

2004-2005

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Maritime Transport and Offshore
Facilities Security Amendment
(Maritime Security Guards and Other
Measures) Bill 2005**

No. , 2005

(Transport and Regional Services)

**A Bill for an Act to amend the law relating to the
security of maritime transport and offshore
facilities, and for related purposes**

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1 **A Bill for an Act to amend the law relating to the**
2 **security of maritime transport and offshore**
3 **facilities, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Maritime Transport and Offshore*
7 *Facilities Security Amendment (Maritime Security Guards and*
8 *Other Measures) Act 2005*.

9 **2 Commencement**

10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with
12 column 2 of the table. Any other statement in column 2 has effect
13 according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, item 1	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 122 of Schedule 1 to the <i>Maritime Transport Security Amendment Act 2005</i> .	
3. Schedule 1, items 2 to 4	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
4. Schedule 2, items 1 to 5	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 1 to the <i>Maritime Transport Security Amendment Act 2005</i> .	
5. Schedule 2, items 6 to 8	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 72 of Schedule 1 to the <i>Maritime Transport Security Amendment Act 2005</i> .	

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
6. Schedule 2, item 9	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 89 of Schedule 1 to the <i>Maritime Transport Security Amendment Act 2005</i> .	
7. Schedule 2, items 10 and 11	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 1 to the <i>Maritime Transport Security Amendment Act 2005</i> .	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1
2 **Schedule 1—Maritime security guards**
3

4 *Maritime Transport and Offshore Facilities Security Act*
5 *2003*

6 **1 At the end of section 113D**

7 Add:

- 8 (6) Regulations made under subsection (1) must be consistent with
9 Australia's obligations under international law.

10 **2 Section 161**

11 Repeal the section, substitute:

12 **161 Simplified overview of Division**

13 This Division provides maritime security guards with limited
14 powers to:

- 15 (a) request people to produce identification and state
16 reasons for being in maritime security zones; and
17
18 (b) restrain and detain people; and
19
20 (c) remove unauthorised people from maritime security
21 zones if they do not leave when requested to do so;
22 and
23
24 (d) remove unauthorised vehicles and vessels from
25 maritime security zones if a guard is unable to have
26 the vehicles or vessels removed by persons in
27 control of them.

25 The Division establishes restrictions on these powers, such as
26 limiting the amount of force that may be used. The power to detain
27 a person is also restricted to the period before the person can be
28 dealt with by a law enforcement officer.

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Regulations must establish requirements to be met before a person can become a maritime security guard.

3 At the end of Division 5 of Part 8

Add:

163A Maritime security guards' power to request information

Power to require production of ID

- (1) A maritime security guard may request any person found in a maritime security zone to produce identification.
- (2) A person commits an offence if:
- (a) a maritime security guard has made a request to the person under subsection (1); and
 - (b) the guard has identified himself or herself as a maritime security guard to the person; and
 - (c) the guard has informed the person of the guard's authority to make the request; and
 - (d) the guard has informed the person that it may be an offence not to comply with the request; and
 - (e) the person fails to comply with the request.

Penalty: 20 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Power to require persons to state reason for being in zone

- (4) If:
- (a) a person is in a maritime security zone; and
 - (b) a maritime security guard believes, on reasonable grounds, that the person is not:
 - (i) a maritime security inspector; or
 - (ii) a duly authorised officer; or
 - (iii) a law enforcement officer; or

- 1 (iv) a member of the Australian Defence Force; or
2 (v) a person who is authorised by a law of the
3 Commonwealth, State or Territory to enter a maritime
4 security zone; or
5 (vi) a person of a kind prescribed in the regulations for the
6 purposes of this subparagraph;
7 the maritime security guard may request the person to state his or
8 her reason for being in the zone.

- 9 (5) A person commits an offence if:
10 (a) a request has been made to the person under subsection (4);
11 and
12 (b) the guard has identified himself or herself as a maritime
13 security guard to the person; and
14 (c) the guard has informed the person of the guard's authority to
15 make the request; and
16 (d) the guard has informed the person that it may be an offence
17 not to comply with the request; and
18 (e) the person fails to comply with the request.

19 Penalty: 20 penalty units.

- 20 (6) Subsection (5) does not apply if the person has a reasonable excuse.

21 Note: A defendant bears an evidential burden in relation to the matter in
22 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

23 **163B Requests to leave maritime security zones**

- 24 (1) If a maritime security guard reasonably suspects that a person is
25 within a maritime security zone without proper authorisation, the
26 guard may request the person to leave the zone.
- 27 (2) A person commits an offence if:
28 (a) a request has been made to the person under subsection (1);
29 and
30 (b) the guard has identified himself or herself as a maritime
31 security guard to the person; and
32 (c) the guard has informed the person of the guard's authority to
33 make the request; and

1 (d) the guard has informed the person that it may be an offence
2 not to comply with the request; and

3 (e) the person fails to comply with the request.

4 Penalty: 20 penalty units.

5 (3) Subsection (2) does not apply if the person has a reasonable excuse.

6 Note: A defendant bears an evidential burden in relation to the matter in
7 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

8 (4) Subsection (2) is an offence of strict liability.

9 **163C Maritime security guards' power to remove people from zones**

10 (1) If:

11 (a) a request to leave a maritime security zone has been made to a
12 person under subsection 163B(1); and

13 (b) the guard has done the things mentioned in paragraphs
14 163B(2)(b), (c) and (d); and

15 (c) the person fails to comply with the request;
16 the guard may remove the person from the zone.

17 (2) A maritime security guard must not use more force, or subject the
18 person to greater indignity, than is necessary and reasonable to
19 remove the person from the zone.

20 **163D Maritime security guards' power to remove vehicles from**
21 **zones**

22 (1) A maritime security guard may remove, or cause to be removed, a
23 vehicle from a maritime security zone if the guard reasonably
24 suspects that the vehicle is in the zone without proper authorisation.

25 (2) However, a vehicle must not be removed under this section without
26 the maritime security guard making reasonable efforts to have the
27 person in control of the vehicle remove the vehicle.

28 (3) The maritime security guard must ensure that:

29 (a) no more force than is necessary and reasonable to remove the
30 vehicle is used; and

- 1 (b) a person is not subjected to greater indignity than is necessary
2 and reasonable to remove the vehicle; and
3 (c) reasonable efforts are taken to avoid damaging the vehicle.
- 4 (4) If a vehicle is removed under this section, the maritime security
5 guard must make reasonable efforts to notify:
6 (a) the vehicle's owner; and
7 (b) persons of a kind (if any) prescribed in the regulations;
8 about the vehicle's removal and the vehicle's new location.
- 9 (5) If a person reasonably incurs costs or expenses in relation to the
10 vehicle's removal, relocation or storage under this section, the
11 vehicle's owner is liable to pay to the person an amount equal to
12 those costs and expenses. This amount:
13 (a) may be recovered by the person as a debt due to the person in
14 a court of competent jurisdiction; and
15 (b) must not be such as to amount to taxation.
- 16 (6) The regulations may make provision for:
17 (a) the disposal, through sale or otherwise, of unclaimed vehicles;
18 and
19 (b) the manner in which the proceeds of any sale are to be
20 distributed.

21 **163E Maritime security guards' power to remove vessels from zones**

- 22 (1) A maritime security guard may remove, or cause to be removed, a
23 vessel, other than a security regulated ship or a ship regulated as an
24 offshore facility, from a maritime security zone if the guard
25 reasonably suspects that the vessel is in the zone without proper
26 authorisation.
- 27 (2) However, a vessel must not be removed under this section without
28 the maritime security guard making reasonable efforts to have the
29 person in control of the vessel remove the vessel.
- 30 (3) The maritime security guard must ensure that:
31 (a) no more force than is necessary and reasonable to remove the
32 vessel is used; and

- 1 (b) a person is not subjected to greater indignity than is necessary
2 and reasonable to remove the vessel; and
3 (c) reasonable efforts are taken to avoid damaging the vessel.
- 4 (4) If a vessel is removed under this section, the maritime security
5 guard must make reasonable efforts to notify:
6 (a) the vessel's owner; and
7 (b) persons of a kind (if any) prescribed in the regulations;
8 about the vessel's removal and the vessel's new location.
- 9 (5) If a person reasonably incurs costs or expenses in relation to the
10 vessel's removal, relocation or storage under this section, the
11 vessel's owner is liable to pay to the person an amount equal to
12 those costs and expenses. This amount:
13 (a) may be recovered by the person as a debt due to the person in
14 a court of competent jurisdiction; and
15 (b) must not be such as to amount to taxation.
- 16 (6) The regulations may make provision for:
17 (a) the disposal, through sale or otherwise, of unclaimed vessels;
18 and
19 (b) the manner in which the proceeds of any sale are to be
20 distributed.

21 **4 Subsection 187(1)**

22 Omit "or 155(4)", substitute ", 155(4), 163A(2) or 163A(5)".

1
2 **Schedule 2—Miscellaneous amendments**
3

4 ***Maritime Transport and Offshore Facilities Security Act***
5 ***2003***

6 **1 Section 10 (definition of *cleared area*)**

7 Omit “persons who”, substitute “persons, goods, vehicles and vessels
8 that”.

9 **2 Section 10**

10 Insert:

11 *gross tonnage* has the same meaning as in the SOLAS Convention.

12 **3 Section 10 (paragraph (e) of the definition of *maritime***
13 ***industry participant*)**

14 Repeal the paragraph.

15 **4 Paragraph 16(1)(b)**

16 Omit “500 or more gross tonnes”, substitute “500 gross tonnage or
17 more”.

18 **5 Subparagraph 17(1)(b)(ii)**

19 Omit “500 or more gross tonnes”, substitute “500 gross tonnage or
20 more”.

21 **6 After subsection 22(4)**

22 Insert:

23 (5) A declaration under subsection (1) that a maritime security level is
24 in force for a regulated Australian ship may specify that the level is
25 only in force for the ship while it is in specified waters.

26 **7 Section 23**

27 Repeal the section, substitute:

23 When a maritime security level is in force

- (1) If a declaration is made under subsection 22(1) or (2), the maritime security level declared in the declaration is in force for the port, facility, area, participant, operation or regulated foreign ship covered by the declaration until either of the following occurs:
- (a) the period (if any) specified in the declaration expires;
 - (b) the declaration is revoked, in writing, by the Secretary.
- (2) If a declaration is made under subsection 22(1) for a regulated Australian ship, and the declaration does not limit the waters in which the security level is in force in reliance on subsection 22(5), the maritime security level declared in the declaration is in force for the ship until either of the following occurs:
- (a) the period (if any) specified in the declaration expires;
 - (b) the declaration is revoked, in writing, by the Secretary.
- (3) If a declaration is made under subsection 22(1) for a regulated Australian ship, and the declaration limits the waters in which the security level is in force in reliance on subsection 22(5), then unless:
- (a) the period (if any) specified in the declaration expires; or
 - (b) the declaration is revoked, in writing, by the Secretary;
- the maritime security level declared in the declaration is in force for the ship while it is in those waters.

8 Section 28

Repeal the section, substitute:

28 Notifying declarations covering security regulated ships

If the Secretary declares that:

- (a) a maritime security level is in force for a regulated Australian ship; or
- (b) a maritime security level is in force for a regulated Australian ship while it is in specified waters; or
- (c) a maritime security level is in force for a regulated foreign ship;

the Secretary must, as soon as practicable, notify the ship operator for the ship, or the master of the ship.

1 **9 Subsection 39(1)**

2 After “A person”, insert “(including a person to whom a security
3 direction to a ship is given under section 36 or 36A)”.

4 **10 Subsection 46(2)**

5 Omit “an enforcement order (see section 189)”, substitute “a ship
6 enforcement order (see section 195)”.

7 **11 Subsection 64(2)**

8 Omit “an enforcement order (see section 189)”, substitute “a ship
9 enforcement order (see section 195)”.