



Trade & Transport – Client Alert

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Maritime Transport Security Act 2003

Developing Security Frameworks for Australia

The *Maritime Transport Security Act 2003* (Cth) (the Act) commenced operation on 12 December 2003. The passage of this legislation has significant implications for the Australian ports and maritime industry. The legislation ensures that Australia will meet its international obligations by giving effect to the provisions of the ISPS Code (contained in Chapter XI-2 of the *Safety of Life at Sea Convention 1974*) before 1 July 2004.

What does the Act require?

The Act requires participants in the maritime industry to develop security frameworks that are relevant to their particular circumstances and the specific risks that they face.

The provision for an enhanced security framework across Australian ports will fulfil international obligations under the ISPS Code. Should Australia fail to fully implement the ISPS Code requirements by 1 July 2004, there could be serious consequences to ship movements and international trade as it is unlikely that foreign ships will call at ports which are not compliant with the ISPS Code.

Who is affected by the Act and how?

Maritime industry participants

The Act applies primarily to maritime industry participants (MIPs) (section 10 of the Act) which include:

- a port operator; or
- a port facility operator; or
- the ship operator for a regulated Australian or foreign ship; or
- other persons who conduct maritime related enterprise.

Security assessments and maritime security plans

Certain MIPs (in particular port operators and port facility operators) are required by the Act to undertake a security assessment which identifies, analyses, evaluates and treats risks and/or

threats to maritime transport security. These security assessments will then form part of maritime security plans (MSPs) which will be submitted to the secretary of the relevant government department for approval.

A key requirement of the Act is that all MIPs operate in accordance with approved MSPs.

An MSP must contain details of the relevant security assessment and relevant security activities which will be implemented at the port. The activities to be adopted will reflect the relevant security "level" which applies to the MIP.

An MSP must also:

- contain contact details for designated "security officers";
- detail provisions for the use of declarations of security; and
- illustrate how the implementation of the MSP will contribute to the achievement of national maritime security (see Part 3 Div 4 of the Act, especially section 47).

It is anticipated that port operators will identify and work in co-operation with the relevant port facility operators and port service providers to develop security assessments and MSPs.

There is a deadline of **1 March 2004** by which time all MIPs must have submitted an MSP for approval. MIPs who fail to comply with this deadline risk being non-compliant with the ISPS Code when it commences operation on 1 July 2004, thereby impacting on their ability to participate in international trade.

Australian ships

For a vessel to comply with the security requirements of the ISPS Code (Part 4 of the Act) the Act provides that regulated Australian ships must operate according to approved ship security plans and must carry a valid International Ship Security Certificate (ISSC).

Foreign ships

In order to enter an Australian port a foreign ship must show (Part 5 of the Act):

- that they hold an ISSC or equivalent which signifies that the ship is compliant with SOLAS requirements;
- evidence of the relevant security level at which the ship is currently operating;
- evidence of relevant security levels for previous ports called at; and
- other relevant security information.

Costs

The primary responsibility for the development and implementation of MSPs lies with the maritime industry, which will bear the costs of creating and implementing the security measures contained in the MSP. These increased costs could be significant.

Department of Transport and Regional Services

The Department of Transport and Regional Services (DoTARS) will be responsible for the operation and administration of the Act including:

- providing guidance to the maritime industry on the development of security assessments and MSPs;
- reviewing and approving MSPs;
- monitoring implementation and compliance with MSPs;
- issuing ISSCs to Australian flagged vessels;
- verifying compliance by foreign flagged vessels visiting Australian ports;
- setting security levels and issuing security directions as appropriate; and

- acting as a point of contact for provision of security level information to Australian and foreign ships and to port facilities.

Regulations

The operation of the Act is supported by the *Maritime Transport Security Regulations 2003* (Cth) (MTSR).

The MTSR are the first in a series of regulations which give effect to the Act. This initial series of regulations establishes the key requirements for Australian MIPs. The following regulations came into operation on 1 January 2004: Parts 1, 3 (except Subdiv 3.4.1), 4, 12, 13 and regulations 6.05, 6.20, 6.80, 6.85, 6.105. The remaining regulations will commence upon operation of Part 2 of the *Maritime Security Act 2003*.

The key requirements detailed in the MTSR include:

- undertaking security assessments which identify, analyse and evaluate the risks and/or threats to maritime transport security; and
- providing MSPs which must be drafted, approved and implemented by the 1 July 2004 deadline.

The MTSR stipulate the obligations of the MIP in relation to the content and form of security assessments and plans; the role of security officers; the sharing of security information; the establishment and enforcement of security zones; the screening and clearance of passengers and the negotiation of declarations of security.

The MTSR also:

- require operators of regulated Australian ships to provide pre-entry information when they return to Australia from an overseas voyage, and to have a ship security alert system in place;
- define what constitutes a weapon and what constitutes a prohibited item. They also include some exemptions from weapons provisions in the Act; and
- require the Secretary of DoTARS to consult with certain people when giving a control direction under the Act.

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