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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**MARITIME TRANSPORT AND OFFSHORE FACILITIES SECURITY
AMENDMENT (MARITIME SECURITY GUARDS AND OTHER MEASURES) BILL
2005**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and Regional Services,
the Honourable John Anderson, MP)

MARITIME TRANSPORT AND OFFSHORE FACILITIES SECURITY AMENDMENT (MARITIME SECURITY GUARDS AND OTHER MEASURES) BILL 2005

OUTLINE

The purpose of the Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005 (the Bill) is to amend the *Maritime Transport and Offshore Facilities Security Act 2003* (the Act) to enhance maritime transport security by providing limited move-on powers for maritime security guards, including the power to request certain information from a person found in a maritime security zone, and by making a number of miscellaneous amendments to clarify intent.

The Bill has two schedules:

Schedule 1: This schedule contains the following provisions:

- a maritime security guard may request that a person found within a maritime security zone provide identification and reason for being in the zone;
- a maritime security guard may request a person found in a maritime security zone without authorisation to move out of the zone, and if that request is not complied with, remove the person from the zone; and
- a maritime security guard may remove, or have removed, vehicles and vessels found in maritime security zones without authorisation.

Schedule 2: This schedule provides for a number of miscellaneous amendments to the Act, which clarifies intent.

Financial Impact Statement

Administrative expenses incurred by the Department of Transport and Regional Services during the preparation and implementation of the Bill, and its associated regulations, are covered by the Department's ongoing funding for its maritime security function.

The Commonwealth receives no direct financial benefit but Australia's economy benefits from the enhancement of security arrangements under the Act.

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NOTES ON CLAUSES

Clause 1 – Short title

This clause provides that the Bill, once enacted, will be known as the *Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Act 2005*.

Clause 2 – Commencement

Subclause 2(1) provides that provisions specified in column 1 of the commencement table commence, or are taken to have commenced, in accordance with column 2 of the table.

Column 2 of the table provides that:

1. Clauses 1 to 3 and anything in the Bill not elsewhere covered by this table commences on the day the Bill receives the Royal Assent.

2. Item 1 of Schedule 1 commences on whichever is the later date of the following:

- (a) the start of the day after the Bill receives the Royal Assent; and
- (b) immediately after the commencement of item 122 of Schedule 1 to the Maritime Transport Security Amendment Act 2005 (the MTSAA), which commences on a single day to be fixed by Proclamation. However, if any of the provisions have not commenced within the period of 6 months beginning on the day of which the MTSAA receives the Royal Assent, they commence on the first day after the end of that period.

1. Items 2 to 4 of Schedule 1 commence on a single day to be fixed by Proclamation.

However, if any of the provisions have not commenced within the period of 6 months beginning on the day of which the Bill receives the Royal Assent, they commence on the first day after the end of that period.

2. Items 1 to 5 of Schedule 2 commence on whichever is the later date of the following:

- (a) the start of the day after the Bill receives the Royal Assent; and
- (b) immediately after the commencement of item 2 of Schedule 1 to the MTSAA, which commences on the day after the MTSAA receives the Royal Assent.

1. Items 6 to 8 of Schedule 2 commence on whichever is the later date of the following:

- (a) the start of the day after the Bill receives the Royal Assent; and
- (b) immediately after the commencement of item 72 of Schedule 1 to the MTSAA, which commences on a single day to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day on which the MTSAA receives the Royal Assent, they commence on the first day after the end of that period.

1. Item 9 of Schedule 2 commences on whichever is the later date of the following:

- (a) the start of the day after the Bill receives the Royal Assent; and

- (b) immediately after the commencement of item 89 of Schedule 1 to the MTSAA, which commences on a single day to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day on which the MTSAA receives the Royal Assent, they commence on the first day after the end of that period.

1. Items 10 and 11 of Schedule 2 commences on whichever is the later date of the following:
 - (a) the start of the day after the Bill receives the Royal Assent; and
 - (b) immediately after the commencement of item 2 of Schedule 1 to the MTSAA, which commences on the day after the MTSAA receives the Royal Assent.

The commencement of Items 2 and 3 of Schedule 1 by Proclamation will enable sufficient time for the development of regulations to facilitate the implementation of the new powers for maritime security guards.

Subclause 2(2) provides that information contained in column 3 of the table does not form part of the Bill.

Clause 3 – Schedule(s)

This clause is the formal enabling provision providing that the Act is amended as set out in Schedules 1 and 2 to the Bill.

SCHEDULE 1 – MARITIME SECURITY GUARDS

Item 1 – At the end of section 113D

Item 1 inserts subclause 113D(6) which provides that regulations made concerning offshore security zones must be consistent with Australia’s obligations under international law.

Item 2 – Section 161

Item 2 repeals section 161 and replaces it with a new simplified overview of the Division.

Item 3 – At the end of Division 5 of Part 8

Item 3 amends Division 5 of Part 8 by adding new provisions. These provisions recognise that there are circumstances when a law enforcement officer will not be available to attend to a breach of a maritime security zone and it is appropriate for a maritime security guard to exercise limited powers.

Clause 163A – Maritime security guards’ power to request information

Subclause 163A(1) provides that a maritime security guard may request identification from a person found in a maritime security zone.

Subclause 163A(2) provides that when exercising the powers in subsection 163A(1) the maritime security guard is required to identify himself or herself, inform the person being confronted of the maritime security guard’s authority to request identification, and inform the person that it may be an offence to fail to comply with the guard’s request. Failure of a person to comply is an offence punishable by a maximum of 20 penalty units. A reasonable excuse defence applies.

These provisions will enable a maritime security guard to obtain identification from a person, including the person's name, which will facilitate verification of the person's authority to be in the maritime security zone. It also provides suitable safeguards to ensure that the person being confronted by a maritime security guard is aware of the guard's identity and authority to request information from the person and that failure to comply may be an offence.

If a person gives a maritime security guard false or misleading information the person may commit an offence under Division 137 of the *Criminal Code Act 1995*.

Subclause 163A(4) provides that a maritime security guard may request a person in a maritime security zone to state his or her reason for being in the zone unless the person is of a class of persons exempt under this provision, or in the regulations made under this provision. The regulation making power provides flexibility for future exemption of other classes of persons who due to the nature of their work should not be required to state a reason for being in a maritime security zone.

Subclause 163A(5) provides that when exercising the powers in subsection 163A(4) the maritime security guard is required to identify himself or herself, inform the person being confronted of the maritime security guard's authority to request the reason for the person's location in the zone, and inform the person that it may be an offence to fail to comply with the guard's request. Failure of a person to comply is an offence which is punishable by a maximum of 20 penalty units. A reasonable excuse defence applies.

These provisions will enable the maritime security guard to establish a person's reason to be in the maritime security zone in order to verify the person's authority to be in the zone. It also provides suitable safeguards to ensure that the person being confronted by a maritime security guard is aware of the guard's identity and authority to request information from the person and that failure to comply may be an offence.

If a person gives a maritime security guard false or misleading information the person may commit an offence under Division 137 of the *Criminal Code Act 1995*.

These powers are not intended to hinder or obstruct maritime security inspectors, duly authorised officers, law enforcement officers, members of the Australian Defence Force, persons otherwise authorised by a law of the Commonwealth, State or Territory to enter a maritime security zone, or persons prescribed in the regulations, from entering a maritime security zone to carry out their duties.

Clause 163B Requests to leave maritime security zones

Subclause 163B(1) provides that a maritime security guard may request that a person leave a maritime security zone if the maritime security guard reasonably suspects that the person is not authorised to be in the zone.

Subclause 163B(2) provides that when exercising the powers in subsection 163B(1) the maritime security guard is required to identify himself or herself, inform the person being confronted of the maritime security guard's authority to request that the person leave the zone, and inform the person that it may be an offence to fail to comply with the guard's request. Failure of a person to comply is a strict liability offence which is punishable by a maximum of 20 penalty units. A reasonable excuse defence applies.

The offence is a strict liability offence because the offence carries physical elements on which a maritime security guard can make a reliable assessment of guilt or innocence.

A person alleged to have committed an offence under this provision may be issued with an infringement notice as an alternative to prosecution, in accordance with section 187 of the Act.

Clause 163C Maritime security guards' power to remove people from zones

This clause provides that if a maritime security guard has requested that a person leave a maritime security zone under subclause 163B(1), and the guard has complied with the requirements of paragraphs 163B(2)(b), (c) and (d), and the person fails to comply with the request, the maritime security guard may remove the person from the zone.

However, a maritime security guard must not use more force, or subject a person to greater indignity than is necessary and reasonable to remove the person from the zone. This provision recognises that a balance must be struck between the legitimate use of force to protect maritime security zones from unauthorised entry and the civil liberties of individuals.

Clause 163D Maritime security guards' power to remove vehicles from zones

Clause 163E Maritime security guards' power to remove vessels from zones

These clauses provide that if a maritime security guard reasonably suspects that a vehicle or vessel is in a maritime security zone without proper authorisation, the maritime security guard may remove the vehicle or vessel, or cause the removal of the vehicle or vessel. Security regulated ships, or ships regulated as offshore facilities, are exempt from the move-on powers as other arrangements apply to these classes of ships under the Act.

When exercising these powers maritime security guards are required to comply with relevant State and Territory laws, including laws on occupational health and safety, marine navigation, road traffic, and any applicable laws of the Commonwealth.

Under subclause 163D(2) and 163E(2), a vehicle or vessel must not be removed without the maritime security guard making reasonable efforts to have the person in control of the vehicle or vessel remove it.

Subclauses 163D(3) and 163E(3) provide that maritime security guards must ensure that no more force than necessary and reasonable is used to remove the vehicle or vessel, and that a person is not subjected to greater indignity than is necessary and reasonable to remove the vehicle or vessel. Reasonable efforts must be taken to avoid damaging the vehicle or vessel. These clauses recognise that a balance must be struck between the legitimate use of force to protect maritime security zones from unauthorised entry and the civil liberties of individuals and reasonable care of property.

Subclauses 163D(4) and 163E(4) provide that if a vehicle or vessel is removed the maritime security guard must make reasonable efforts to notify the owner of the vehicle or vessel of its removal and new location. The maritime security guard will also need to inform persons of a kind prescribed in the regulations, which in the case of the removal of a vessel could include the port's harbourmaster.

Subclauses 163D(5) and 163E(5) provide that if a person reasonably incurs costs or expenses in relation to the removal of an unauthorised vehicle or vessel, such as towing costs, the owner of the vehicle or vessel is liable to pay the person an amount equal to the costs and expenses. For example, a person could be a port facility operator whose maritime security guard authorised the removal of an unauthorised vehicle. Paragraphs 163D(5)(b) and 163E(5)(b) clarify that the amount must not be such as to amount to taxation.

Subclauses 163D(6) and 163E(6) provide that regulations may be made concerning the disposal of unclaimed vehicles and vessels, and the manner in which the proceeds of any sale are to be distributed. To ensure there is no unjust acquisition of property, the regulations will need to provide for compensation arrangements if the owner of a vehicle or vessel comes forward after the sale of the vehicle or vessel.

Item 4 – Subsection 187(1)

This item provides for the exemption of clauses 163A(2) and 163A(5) from the infringement notice regime in section 187 of the Act as these are not strict liability offences.

SCHEDULE 2 – MISCELLANEOUS AMENDMENTS

Item 1 – Section 10 (definition of *cleared area*)

Item 1 clarifies that a *cleared area* means an area that may be entered by “persons, goods, vehicles and vessels” that have received clearance.

Item 2 – Section 10

Item 2 inserts a definition for *gross tonnage*. The definition provides that the term has the same meaning as in the International Convention for the Safety of Life at Sea (SOLAS Convention).

Item 3 – Section 10 (paragraph (e) of the definition of *maritime industry participant*)

Item 3 repeals redundant paragraph (e) in the definition of a *maritime industry participant*.

Item 4 – Paragraph 16(1)(b)

Item 5 – Subparagraph 17(1)(b)(ii)

Items 4 and 5 substitute “500 or more gross tonnes” with “500 gross tonnage or more” consistent with the SOLAS Convention.

Item 6 – After subsection 22(4)

Item 6 inserts subclause 22(5) after subsection 22(4). The subclause provides that a declaration of a higher security level given by the Secretary under subsection 22(1) to a regulated Australian ship may specify that the higher security level is only in force for the ship while in specified waters.

Item 7 – Section 23

Item 7 repeals section 23 and inserts clause 23. Subclause 23(1) provides that a security level declaration remains in force for a port, facility, area, participant, operation or regulated foreign ship until any period specified in the Secretary’s declaration expires, or the declaration is revoked in writing by the Secretary.

Subclause 23(2) provides that if a declaration for a regulated Australian ship does not limit the declaration to being in force for specified waters, the declaration remains in force for the ship until any period specified in the Secretary's declaration expires, or the declaration is revoked in writing by the Secretary.

Subclause 23(3) provides that if a declaration for a regulated Australian ship limits the declaration to being in force for specified waters, the declaration will be in force for the ship when it is in the specified waters unless revoked in writing by the Secretary, or the period (if any) specified in the declaration expires.

Item 8 – Section 28

Item 8 repeals section 28 and inserts clause 28 which provides that the Secretary must, as soon as practicable, notify the ship operator for the ship, or master of the ship, that the Secretary has declared that a maritime security level is in force for a regulated Australian ship, a regulated Australian ship while it is in specified waters, or a regulated foreign ship.

Item 9 – Subsection 39(1)

Item 9 amends subsection 39(1) to clarify that the reference to “a person” in this offence provision includes a person to whom a direction to a ship has been given under section 36 or 36A. This is consistent with the offence provision in section 40 of the Act.

Item 10 – Subsection 46(2)

Item 11 – Subsection 64(2)

These items correct references to ship enforcement orders in the Act.