

Trade & Transport Alert

September 2005

New maritime security provisions for Australia

The Federal Government has recently introduced two initiatives to further strengthen Australia's maritime security arrangements. Firstly, the *Maritime Transport Security Act 2003 (Act)* has been extended to include security arrangements for Australia's offshore oil and gas facilities. Secondly, identification cards will be issued for all persons in designated maritime zones.

Existing maritime security obligations

Australia is a signatory to the International Convention for the Safety of Life at Sea (1974) (**SOLAS**). In December 2002, Australia agreed that the International Ship and Port Facility Security Code (**Code**) should be included so as to supplement existing SOLAS obligations.

The Code was implemented in Australia by the Act (now known as the *Maritime Transport and Offshore Facilities Act 2003*), which came into force on 1 July 2004. (See our February 2004 Alert, available on our website www.bdw.com under publications, for more details on the Act.) This Act was amended on 26 June 2005. This alert deals with two of the major changes to the Act.

Extension of maritime security arrangements to offshore and gas facilities

One of the main features of the Act is the requirement to have security plans for port facilities and shipping. Prior to the amendments to the Act, only specified ports and ships were required to have a security plan. However, this requirement to have a security plan has now been extended to all offshore oil and gas facility (**offshore facility**) operators within Australian waters, Australia's exclusive economic zone, and on its continental shelf (**offshore area**).

An offshore facility is any structure or vessel that is located in an offshore area that is used in the extraction of petroleum from the seabed or its subsoils. FPSO's and FSU's are also considered to be offshore facilities in certain circumstances. However, offtake tankers, tugs or anchor handlers, ships used to supply an offshore facility, any pipelines below the water mark, or mobile drilling units are not considered to be offshore facilities for the purposes of the Act.

The security plan for each offshore facility must include:

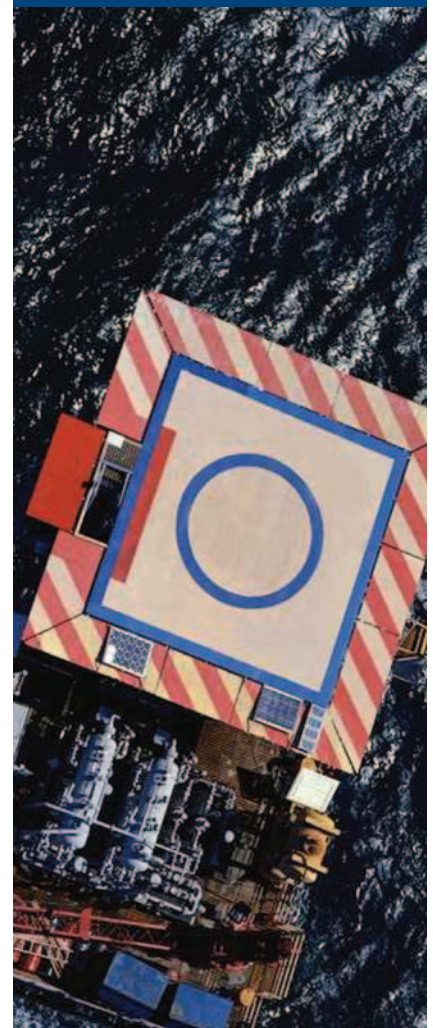
- a security assessment of the facility's operation;
- the procedure to be adopted during various levels of security alerts;
- contact details of the facility's security officer;
- provision for the use of declarations of security (agreements between operators and third parties identifying security activities each will undertake in specified circumstances); and
- a demonstration that the plan will make an appropriate contribution towards the achievement of maritime security outcomes.

Security plans for all offshore facilities must be submitted to the Department of Transport and Regional Services (**DOTARS**) by 30 September 2005.

In brief

Maritime security laws in Australia have recently been amended. The main features of these amendments are:

1. extension of the requirement to develop and submit a security plan to offshore oil and gas facility operators; and
2. the introduction of a **Maritime Security Identification Card for personnel in Maritime Security Zones**.



Maritime Security Identification Cards (MSIC)

Amendments to the Regulations under the Act were also made on 2 September 2005. Prior to these amendments, access to Maritime Security Zones (MSZs) was managed by each individual port or ship operator. However, there was no regulatory regime setting out the manner in which a person may be granted access to these MSZs. Such a regime has existed in the aviation industry for some time. Under this regime, aviation security identification cards are used to allow persons access to designated areas after they have passed background checks.

The amendments to the Regulations introduce a similar regime in the shipping industry by way of the MSIC system. The identification cards issued under this system will be identical across all ports and ships and will prove that the holders of such cards have satisfied background checks conducted by both the Australian Federal Police and ASIO.

Who will be affected by the MSIC system?

All current and new employees including:

- port, port facility and port service workers;
- stevedores;
- some truck and train drivers;
- seafarers on Australian regulated ships; and
- people who work on or supply offshore facilities.

Federal and local police, certain Australian customs officers and emergency personnel responding to an emergency are exempt from the MSIC system.

Whilst the shipping industry generally supports the concept of the MSIC system, there have been concerns raised in respect of its implementation, particularly in relation to its application to foreign seafarers. It is argued that the additional requirement of an MSIC is unnecessary as those seafarers are already required to hold passports and special purpose visas.

Applications for an MSIC

Those wishing to apply for an MSIC will need to complete:

- an application form by which they will justify a need to be in an MSZ;
- provide various forms of identification; and
- sign a consent permitting background checks to be carried out.

The application will then be processed by an authorised issuing body, which may be an industry association, private company or an employee union.

Commencement of the MSIC system

The implementation of the MSIC system will commence on 1 October 2005. From 1 January 2007, all people entering an MSZ will need to display their MSICs.

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