

Trade & Transport Alert

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Maritime Security in Australia: update on the maritime security identification system

In the *Trade & Transport Alert* September 2005, we reported on the amendments to the *Maritime Transport and Offshore Facilities Security Act 2003* (Act). One of those amendments is the introduction of a requirement for individuals to carry a maritime security identification card (MSIC) whilst in a maritime security zone (MSZ). It is estimated that approximately 130,000 people in the maritime industry will be affected by this requirement.

Controversy surrounding MSICs

The introduction of the MSIC has been the subject of some controversy relating to the administration of the regime and the background checks to be performed by the AFP and ASIO. In particular:

1. The report of criminal convictions

Neither the Act nor the accompanying Regulations contain a mandatory requirement on MSIC applicants to disclose all prior criminal convictions. Nevertheless, the Department of Transport and Regional Services (DOTARS) have supported the Australian Federal Police (AFP) in requesting the disclosure of all prior criminal convictions as part of the MSIC application process. This issue was a subject of debate amongst members of the Office of Transport Security (OTS), DOTARS, employers' groups, the AFP and the maritime unions.

The rationale behind the requirement to disclose is to ensure that reports from Federal and State police forces will be matched to the correct applicant. Ultimately however, it seems that

a failure to disclose a prior conviction does not disentitle an applicant from obtaining an MSIC. The MSIC applicant will not be penalised if the AFP's inquiries reveal a conviction which was not disclosed.

2. The identity and role of the issuing bodies

The identity and role of the issuing bodies, both during the 15 month implementation period and after 31 December 2006 remain contentious.

During the implementation period, an MSIC application is determined in the following manner:

- the issuing body administers the application;
- the AFP and ASIO undertake a two-step security clearance; and
- DOTARS reviews and decides the application.

These 3 processes are described in more detail below:

2.1 Issuing body administers the application

The issuing body accepts the application, ensures that all supporting documents are provided, arranges for the

In brief

- Controversy and confusion still exist over the introduction of a maritime security identification card (MSIC) system
- The introduction of the MSIC system to all ports should be complete by November 2006
- All Australian maritime workers who need to enter maritime security zones must have an MSIC by 31 December 2006

security clearance and for review by DOTARS.

Any organisation can apply to become an issuing body, provided it meets the criteria set out in the *Maritime Transport and Offshore Facilities Security Regulations 2003* (Regulations).

At the moment, it is understood that there have been 29 declarations of interest made to the OTS. Currently the Port of Melbourne is the only organisation that has been approved to be an issuing body.

2.2 Security clearance

There is a two-step security clearance provided by:

- The AFP – who obtain details of State and Federal criminal convictions; and
- ASIO – for any politically motivated violence or whether the person is on its watch list.

2.3 Review of application by DOTARS

Neither the AFP nor ASIO makes a decision on whether the MSIC application is successful. Both

organisations simply report back to DOTARS with the relevant information.

DOTARS then reviews the application in light of the legislation, and determines whether the MSIC applicant is successful.

After December 2006, the Regulations currently provide that issuing bodies will take over responsibility for deciding whether to grant an MSIC, in addition to their current role in administering the application. The difficulties arising from this include:

- the treatment of sensitive information obtained from the issuing body. Under the Regulations, there is a 7 year obligation for maintaining this information. The costs associated with this record keeping are not insignificant in light of the fact that the issuing body must track the applicant's criminal conviction (if any) made after the issue of the MSIC; and
- with the prospect of having different issuing bodies review applications, there is a possibility arising of having different decisions based on the same set of facts. This is because the review is vulnerable to some subjectivity. Australian Shipowners Association (ASA) advocates the notion of a centralised vetting agency and believes that an organisation such as

DOTARS would be the most appropriate body to review the MSIC application.

The latest information obtained from Trevor Griffett of the ASA indicates that the Federal Attorney General, Customs and DOTARS are currently discussing this issue. This has been complicated by the recommendations of the Wheeler Report into the equivalent aviation security identification cards, which also touch upon the longer term administration of MSICs.

3. Rights to access to MSZs

The MSIC does not entitle its holder automatic access to MSZs. For example, the holder of an MSIC will still need to be authorised by the relevant stakeholder to be in the restricted area. However, there are genuine concerns that some facilities (or security at the gates) may treat an MSIC as an automatic right to entry.

What has happened since September 2005?

The first phase of the MSIC system will be implemented on 28 November 2005 when it will be introduced to the Port of Melbourne. The planned introduction of the MSIC system to all ports across Australia will take place on a phase by phase basis with completion by November 2006.

MSIC Timetable

Ports will be grouped into 7 groups according to their perceived security risk and geographical location. Each group will then be allocated a specific period in which it is to introduce the MSIC system. There will be 7 phases to the implementation of the MSIC system. For information on the implementation timetable, please refer to the DOTARS website (<http://www.dotars.gov.au>).

Persons such as shipping agents, shore-based managers and seafarers will be able to apply for an MSIC from the Port of Melbourne from 28 November 2005 because they are not dependent on one particular port.

All Australian maritime workers who have an operational need to enter an MSZ must have an MSIC by **31 December 2006**. If a person fails to obtain an MSIC by this date it will result in a fine.

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