in section 9 of the *Aviation Transport Security Act 2004* ('Aviation Act').

Note 1

Note 1 to section 4 notes that certain terms used in the Determination are defined in the Maritime Act. Those terms include *baggage, port facility operator, regulated Australian ship, screening function, screening officer* and *ship operator*.

Note 2

Note 2 to section 4 notes that certain terms used in the Determination are defined in the Maritime Regulations. Those terms include *MSIC* and *properly displaying*.

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.

The note under this section clarifies that the Secretary, under section 165B of the Act, may exempt a class of screening officers from one or more requirements in this determination if the Secretary is satisfied an exceptional circumstance exists.

Section 6 – Qualifications

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

Subsection 6(1) provides that a screening officer who is engaged or employed by a port facility operator or a ship operator for a regulated Australian ship, that is the subject of a notice under 7.30 of the Maritime Regulations, must hold either a Certificate 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 powers available to the Secretary under section 165A of the Maritime Act permit the Secretary to determine, under section 6 of the Determination, a mandatory qualification for a screening officer (in accordance with the date they were engaged or employed), and to include a qualification that the Secretary is satisfied will enable the holder to exercise or performance of a power or function of a screening officer under the Maritime Act. The effect of paragraph 6(1)(b) is to allow the Secretary to accept a qualification the Secretary is satisfied will enable the screening officer to carry out the duties of a screening officer under the Maritime Act. The qualification requirements in subsection 6(1) only apply to new screening officers from the date of this Determination commencing or persons who do not meet the description in subsection 6(2).

The requirement for newly engaged or employed screening officers to hold a Certificate II in Transport Security Protection is consistent with the qualification requirements in the *Aviation Transport Security (Screening Officer Requirements) Determination 2022* for newly engaged or employed 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.

For existing screening officers, subsections 6(2) and (3) have the effect that a person who was engaged or employed as a screening officer before 16 January 2022 by either a screening authority under the Aviation Act or a port facility operator or a ship operator for a regulated Australian ship under the Maritime Act must hold either:

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

In addition, for subsections 6(2) and (3) to apply the existing screening officer must not:

- hold a certificate II in Transport Security Protection; or
- after 15 June 2020—have ceased to be engaged or employed as a screening officer by a port facility operator, a ship operator for a regulated Australian ship or screening authority for a continuous period of more than 24 months.

This allows those screening officers to rely on their existing Certificate II or equivalent qualification, without requiring these screening officers to acquire a Certificate II in Transport Security Protection. This subsection also recognises the skills and experience of screening officers with screening officer experience in the aviation sector to transfer into the maritime sector, provided that those officers have not ceased to be engaged or employed as a screening officer for a continuous period of 24 months or more, from particular points in time. This arrangement also ensures that persons who have had an extended period, being more than 24 months, away from being engaged or employed as a screening officer are required to obtain and hold the more recent Certificate 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 Act.

The application of the qualification requirements has only been applied to those port operators and ship regulators for regulated Australian ships that have been served a notice issued by the Secretary under regulation 7.30 of the Maritime Regulations relating to the method, technique or equipment to be used for screening under Part 7 of the Maritime Regulations. This is a proportional application of screening officer requirements to reflect the differential threat and risk within the maritime sector.

Similar to paragraph 6(1)(b), the effect of paragraph 6(3)(b) is to allow the Secretary to accept a qualification the Secretary is satisfied will enable the screening officer to carry out the duties of a screening officer under the Maritime Act. The qualification requirements in paragraph 6(3)(b) are intended to apply to existing screening officers to whom subsection 6(2) applies.

To ensure screening officers engaged or employed on or before 16 January 2022 can continue to operate as screening officers, it is necessary to have different qualification 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 will not be able to make an *independent screening decision* (as a consequence of being unable to undertake any maritime accreditation tests as required by section 9, explained further below).

Section 7 – Training

Section 7 specifies the training requirements for screening officers who are engaged by a port facility operator, ship operator for a regulated ship that has been served a notice under regulation 7.30 of the Maritime Regulations. Subsection 7(1) provides that a screening officer:

- first engaged after 30 June 2023 by a port facility operator or a ship operator for a regulated ship; or
- who ceased to be engaged or employed as a screening officer for a continuous period of more than 24 months and was later re-engaged or re-employed as a screening officer by a port facility operator or a ship operator for a regulated ship

must complete 40 hours of on-the-job training specific to the screening officer's role.

Subsection 7(2) provides the types of training which may be undertaken for the purposes of on-the-job training and the requirements of subsection 7(1). Such on-the-job training may include:

- supervised practice at a screening point, preferably live;
- training on X-ray image interpretation;
- training on specific screening equipment used in the workplace;
- training on weapons and prohibited items;
- training on maintaining the integrity of cleared areas;
- training on methods and techniques for screening;
- training designed to ensure familiarity with legislation relevant to screening.

The purpose of this requirement is to provide a consistent standard of training for specified screening officers engaged or employed after 30 June 2023 and ensure that screening officers are appropriately supervised until they are capable of making an independent screening decision. The effect is that, until they have completed a minimum of 40 hours of on the job training and a supervisor is satisfied that the person is so capable, they will not be able to make an *independent screening decision* (as a consequence of being unable to undertake any maritime accreditation tests as required by section 9, explained further below).

Section 8 - Maritime accreditation test

Subsection 8(1) provides that the Secretary may approve a test (a maritime accreditation test) if the Secretary is satisfied that it is appropriate to test the ability of a screening officer (as defined in the Maritime Act), to exercise any of the powers mentioned in Division 6 of Part 8 of the Act which may be exercised by a screening officer; and to perform a specified screening function.

Division 6 of Part 8 of the Maritime Act sets out who is authorised to conduct screening, as well as the requirements and powers applicable to screening officers. Screening officers may also perform screening functions which are established in administrative notices made under the Maritime Regulations, which are not published publically to protect the integrity and security of maritime transport or offshore facilities and procedures.

The purpose of a maritime accreditation test is to introduce a national standard of competency for screening officers. This in turn will strengthen the performance of security screening activities undertaken in relation to maritime transport or offshore facilities, and help ensure all screening officers in Australia are equipped to respond to current and emerging threats. Maritime accreditation testing replaces the requirement in the 2022 Determination for screening officers to be assessed as competent by a supervisor prior to making an independent screening decision. Subsection 8(2) makes it clear that the accreditation tests must be administered by a person approved by the Secretary and completed using the Department of Home Affairs' ICT systems.

Section 9 – Testing screening officers

Subsection 9(1) provides that section 9 applies to screening officers employed or engaged by a port facility operator or a ship operator for a regulated Australian ship that has been served a notice under regulation 7.30 of the Regulations.

Subsection 9(2) provides that before a screening officer (as defined in the Maritime Act) is able to undertake a maritime accreditation test they must comply with sections 6 and 7 of the Determination, which outline the *qualification* and *training* requirements for screening officers.

Subsection 9(3) provides that a person engaged or employed in the role of a screening officer after 30 June 2023 must pass the maritime accreditation test, for the power mentioned in Division 6 of Part 8 of the Maritime Act or screening function, prior to making any independent screening decision.

A screening officer is required to pass a maritime accreditation test for each power and screening function the screening officer exercises or performs at least once every 12 months after passing their initial maritime accreditation test for the power or screening function.

Subsection 9(4) provides that where a person is engaged or employed as a screening officer before 1 July 2023, they must pass a maritime accreditation test for each power and screening function which the person will be exercising or performing, within 12 months of 30 June 2023 and at least once every 12 months after passing the relevant maritime accreditation test.

Note 1 to section 9 explains that the effect of subsection 9(4) is that a person who was engaged or employed as a screening officer before 1 July 2023 is taken to hold accreditation in all powers and screening functions until 1 July 2024. However, if the screening officer attempts and fails to pass a maritime accreditation test prior to 1 July 2024 for a particular

screening power or function then, their accreditation ceases until they attempt and pass the maritime accreditation test.

Subsection 9(5) provides that where there is no maritime accreditation test which relates to a particular screening function or a power that the person may use then the screening officer must have passed the maritime accreditation test for any other power or function before they are able to exercise the power or perform the screening function for which there is no maritime accreditation test. A person can only be a ‘screening officer’ if they have undertaken and passed an accreditation test. Subsection 9(5) ensures a person is a ‘screening officer’ for the purpose of performing screening functions for which there are no accreditation test, and also ensures a screening officer has demonstrated some form of competency in a screening function prior to undertaking any screening function.

Subsection 9(6) provides that if a screening officer fails a maritime accreditation test related to a screening function or power, the screening officer must not make an independent screening decision in relation to the in relation to the screening function or power which they have failed the accreditation test for, until the screening officer passes the maritime accreditation test. During the timeframe between where the screening officer has failed the maritime accreditation test and prior to passing the said test, the screening officer may continue to perform that power or function on condition that they are supervised by an accredited screening officer. Note 2 to section 9 explains the effect of subsection 9(6); namely, where a screening officer does not pass a maritime accreditation test they will only be prevented from exercising their powers or performing the functions related to the specific test. The screening officer will not be prevented from exercising other powers or performing other functions for which they have passed the maritime accreditation tests for those other powers and functions.

Subsection 9(7) provides that a screening officer, who fails a maritime accreditation test, may re-take the test at any time. However, they are prohibited from taking the test more than 3 times in any 30-day period. This is to ensure that screening officers do not ‘brute force’ a successful accreditation test by repeatedly undertaking the test in a short timeframe, and also allows time to undertake remediation training in the areas they have failed during an accreditation test.

Note 3 to section 9 explains that the 30-day period for a screening officer to retake a maritime accreditation test commences from the date the of the screening officer’s first unsuccessful accreditation test. From the date of the first test failure, the screening officer may take the accreditation test a further 2 times from that date until the 30-day period has elapsed. This is illustrated by the example in section 9. It explains that if a screening officer were to make their first unsuccessful attempt on 1 July, the screening officer would only be permitted to take 2 further tests within that 30 day period (ending on 1 August).

Section 10 – Continuing professional development

Subsection 10(1) provides that a screening officer (as defined in the Maritime Act) who is engaged or employed by a port facility operator or a ship operator for a regulated Australian ship, that has been served a notice under regulation 7.30 of the Maritime Regulations, must complete at a minimum 12 hours of continuing professional development (‘CPD’) training which is specific to the screening officer’s role. This CPD training requirement must be undertaken every twelve (12) months from the date which the screening officer passed their first maritime accreditation test to independently exercise any of the powers mentioned in Division 6 of Part 8 of the Maritime Act.

Screening officers perform a vital role in relation to maritime security. The purpose of this requirement is to ensure that all screening officers continue to develop their skills, knowledge and practise. CPD is vital to ensure that all screening officers is sufficiently trained and skilled using the tools and technology involved in the role and the fact that the technology is evolving and developing.

The example under subsection 10(1) illustrates that a screening officer who passed their first maritime accreditation test on 1 July 2023, the screening officer must complete 12 hours of continuing professional development before 1 July 2024. The screening officer must then complete 12 hours of continuing professional development every subsequent year within 12 months from 1 July of every subsequent year.

Subsection 10(2) provides that CPD training may include training on the following:

- X-ray image interpretation software;
- upgrades to existing equipment;
- new and emerging threats, or a briefing on these;
- detection and concealment techniques.

Section 11 – Maritime Security Identification Cards

Section 11 provides that a screening officer regardless of whether or not the port facility operator or ship operator for a regulated Australian ship by whom they are engaged or employed has been served a notice under regulation 7.30 of the Maritime Regulations, must at all times hold and properly display a valid Maritime Security Identification Card (‘MSIC’) while on duty.

This requirement applies to all 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.

Paragraph 11(b) also requires a screening officer to properly display an MSIC when otherwise required by the Maritime Regulations. This provides a safeguard against unlawful interference with maritime transport or offshore facilities.

Section 12 – Uniforms

Section 12 provides that a screening officer regardless of whether or not the port facility operator or ship operator for a regulated Australian ship 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 all 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. This provides a safeguard against unlawful interference with maritime transport or offshore facilities.

Section 13 – Record Keeping

Subsection 13(1) provides that the port facility operator or a ship operator for a regulated Australian ship must make an electronic record for each screening officer engaged or employed by a screening authority with the following information:

- the date the screening officer is engaged or employed;
- the qualifications held by the screening officer for section 6;
- the training undertaken by the screening officer for section 7;
- any continuing professional development activity undertaken by the screening officer for section 10;
- the screening officer’s unique individual MSIC number, the name of the issuing body that issued the MSIC and when the MSIC ceases to be in effect.

Subsection 13(2) provides that where either subsection 6(2) or 7(1) applies to a screening officer, the port facility operator or regulated Australian ship responsible for conducting the screening at that port must make an electronic record of any evidence relied on to determine that subsection 6(2) or 7(1) applies.

Subsection 6(2) provides that the requirements under subsection 6(3) (the requirement to hold certain qualifications) applies to a person who was engaged or employed as a screening officer before 16 January 2022, does not hold a Certificate II in Transport Security Protection and, after 15 June 2020—have ceased to be engaged or employed as a screening officer by a port facility operator, a ship operator for a regulated Australian ship or screening authority for a continuous period of more than 24 months.

Subsection 7(1) provides that the training requirement of at least 40 hours of on-the-job training only applies to a screening officer who was engaged or employed as a screening officer by a screening authority under the Aviation Act or a port facility operator or a ship operator for a regulated Australian ship under the Maritime Act after 30 June 2023 or who is employed or engaged as a screening officer by a screening authority under the Aviation Act or a port facility operator or a ship operator for a regulated Australian ship under the Maritime Act before 1 July 2023 and after 30 June 2023 takes a continuous break of 24 months.

The example to section 13 outlines that the evidence required for the purpose of record keeping may include records of qualifications held or any other information demonstrating that a person was employed or engaged by a port facility operator, a ship operator for a regulated Australian ship, or other screening authority.

Subsection 13(3) provides that port facility operators or ship operators for regulated Australian ships must keep records made for the purposes of subsection 13(1) and (2) for a minimum of 2 years after the cessation of the screening officer’s employment or engagement (even if the screening authority ceases to be a screening authority during that time) with the port facility operator. As grandfathered screening officers are required to gain the Cert II TSP qualification should they cease screening for a continuous period of 24 months or more, this

requirement provides evidence for the period necessary for a screening officer to be re-employed without needing to gain the qualification.

The purpose of these record-keeping requirements is for port facility operators and ship operators for regulated Australian ships to be able to demonstrate to Departmental compliance officers that they have employed or engaged screening officers who meet the accreditation, qualification, training, continuing professional development and other requirements in the Determination.

The information collected by screening authorities is protected by the privacy protection framework in the Privacy Act 1988 (Privacy Act). The Department may also request this information for the purposes of assessing the effectiveness of the screening officer training framework, consistent with the Determination, Aviation Act and Aviation Regulations, to safeguard against unlawful interference with aviation and prevent the use of aviation in connection with serious crime. The collection, storage, use and disclosure of personal information by the Department is undertaken in accordance with the Australian Privacy Principles contained in the Privacy Act.